



Brihanmumbai Municipal Corporation

Design and Build Contract

**Construction of 45m wide Elevated Road from Link Road at
Dahisar (West) in BMC limit to Bhayander (West) in MBMC limit
(Coastal Road Last Leg)**

Volume 2

Particular Conditions of Contract

Contract Code: 7200037432

Volume 2

Particular Conditions of Contract



Employer:

Municipal Commissioner,
Brihanmumbai Municipal Corporation
Municipal Head Office Building,
Mahapalika Marg, Fort,
Mumbai- 400001, INDIA.

Engineer:

Chief Engineer (Bridges)
Brihanmumbai Municipal Corporation
Ground Floor, Engineering Hub Building Dr. E. Moses
Road Worli, Mumbai - 400018, INDIA.
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Portal: <http://portal.mcm.gov.in>

Volume 2
Part I
General Conditions of Contract (GCC)

The General Conditions of Contract shall be those contained in the “Conditions of Contract for Plant and Design-Build(First Edition, 1999)”, published by the Federation International des Ingenieurs — Conseils (FIDIC). The Clauses of these conditions shall be considered valid and binding in relation to the present contract, insofar as they are relevant and within the Laws of India.

Tenderers are deemed to be in possession of their own copy of the above document and to be fully aware of and have understood the contents therein.

Volume 2

Part II

Particular Conditions of Contract (PCC)



Brihanmumbai Municipal Corporation

Mumbai, Maharashtra, India

Part II

Particular Conditions of Contract (PCC)

The General Conditions of Contract shall be those contained in the “Conditions of Contract for Plant and Design-Build (First Edition, 1999)”, published by the Federation Internationale Des Ingenieurs – Conseils (FIDIC).

The General Conditions of Contract (GCC) are linked with the Particular Conditions of Contract (PCC) by the corresponding numbering of the Clauses, so that the GCC and the PCC together comprise the rights and obligations of the parties. In the case of any discrepancy between the conditions contained in the GCC and the PCC, the conditions contained in the PCC shall prevail over that of the GCC.

The Clauses of these conditions shall be considered valid and binding in relation to the present contract, insofar as they are relevant and within the Laws of India. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

Tenderers are advised to purchase copies of the FIDIC Conditions of Contract and deemed to be in possession of their own copy of the above document and to be fully aware of and have understood the contents therein.

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Units & Abbreviations

Units of measurement, symbols and abbreviations expressed in the Tender Documents Tenderers shall comply with the System International Units (SI Units).

Abbreviations

The following abbreviations shall be used in the Bid Document:

Prime Minister of India	PM
Chief Minister of Maharashtra	CM
Government of India	GOI
Government of Maharashtra	GOM
Ministry of Environment, Forest and Climatic Changes	MoEFCC
Ministry of Urban Developments	MoUD
Environment Appraisal Committee	EAC
State Environment Appraisal Committee	SEAC
State Environmental Impact Assessment Authority	SEIAA
Maharashtra Coastal Zone Management Authority	MCZMA
Brihanmumbai Municipal Corporation	BMC
Municipal Commissioner of Mumbai	MC
Additional Municipal Commissioner of Mumbai	AMC
Deputy Municipal Commissioner of Mumbai	DMC
Chief Engineer	Ch.E.
Mira Bhayandar Municipal Corporation	MBMC
Central Pollution Control Board	CPCB
State Pollution Control Board	SPCB
Maharashtra State Pollution Control Board	MPCB
Urban Development Department	UD
Maharashtra Maritime Board	MMB
Maharashtra State Road Development Corporation Ltd.	MSRDC
Mumbai Urban Infrastructure Project	MUIP
Mumbai Urban Transport Project	MUTP
Mumbai Metro Rail Corporation	MMRC
Mumbai Metro Line	MML
Mumbai Tran Harbour Link	MTHL
Mumbai Metropolitan Regional Development Authority	MMRDA
High Power Committee	HPC

Mumbai Heritage Conservation Committee	MHCC
National Institute of Oceanography	NIO
Development Planning Department	DPD
Water Supply Project Department	WSP

Units & Abbreviations

Chief Fire Officer	CFO
Hydraulic Engineer Department	HE
Airport Authority of India	AAI
Mumbai Traffic Police	MTP
Mumbai Port Trust	MbPT
Employer's Requirements (For Documents)	ER
Employer's Representative (For Agency or Person)	ER
Project Management Consultant	PMC
General Conditions of Contract	GCC
Development Plan	DP
Coastal Zone Management Plan	CZMP
Public Works Department	PWD
Indian National Rupees	INR
Interim Payment Certificate (for Tender)	IPC
Indian Penal Code (for Law)	IPC
Hector	Ha
Town Hall Datum	THD
Chart Datum	CD
Mean Sea Level	MSL
High Tide Level	HTL
Low Tide Level	LTL
Kilometer	km
Chainage	CH
Non Pressure	NP
Number	No.
Particular Conditions of Contract	PCC
Provisional Sum	PS
Reinforced Cement Concrete	RCC
Safe Bearing Capacity	SBC
Slum Rehabilitation Authority	SRA
Removal & Rehabilitation	R&R
State Bank of India Prime Lending Rate PLR	SBI
Tender Data Sheet (For Tender)	TDS

Tax Deducted at Source (For Taxes)	TDS
Bombay Electric Supply & Transport	BEST
TATA Power Company Ltd.	TPCL
Notice for Inviting Tender	NIT
Instructions to Tenderer	ITT

PCC Clause No.	GCC Clause No.	
1. General Provisions		
1.1 Definitions		
Clause 1		
Add Sub-Clause 1.1 Definitions		
1.1(a) (i)	1.1	(i) "The Employer" means: Brihanmumbai Municipal Corporation (BMC)//The Municipal Commissioner of Mumbai for time being holding office as per 1.1 (a), Municipal Head Office Building, Mahapalika Marg, Fort, Mumbai 400 001, India.
1.1.(a) (ii)	1.1.2.4	(ii) "The Engineer" means: The Chief Engineer (Bridges) Ground Floor, Engineering Hub Building, Dr. E-Moses Road, Near Worli Naka, Worli, Mumbai 400 018. Maharashtra, India Email: che.br@mcgm.gov.in OR any other person appointed by the Employer, and notified in writing to the Contractor to act in replacement of the Engineer from time to time. The term "the Engineer" in the tender documents shall also mean "the Employer's Personnel" (Project Management Consultant — PMC)
1.1 (a) (iii)	Under 1.1	The "Corporation" or the "Municipal Corporation" shall mean Brihanmumbai Municipal Corporation constituted under the Mumbai Municipal Corporation Act. The "Commissioner" shall mean the Commissioner for Brihanmumbai Municipal Corporation, for the time being holding the said office, and shall also include all the Additional Municipal Commissioners and officers to whom the powers of the Commissioner have been delegated under Section 56 and 56-B of the Bombay Municipal Corporation Act.
1.1 (a) (iii)	1.1	Hierarchy of Administration: The Employer → The Engineer → The Employer's Personnel (PMC) → The Contractor
1.1 (b)		Add at the end of the Sub-Clause 1.1.1.6: "Contract Forms", "Schedules", "Annexures" and "Annexes" means the document(s) enclosed Contract Forms, Schedules, Annexures and Annexes completed by the Contractor and

	1.1.1	submitted with the Tender, as included in the Contract. Such document may include data, lists and schedules of payments and/or prices
1.1 (c)	1.1.1	<p><u>Add at the end of the Sub-Clause 1.1.1.11:</u></p> <p>“Intimation to Proceed” means the Intimation issued by the Employer</p> <p>/the Engineer or the person appointed from time to time by the Employer to perform specified duty to the Contractor communicating the consent by which the Works are to be commenced.</p>
1.1 (d)	1.1.1	<p><u>Add a new Sub-Clause 1.1.1.12:</u></p> <p>“Occupational, Safety, Health and Environmental (OSH&E) Manual” means the Employer’s manual containing the requirements and conditions to be met during the execution of the Works by the Contractor.</p>
1.1. (e)	1.1.1	<p><u>Add a new Sub-Clause 1.1.1.13:</u></p> <p>“Particular Conditions of Contract” means any Particular Conditions of Contract issued by the Employer over and above the General Conditions of Contract, issued by the Employer prior to submission of the Tender or negotiated and agreed in writing by the Employer and the Contractor prior to and conditional upon acceptance of the Tender.</p>
1.1 (f)	1.1.1	<p><u>Add a new Sub-Clause 1.1.1.14:</u></p> <p>“Works Programme” means the programme showing the sequence, method and timing of investigations, design, issue of Notice to Proceed, execution, manufacture, delivery to site, erection, installation, testing, commissioning of the Works (including Integrated Testing and Commissioning), indigenisation (where applicable) and related activities in the form and content prescribed by the Employer’s Requirements, or any amended or varied version thereof, as submitted by the Contractor and for which the Engineer has issued a Notice to Proceed .</p>
1.1 (g)	1.1.1	<p><u>Add a new Sub-Clause 1.1.1.15:</u></p> <p>(i) Project Management Consultant (PMC) means any consultant or the person appointed from time to time by the Employer to perform specified duty as per the Contract entered in between the Employer and the consultant or the person as Project Management Consultant. As named in the Appendix FT — 1 Contract Data of Volume 1.</p>
1.1. (h)	1.1.1	<p><u>Add a new Sub-Clause 1.1.1.16:</u></p>

		The word “ tender ” is synonymous with “ bid ”, and “ tenderer ” with “ bidder ” and the words “ tender documents ” with “ bidding documents ”
1.1 (i)	1.1.1	<u>Add a new Sub-Clause 1.1.1.17:</u> The word “Contract Price” is synonymous with “Contract Sum”.
1.1 (j)	1.1.1	<u>Add a new Sub-Clause 1.1.1.18:</u> The “Corporation” or the “Municipal Corporation” shall mean Brihanmumbai Municipal Corporation, constituted under the M.M.C. Act 1888 as amended up to date.
1.1 (k)	1.1.2	<u>Add a new Sub-Clause 1.1.2.11:</u> “ Designated Contractors ” means any of the following whose activities or the works they are engaged to carry out, affect or are affected by the Works, in any way or at any time: (a) contractors, design consultants and utility authorities engaged on the Project from time to time by the Employer; (b) Sub-contractors of any tier of the contractors above; provided that the definition shall exclude the Contractor and his sub-contractors of any tier in relation to the Works.
1.1 (l)	1.1.2	<u>Add a new Sub-Clause 1.1.2.12:</u> “ Designer ” means the Contractor, or part of the group forming the contractor, person, firm or company or group of companies, or any replacement, carrying out the Design of Works or part thereof.
1.1 (m)	1.1.3	<u>Add a new Sub-Clause 1.1.3.10:</u> “ Contract Period ” means the period from the Commencement Date to the completion of the Works; “ Defects Liability Period ” means the period stated for remedying any defects from taking over the work till the end of the Defects Liability Period. The terms “Maintenance Period” or “Period of Maintenance” is synonymous with “Defects Liability Period”.
1.1 (n)	1.1.3	<u>Add a new Sub-Clause 1.1.3.11:</u> “ Key Date ” means a date identified as such in the Contract to achieve a particular activity, and the same may be extended pursuant to GCC Sub-Clause 8.4.
1.1 (o)	1.1.3	<u>Add a new Sub-Clause 1.1.3.12:</u>

		<p>“Milestone” means the completion of a part of the Works or the occurrence of an event identified as such in the Schedule of Milestones.</p>
1.1 (p)	1.1.3	<p><u>Add a new Sub-Clause 1.1.3.13:</u></p> <p>“Factory Tests” means the tests required to be carried out in the factory premises on components, equipment, subsystem, system, etc. During and/or after manufacture in the factory, before shipped.</p>
1.1 (q)	1.1.3	<p><u>Add a new Sub-Clause 1.1.3.14:</u></p> <p>“Integrated Testing” means the programme of tests performed by the Contractor at the direction of the Engineer following satisfactory completion of Contractor’s tests on his equipment, sub-systems or system to verify and confirm the compatibility and compliant performance of his equipment/sub-system/system with the equipment/sub-system/system provided by others.</p>
1.1 (r)	1.1.6	<p><u>Add to Sub-Clause 1.1.6.9 with the following:</u></p> <p>Changes to temporary works, any sequence, method or timing of construction, manufacture or installation and changes to any part of the Site or the Works Areas or access thereto will not constitute Variation.</p>
1.1 (s)	1.5	<p><u>Replace Sub-Clause 1.5 with the following:</u></p> <p>The priority of the documents shall be with the following sequence:</p> <ul style="list-style-type: none"> (a) Contract Agreement (b) Letter of Acceptance (LOA) (c) Letter of Tender (d) Letter of Clarification, if any. (e) Addendum/Corrigendum to Tender (f) Particular Conditions of Contract (PCC) (g) FIDC Conditions of Contract for Plant and Design — Build Contract First Edition, 1999 (GCC) (h) Pricing Document (i) Instructions to Tenderers (ITT) (j) Employer’s Requirements

		<p>(k) Outline Design & Construction Specifications</p> <p>(l) Tender Drawings</p> <p>(m) Contractor's Technical & Financial Proposal</p> <p>(n) All Qualification Documents with its all Addendum/Corrigendum</p> <p>(o) Reference Documents</p> <p>(p) Any other Forms, statements as part of Tender Technical & Financial Documents</p> <p>(q) If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction</p> <p>Note: The Costs of stamp duties and similar charges (if any) imposed by law in connection with entering into the Contract Agreement shall be borne by the Contractor.</p>
1.1 (t)	1.6	<p><u>Add a new Sub-Clause 1.6.1:</u></p> <p>Till the execution of formal agreement, the Letter of Acceptance (LOA) will form the agreement.</p>
1.1 (u)	1.7	<p><u>Add a new Clause 1.7.1 :</u></p> <p>The Employer shall be fully entitled without consent of the contractor to assign any part of work to any third party by giving 14 days' notice when the contractor is behind the schedule and causing undue delay, at the risk and cost of the contractor.</p>
1.1 (v)	1.8.1	<p><u>Add Sub-Clause 1.8.1 as under: As-Built Drawings</u></p> <p>On the basis of all Drawings relating to the work, the Contractor, at his own expense, shall prepare. "As- Built Drawings" using the latest software Auto CAD/*dxf/shape files to record the precise details of the work completed.</p> <p>A copy of the Auto CAD/*dxf/shape file Drawings shall be provided to the Engineer or his representative on a monthly basis for approval and to record all details relating to progress and developments. The final copy of the Auto CAD/*dxf/shape file Drawings shall be provided on Soft copy digital files as well as 8 sets of hard copies (A1 size) at the time of issue of the Taking Over Certificate. Failure to provide within 60 days from the date of issue of the Taking Over Certificate of project, the amount will be withheld as per Payment Schedule.</p>
		<p><u>Add Sub-Clause 1.8.2 as under:</u></p>

1.1 (w)	1.8.2	<p>The Contractor shall also arrange to take photographs as directed by the Engineer or his representative, depicting various details and stages of progress of works and submit them in duplicate in proper albums for records.</p> <p>All detailed working drawings, design calculations and fabrication drawings for <u>temporary works</u> (such as form work, staging, centering, scaffolding, specialized construction, handling and launching equipment and the like) and permanent works as well as bar bending schedule for reinforcement, material list for structural fabrication as well as detailed drawings for templates and anchorage and temporary support details for pre-stressing cables etc. shall be prepared by the Contractor at his own cost and submitted to the Engineer or his representative at least three weeks in advance of actual constructional requirements. Within two weeks of receipt, the Engineer or his representative will check and return one copy of the same for the contractor's use with amendments if any, marked on them after due discussion and agreement with the contractor. Such approval shall not relieve the contractor of any of his responsibilities in connection with temporary works. The Contractor will supply two copies of the approved drawings for the Engineer or his representative's use. The cost of preparing all such items of work shall be deemed to have been included in the respective rates or price quoted by the Contractor.</p>
1.1 (x)	1.13	<p>Sub-Clause: 1.13: Compliance with Law</p> <p>Replace Sub-Clause 1.13(b) with the following :</p> <p>b) The Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, wherever required such as Permission from GOI, GOM, MoEFCC, MoUD, EAC, MMRDA, MBMC, MSRDC, Traffic Police, BMC, PWD, MCZMA, SEIAA, AAI, MPCB, SEAC, CPCB, UD, Salt Commissioner, MML, HPC, MHCC, NIO, SRA, TPCL, External and Internal Utility Agencies, Navy, Coast Guard, Maharashtra Maritime Board, etc. Licenses and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.</p> <p>The scope of the Contractor shall include co-ordination with all agencies, obtaining permissions and approvals from all concerned agencies and Government Authorities, such as electrical inspector, safety office, tree authority, forest department, Environment Clearance authority, pollution control board's service providers relevant to the project.</p>

		All expenses and fees connected with permissions and approvals including deposits and renewal fees etc. shall be borne by the Contractor. However, all official fees/deposits related to clearances/ NOCs shall be paid by Tenderer and the same shall be reimbursed by Employer at actual. This condition will supersede any other conflicting provisions in the entire Tender document. Permission should be secured by the contractor for the Corporation.
1.1 (y)	1.14	<p><u>Add to Sub-Clause 1.14:</u></p> <p>d) The Contractor shall ensure that each and every member of JV participates actively and contributes in execution of the Works under the Contract, which shall be commensurate with their respective main scope of Works as stated in the JV Agreement, in mobilization/ deployment of technical resources (including manpower and equipment etc.) for the satisfactory execution of the Works under the Contract.</p>
1.1 (z)	1.14	e) The Contractor shall ensure that for execution of the Works under the Contract, each and every member of the JV deploys their respective technical expertise relating to their specific part of expertise as claimed in the RFP stage and utilizes it to the maximum extent for the successful project delivery/implementation of the Contract.
1.1 (aa)	1.15	<p>Sub-Clause: 1.15</p> <p>Add new Sub-Clause</p> <p>Inspection and Audit by Employer:</p> <p>The Contractor shall permit the Employer or the persons appointed by the Employer to inspect the site and /or the Contractors accounts and records relating to the performance of the Contract and to have such accounts audited by the Employer or the Auditors appointed by the Employer if required by the Employer.</p>
1.1 (ab)	1.16	<p>Sub-Clause: 1.16</p> <p>Add new Sub-Clause</p> <p>Details to be Confidential</p> <p>The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or as agreed with the Employer. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere except with the written consent of the Engineer and subject to such conditions as he may prescribe.</p>
2. The Employer		
2.1	2.1	<u>Sub-Clause 2.1: Right of Access to the Site</u>

		<p>If the contractor suffers delay and / or incurs cost as a result of a failure by the Employer to give any such right or possession within such time, the contractor shall give notice to the Engineer and shall be entitled subject to Sub-clause 20.1 [Contractor's claim] to:</p> <p>(a) An extension of time for any such delay, if completion is or will be delayed, under sub-clause 8.4 [Extension of Time for Completion], and</p> <p>(b) Payment of any such cost plus reasonable profit, which shall be included in the contract price.</p> <p><u>Delete Sub-Clause 2.1(b)</u></p>
2.2	2.2	<p><u>Add to Clause 2.2:</u></p> <p>(c) by organizing official meetings with the relevant authorities, and</p> <p>The Contractor is responsible for the preparation of necessary documents and, if required, explanations to the relevant authorities to get Permits, Licenses or Approvals from the relevant authorities in the approval process.</p> <p>The rendering of such assistance by the Employer shall not be interpreted as a pretext by the Contractor as condoning of any delay or non-performance of any of the Contractors obligations. The following-up of all such requirements shall be the responsibility of the Contractor.</p>
2.3	2.4	<p><u>Sub-Clause 2.4:</u></p> <p>Employer's Financial Arrangements Delete Sub-Clause 2.4</p>
2.4	2.5	<p><u>Add to Sub-Clause 2.5:</u></p> <p>The Employer is entitled to recover :</p> <p>a. Claims for amounts not insured by the contractor</p> <p>b. Claims for amounts not recovered from insurers</p> <p>Claims for the damage caused to interfacing contractors, third parties, Employers / Engineer's property.</p>
3. The Engineer		
3	3.1	<p><u>Engineer's Duties and Authority</u></p> <p>“ The Employer's Administration”:</p> <p>(1) The Employer may appoint an Employer's Representative to act on his behalf under the Contract. In this event, he shall give notice to the Contractor of the name, address, duties and authority of the Employer's Representative.</p>

		<p>The Employer's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him, by the Employer. Unless and until the Employer notifies the Contractor otherwise, the Employer's Representative shall be deemed to have authority of the Employer under the Contract, except in respect of Termination by the Employer. If the Employer wishes to replace any person appointed as Employer's Representative, the Employer shall give the Contractor not less than 14 days' notice of the replacement's name, address, duties and authority, and of the date of appointment.</p>
3	3.1	<p>“ The Employer's Administration ”:</p> <p>(2) The Employer or the Engineer or the Employer's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation with the Employer's approval. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall not take effect until a copy of it has been received by the Contractor. Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communication.</p> <p>Notwithstanding anything contained in this Sub-Clause, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibilities under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer.</p>
4	3.6	<p>Add Sub-Clause 3.6 as under :</p> <p>Site Meetings</p> <p>The Engineer shall summon all parties concerned to the first Site Meeting where he shall decide upon the future meetings. It is the duty of the Contractor or his Representative to participate in the Site Meetings. The purpose of the Site Meetings is to coordinate the various work components with the Contractor, to register the time in relation to the Program and to record the progress made.</p>
4 The Contractor		
Add the following Sub-Clauses after Sub-Clause 4.1		

5	4.1	<p>Add Sub-Clause 4.1.1 as under:</p> <p>The Contractor shall maintain all the records and submit the same in hard copies and soft copies till the completion of defect liability period or till the claims and court matters, if any, pertaining to the work are settled whichever is later and handover the same to the Employer through the Engineer or his representative.</p>
6	4.1	<p>Add Sub-Clause 4.1.2 as under:</p> <p>Maintenance of Existing Roads/Flyovers/Bridges</p> <p>In case of works of improvement to the existing Roads / Flyovers / Bridges, including widening of the Roads/Flyovers/Bridges (subject to the amendments if any, as specified), the Contractor shall be responsible for the maintenance (Ordinary Repairs) of the complete length of the road within site limit right from the date of the work order, even though he proposes to take up the length for improvement in phases. His offer/rates shall be deemed to be inclusive of the cost of such repairs and no separate payment towards maintenance (Ordinary Repairs) would be payable to him. In case the Contractor neglects or fails to carry out maintenance to the satisfaction of the Engineer or his representative, the Engineer or his representative shall have the authority to get the same carried out through any other agency at the risk and cost of the Contractor. The Contractor is supposed to maintain an O&M manual and it has to be regularly updated and shared with the client on satisfactory completion of all maintenance work.</p>
7.	4.1	<p>Add Sub-Clause 4.1.3 : Contractor's General Obligation</p> <p>The Contractor accepts entire responsibility for the Contractor's Technical Proposals, the Design Data, and for any mistake, inaccuracy, discrepancy or omission contained therein. Nothing contained in the Contractor's Technical Proposals and the Design Data shall relieve the Contractor in any way from his obligations. The Contractor warrants to the Employer that:</p> <p>(a) he has exercised and will continue to exercise in the design of the Works all the skill and care to be expected of a professionally qualified and competent designer experienced in work of similar nature and scope of the Works;</p> <p>(b) The Works will, when completed, comply in all respects with the Employer's Requirements, the Contractor's Technical Proposals, the Design Data and the intended use of the Works;</p> <p>(c) The Works have been or will be designed, manufactured, installed and otherwise constructed and to the highest standards available using proven up-to-date good practice;</p> <p>(d) The Works will, when completed, comply with enactments and regulations relevant to the Works;</p>

		<p>(e) no Materials generally known to be deleterious or not in accordance with good engineering practice have been or will be specified or selected or incorporated in the Works by the Contractor; and</p> <p>(f) The design of the Works and the manufacture of Plant have taken or will take full account of the effects of the intended manufacturing and installation methods, Temporary Works and Contractor's Equipment.</p> <p>The Contractor shall not, under any circumstance, make any claim for additional payment or an extension of time or be relieved from any liability or obligation under the Contract, where the cause of delay, suspension, impediment to or adverse effect upon the progress of the Works is due to any mistake, inaccuracy, discrepancy or omission in or between the Contractor's Technical Proposals, the Technical Design, and the Construction Design, or any failure by the Contractor to prepare any Design Data or submit the same to the Engineer in due time.</p>
8.	4.2	<p>Add Sub-Clause 4.2.1 as under:</p> <p>The Performance Guarantee and Contract Deposit amount as per Appendix to tender submitted by the Contractor in accordance with Sub-Clause 4.2, shall be either in the form of demand draft drawn in favour of BMC or in the form of bank guarantee furnished by a Scheduled Bank of India approved by RBI and issued from any of its branches in Mumbai. Performance Guarantee shall be furnished within 28 days from the date of Receipt of Letter of Acceptance, failing which the Contractor will be liable for action as per Sub-Clause 5.5.3 of ITT. And refund of Performance Security shall be as per Sub-Clause 5.5.6 of ITT. The Performance Guarantee and Contract Deposit shall be valid till the issue of Taking Over Certificate and it shall carry no interest.</p>
4.4 Subcontractors and 4.5 Nominated Sub-contractor		
9.	4.4	<p><u>Add Sub-Clause 4.4 with :</u></p> <p>Notwithstanding any consent to sub-contract given by the Employer / the Engineer, if in his opinion he considers it necessary, the Engineer shall have full power to order the removal of any sub-contractor from the Site or off-Site place of manufacture or storage, by giving 7 days' Notice to the Contractor.</p>
	4.5	<p>Add (d) The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor. Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from this Country to be appointed as Sub-contractors.</p> <p>The Employer reserves the right to appoint nominated sub-contractor for environmental clearances, if contractor fails to</p>

		appoint suitable agency and show any progress within 60 days from date of contract award.
4.6 Co-operation		
10.	4.6	<p><u>Replace Sub-Clause 4.6 with the following:</u></p> <p>The Contractor shall not impede and shall afford all necessary facilities, access and/or services to the Employer, the Engineer, the Project Management Consultants (PMC), the Designated Contractors, utility undertakings, other relevant authorities and other contractors (whether employed by the Employer or not) who are carrying out on, or in the vicinity of, the Site, works not included in the Contract:</p> <p>(a) The Contractor shall take all reasonable steps to ensure that the Works are co-ordinated and integrated with the design, manufacture, installation execution and testing of such other works and shall in particular (but without limitation):</p> <ul style="list-style-type: none"> i) comply with any direction which the Engineer may give for the integration of the design of the Works with the design of any other part of the Project; ii) consult, liaise and co-operate with those responsible for carrying out such other works, including where necessary, in the preparation of the respective designs, the preparation of co-ordinated programmes, method statements, co-ordination drawings and specifications together with arrangements of service priorities and zoning; iii) participate in Integrated Testing and Commissioning of the system with Designated Contractors and demonstrate to the satisfaction of the Engineer that the Works have been designed and constructed in a manner compatible with the works of Designated Contractors.
4.7 Setting Out		
11.	4.7	<p><u>Replace Sub-Clause 4.7 with the following :</u></p> <p>4.7.1 The Contractor shall be responsible for</p> <ul style="list-style-type: none"> (a) Validating the accuracy of the original points, lines, alignment, levels, etc. which are basis for proceeding with the work. (b) the accurate setting out of the Works in relation to the original points, lines and levels of reference given by the Engineer in writing (c) the correctness of position, levels, dimensions and alignments of all parts of the Works

		<p>(d) employ of all necessary instruments, equipment, apparatus and labour in connection with the foregoing responsibilities</p> <p>(e) Carefully protecting and preserving all bench marks, reference points, pegs and other things used in setting out the Works.</p> <p>The checking of any setting-out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy or correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, reference points, pegs and other things used in setting out the Works.</p>
11.	4.7	<p>4.7.2 Errors in Setting out</p> <p>If, at any time during the execution of the Works, any error appears in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer or his representative, shall, at his own cost, rectify such error to the satisfaction of the Engineer or his representative, unless such error is based on incorrect data supplied in writing by the Engineer or his representative. In such case the Engineer or his representative shall determine an addition to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer in which case the cost of rectification shall be borne by the Employer.</p>
4.8 Safety Procedures		
12	4.8	<p><u>Add to Sub-Clause 4.8:</u></p> <p><u>4.8.1: Site Safety Plan</u></p> <p>Within 60 days of the commencement date, the Contractor shall submit a detailed and comprehensive contract-specific Site Safety Plan based on the Employer's Occupation Safety, Health and Environmental Manual (OSH&E Manual).</p> <p>The Contractor shall adhere to the Site Safety Plan and shall ensure that all sub-contractors of all tiers have a copy of the Site Safety Plan and comply with its provisions.</p> <p>The Contractor shall provide all necessary access, assistance and facilities to enable the Engineer and the Employer to carry out surveillance to verify that the Site Safety Plan is being properly and fully implemented.</p> <p>The Contractor shall notify the Engineer immediately of any occurrence or incident that results in death or serious injury as defined in the Indian Penal Code. Such initial notification may be verbal and confirmed in writing thereafter and shall be</p>

		<p>followed by a comprehensive written report within 24 hours of the occurrence/incident. The Contractor shall duly complete standard forms as required by the Engineer and Statutory Authorities.</p> <p>The Contractor shall provide and maintain all necessary temporary fire protection and firefighting facilities on the Site during the construction of the Works in accordance with the statutory regulations and as required by the Engineer.</p> <p>The Contractor shall ensure that all gases, fuels and other dangerous Materials and goods are stored and handled in a safe manner and in accordance with the statutory regulations and as required by the Engineer.</p> <p>The obligations and requirements for safety and industrial health under this Contract are entirely without prejudice to, and do not derogate from, the Contractor's statutory obligations, with respect to safety and industrial health.</p>
		<p>4.8.2 First Aid Base</p> <p><u>First -aid personnel and facilities</u></p> <p>a) The Contractor shall make available first-aiders, first-aid boxes and/or first aid stations as per statutory requirements. The persons holding current certificates of competency of recognized institutions in prescribed numbers as per any governing statute and in the absence of such regulatory requirement a minimum of two first-aiders for each area of work for every hundred workmen. First-aiders' names shall be prominently displayed.</p>
12	4.8	<p>b) The first -aid boxes shall display contents of medical and medicinal articles with quantity maintained, which shall be in accordance with governing statute. Nominated first-aider shall replenish stock promptly.</p> <p>The first-aid refresher training shall be provided at least once in a year and all employees shall be encouraged to undergo first-aid training. A record shall be kept of all first aid treatments with particulars of treatment and personnel providing the treatment.</p> <p>4.8.3 Precautions for works in thorough-fares:</p> <p>a) While the execution of any work is in progress in any street or thoroughfare the Contractor at his own cost shall make adequate provision for the passage of traffic, for securing safe access to all premises approached from such street or thoroughfare, and for any drainage, water supply, or means of lighting or any other utility service which may be interrupted by reason of execution of the work. Whenever it may be necessary to stop the traffic in any street or thoroughfare permission must first be obtained</p>

		<p>from the Engineer and the Contractor shall then put up such barriers and adopt such other measures or take precautions as may be necessary or as the Engineer may direct for regulation of traffic. The work shall in such cases be executed night and day or for as long a period as practicable if so ordered by the Engineer, and with such speed and vigour as he may require, so that the traffic may be impeded for as short a time as possible. The Contractor shall remove the barriers as soon as the necessity for them has ceased. Care shall be taken by the Contractor to cause the least possible obstruction to traffic during the progress of the work.</p>
12	4.8	<p>b) The contractor shall use every reasonable means to prevent any of the roads or bridges communicating with or on the routes from the site from being damaged or injured by any traffic of the contractor or any of his subcontractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from moving of materials, Plant, Contractor's equipment or Temporary works from and to the site shall be limited, as far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such roads and bridges.</p> <p>Save in so far as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the site to facilitate the movement of Contractors equipment or Temporary Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement; including such claims as may be made directly against the employer, and shall negotiate and pay all claims arising safely out of such damage.</p> <p>If it is found necessary for the Contractor to move one or more loads of heavy constructional equipment, materials or pre-constructed units or parts of units of work over roads, highways, bridges on which such oversized and overweight items are not normally allowed to be moved, the Contractor shall obtain prior permission from the concerned authorities. Payments for complying with the requirements, if any, for protection of or strengthening of the roads, highways or bridges shall be included in his contract price.</p> <p>Where the nature of Works is such as to require the use by the Contractor of waterborne transport the forgoing provisions of this Clause shall be construed as though "road included a lock, dock or other structure related to waterway and "vehicle"</p>

		included craft and shall have effect accordingly. Any non-compliance to these precautions will attract penalties.
12	4.8	<p>4.8.4 Maintenance of underground utility services:</p> <p>All the underground utility services such as water pipes, gas pipes, drains, sewers, cables, etc. which may be met up in or about any excavation, shall if the Engineer deem it practicable, be properly maintained and protected by the Contractor himself or through other agency by means of shoring, strutting, planking over, padding or otherwise as directed by the Engineer during the progress of the work without claiming any extra charges. Any damage to these underground utility services shall be immediately remedied by the Contractor or by other agency at its own cost, failing which the Engineer may with or without notice adopt such measures as he may deem necessary at the risk and cost of the Contractor.</p> <p>If on the other hand, the Engineer considers it impracticable for the Contractor to maintain any such underground utility services and that the exigencies of the work necessitate, the breaking down, removal or diversion of the said utility services, the cost of such breaking down, removal or diversion including that of rebuilding, replacing, diverting and reinstating of any such utility services shall be paid to the Contractor if done by him. However, the cost of providing pumps, chutes or other appliances as the Engineer may direct for the raising or temporary passage of the water or sewage and the cost of pumping out or removing as often as the Engineer may direct, any water or sewage which may escape from any such underground utility services, shall be borne by the Contractor.</p>
13	4.9	<p>Add Sub-Clause 4.9.1 as under:</p> <p>Working Methods</p> <p>a) The Contractor shall submit within the time stipulated by the Engineer or his representative in writing, the details of actual methods that would be adopted by the Contractor for the execution of any item as required by the Engineer or his representative at each of the locations, supported by necessary detailed drawings and sketches including those of the equipments and machinery that would be used, their locations, arrangements for conveying and handling materials etc. and obtain prior approval of the Engineer or his representative well in advance of starting of such item of work. The Engineer or his representative reserves the right to suggest modifications or make complete changes in the methods proposed by the Contractor, whether accepted previously or not, at any stage of work with prior approval of the Employer to obtain the desired accuracy, quality, safety</p>

		<p>and progress of work which shall be binding on the Contractor and no claims on account of such change in methods of execution will be entertained by the Employer, so long as specifications of the items remains unaltered.</p> <p>b) The Contractor shall deploy sufficient plant, equipment and labour as may be necessary to maintain the progress schedule. The working and shift hours for operations to be done under the supervision shall be such as may be approved by the Engineer or his representative. They shall not be varied without prior approval of the Engineer or his representative. The Contractor shall provide necessary lighting arrangements etc. for night work, as directed by the Engineer or his representative with no extra cost.</p>
13	4.9	<p>c) A work order book shall be maintained on the site and it shall be the property of the Employer and the Contractor shall promptly sign orders given therein by the Engineer or his representative or his authorized representatives to comply with them. The compliance shall be reported by the Contractor to the Engineer or his representative in good time so that it can be checked. The blank work order book with machine numbered pages in quadruplicate with perforated sheet for three copies to be detached will be provided by the Engineer or his representative for this purpose. Whenever any instructions are written in the work order book, the Contractor will be supplied the first carbon copy.</p>
14	4.10	<p>Substitute Sub-Clause 4.10 by the following:</p> <p>Site Data</p> <p>The Contractor acknowledges and agrees that, prior to the Base Date, the Employer,</p> <p>(a) provided non-binding background information to the Contractor during the tender process that preceded this Contract, including the information set out in a separate volume of background site and additional technical information; and</p> <p>(b) Made relevant and readily available data which was in the Employer's possession on sub-surface, hydrological and climatic conditions at the Site, including environmental aspects, available to the Contractor, for the Contractor's information.</p>
14	4.10	<p>The Contractor shall be responsible and bear all liability for the interpretation and use of all such data referred to in this Sub-Clause 4.10 provided by the Employer prior to and after the Base Date (collectively, the "Data"). All Data provided by the Employer, including any background information provided by the Employer during the tender process that preceded this Contract is indicative and for the information of the Contractor only, and any</p>

		<p>reliance by the Contractor on the Data shall be at the Contractor's own risk. The Contractor shall be deemed to have inspected and examined the Site for the purpose of preparing the Tender Submission and the Schedule of Payments, and is deemed to have made all sufficient enquiries to satisfy himself with respect to the accuracy, completeness and fitness for purpose of the Data, the existing structures and facilities, the Site conditions and ground conditions and other surroundings and utilities, including, but not limited to, the following matters: structures and facilities, utilities and other installations;</p> <p>(c) The hydrological and climatic conditions;</p> <p>(d) The extent and nature of the work and Materials necessary for the execution and completion of the Works, and the remedying of any defects;</p> <p>(e) The means of access to the Site and the accommodation he may require;</p> <p>(f) The adequacy, suitability and reliability of the data provided for use in preparation of his Tender Submission and execution of the Works,</p> <p>(g) Works necessary in obtaining and due compliance with all necessary consents, permissions, licenses, easements and statutory requirements in order to execute the Works; any interference or disruption to the Works caused by third parties; and</p> <p>(h) Any nuisance, interference and compliance with directions from statutory and public bodies.</p>
14	4.10	<p>The Employer provides no warranty or undertaking of whatever nature in respect of the Data. The Contractor acknowledges and confirms that:</p> <p>1) It was cautioned during the tender process that preceded this Contract that the interpretation and use of the Data is at the Contractor's own risk;</p> <p>2) it has conducted its own analysis and review of the Data and has, before the execution and delivery of this Contract, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Data upon which it places reliance; and</p> <p>3) It shall not be entitled to and shall not make any claim against the Employer (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Contract on the grounds:</p> <p>a. Of any misunderstanding or misapprehension in respect of the Data; or</p>

		b. That the Data was incorrect neither insufficient, nor shall the Contractor be relieved from any of its obligations under this Contract on any such ground.
15	4.10	<p>Add Sub-Clause 4.10.1 as under:</p> <p>The foundation strata indicated on the drawing supplied with the bid is indicative only. The cost of taking one bore at each of the foundation location as per technical proposal of the Contractor and at 50 meter interval along each retaining wall and one bore hole at 20 m beyond the end of retaining wall will be deemed to be included in the Bid. In case of adjacent carriageways, separate borehole under each adjacent foundation is not obligatory. The Contractor shall be responsible for preserving the samples and testing the samples to justify the assumptions made in the design at his own costs. The boring shall be extended to a depth of 10 meters in soft rock strata (RQD<50%) or 5 meters in hard rock strata (RQD>50%) whichever is struck earlier. Irrespective of the above criteria in rock, the boring shall extend minimum 5 meters below proposed foundation level if the geological formations suggest rapid changes in the strata.</p>
16	4.12	<p>Substitute the Sub-Clause 4.12 by the following:</p> <p>4.12 Unforeseeable Physical Conditions</p> <p>In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions. If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Engineer as soon as practicable. This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Engineer may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply. If and to the extent that the Contractor encounters physical conditions which are unforeseeable, gives such a notice, and suffers delay due to these conditions, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</p>
16	4.12	<p>a. An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion].</p> <p>b. Deleted.</p>

		<p>After receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described above related to this extent.</p> <p>However extension of time will be determined by the Engineer after review, whether other physical conditions in similar parts of the works (if any) were more favourable than could reasonably have been foreseen when the contractor submitted the Tender. The Engineer may take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which may be made available by the Contractor, but shall not be bound by any such evidence.</p>
17	4.12.1	<p>Substitute the Sub-Clause 4.12.1</p> <p>Delay in Completion Time</p> <p>For delay in any time period beyond the contract period, the consultancy fees shall be compensated on time and material basis to PMC on prorata in proportionate to actual services provided by PMC. If delay is on the part of the Contractor, the Consultancy fees for the extended services of PMC beyond the scheduled time shall be liable to be recovered from the Contractor's bills as a liquidated damages /penalty for the delayed period and shall be reimbursed to PMC.</p>
4.13 Rights of Way and Facilities		
18	4.13	<p><u>Add to Sub-Clause 4.13 with :</u></p> <p>The Employer reserves the right to make use of these service roads/rights of way for itself or for other contractors working in the area, as and when necessary without any payment to the Contractor.</p>
4.17 Contractor's Equipment		
19	4.17	<p><u>Add to Sub-Clause 4.17 :</u></p> <p>Plant and Equipment: The Contractor shall arrange at his own expense all tools, plant and equipment required for execution of Works. If required by the Contractor and if available the Municipal Corporation may supply such of the tools, plant and equipment as are available, to the Contractor at the rates and terms to be specified by the Engineer. No tools, plant and equipment once brought to the work site shall be removed without the written permission or order of the Engineer, until he has certified the completion of the work.</p> <p>If any Tools, Plants and equipment brought on site, are in the opinion of the Engineer inefficient, bad or of inferior quality or are unsuited for the Works then such tools, plant and equipment shall not be used on the Works but shall be removed by the Contractor at his own expense within twenty four hours after the</p>

		<p>service of a written order or notice from the Engineer to that effect and fresh tools, plant and equipment be substituted in lieu of that ordered to be removed by the Engineer. The Employer will use his best endeavours in assisting the Contractor, where required, in obtaining clearance through the Customs of Contractor's equipment, material and other things required for the Works but shall not be liable to the Contractor for any loss resulting from clearance being delayed or refused.</p>
		<p>The Contractor shall submit the following information to the Engineer, for a Notice to Proceed, within the time stipulated against each item given below:</p> <p>(a) A general layout plan for construction plant and equipment required for the execution of the Works, within 60 days from the Commencement Date; and</p> <p>(b) Drawings showing the locations of major facilities, including the Contractor's, Employer's and Engineer's site offices, which he proposes to build/erect on site, within 60 days from the Commencement Date; and</p> <p>(c) Any other details and drawings as required under the Contract, within the time as specified in the Contract.</p> <p>Upon completion of the Works the Contractor shall remove from the Site the entire said Contractor's Equipment, Temporary works and his unused materials within 45 days after the Issuing of Taking-Over Certificate.</p>
4.18 Protection of the Environment		
20	4.18	<p><u>Add to Sub-Clause 4.18 with:</u></p> <p>Within 60 days of commencement date, the Contractor shall submit a detailed and comprehensive Site Environmental Plan based on the Employer's Safety, Health and Environmental Manual (SHE Manual), and shall include such further material, which the Contractor considers necessary and relevant.</p> <p>The Contractor shall provide all necessary access, assistance and facilities to enable the Engineer to monitor and conduct tests to verify that the Site Environmental Plan is being properly and fully implemented.</p>
4.19 Electricity, Water and Gas		
21	4.19	<p><u>Replace Sub-Clause 4.19 with the following:</u></p> <p>The Contractor shall be responsible for making his own arrangements at his own cost to obtain supply of water, electricity or gas for the Works. In this regard the conditions stipulated by the statutory authorities shall be adhered to. The Employer where feasible may at his</p>

		discretion assist the Contractor in giving recommendatory letters etc.
4.20 Employer's Equipment and Free Issue of Material		
22	4.20	<p><u>Replace with Sub-Clause 4.20 with the following:</u></p> <p>No material, tools, plant and equipment shall be supplied by the Employer. The Contractor shall arrange at his own expense all tools, plant and equipment required for execution of Works as well as construction materials required for the work. No tools, plant and equipment once brought to the work site shall be removed without the written permission or order of the Engineer, until he has certified the completion of the work. If any Tools, Plants and equipment brought on site, are in the opinion of the Engineer inefficient, bad or of inferior quality or are unsuited for the Works then such tools, plant and equipment shall not be used on the Works but shall be removed by the Contractor at his own expense within twenty four hours after the service of a written order or notice from the Engineer to that effect and fresh tools, plant and equipment be substituted in lieu of that ordered to be removed by the Engineer.</p>
4.21 Progress Reports		
23	4.21	<p><u>Replace Sub-Clause 4.21 item (f) with the following:</u></p> <p>(f) List of Variations, list of notices given under Sub-Clause 2.5 [Employer's Claims] and list of notices given under Sub-Clause 20.1 [Contractor's Claims], no claims narrative is required in the Progress Reports;</p> <p><u>Insert the following at the end of Sub-Clause 4.21:</u></p> <p>The Contractor shall furnish to the Engineer, a detailed cash flow estimate in respect of the Works, within 3 months from the Commencement Date. This shall be up-dated and submitted every three (3) months thereafter until the Completion of the Works is achieved or at any time upon the request of the Engineer.</p> <p>If requested by the Engineer, the Contractor shall submit to the Engineer, at weekly intervals, a written report as to the progress of off- Site manufacture of Plant, and Materials etc.</p>
24	4.21	<p>Add Sub-Clause 4.21.1 as under</p> <p>Progress Schedules:</p> <p>a. The Contractor shall submit the progress of work in prescribed forms and statements at quarterly intervals in the form of progress charts, forms, statements and / or reports as may be approved by the Engineer or his representative.</p>

		b. The Contractor shall maintain pro-forma, charts, and details regarding machinery, equipment, labour, materials, and periodical returns thereof as may be specified by the Engineer or his representative.
4.22 Security of the Site		
25	4.22	<p><u>Replace Sub-Clause 4.22 :</u></p> <p>The Contractor shall be responsible for the security of the Site in his possession. The Contractor shall take all measures necessary to ensure such security, including exercising control over all persons and vehicles which are employed or engaged on the Site or in connection with the Works or the other works comprising the Project and with the security arrangements applicable to any other site within the Project.</p> <p>The Contractor shall arrange the issue of passes for the admission of all persons and vehicles to the Site or to any part thereof and may refuse admission to or remove from the Site any person or vehicle failing to show an appropriate pass on demand from any duly authorised person..</p> <p>If required by the Engineer, the Contractor shall submit a list identifying all persons to whom passes have been issued together with two photographs of each person and all entities to which a pass has been issued in respect of any vehicle and shall satisfy the Engineer of the sincerity of any such person or entity.</p> <p>The Contractor shall not, without the written permission of the Employer/Engineer or otherwise in accordance with the Contract, allow access to the Site to any person unless the presence on Site of such person is necessary in connection with the execution of the Works or with the discharge of the duties of any relevant authority.</p>
4.23 Contractor's Operations on Site		
25(a)	4.23	<p>If the Contractor fails to remove within 84 days after the issue of the Taking-over Certificate, any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works, the Employer may sell or otherwise dispose of such items without any reference to the Contractor. The Employer shall be entitled to retain from the proceeds of such sale, a sum sufficient to meet the costs incurred in connection with the sale or disposal, and in restoring the Site. Any balance of the proceeds shall be paid to the Contractor. If the proceeds of the sale are insufficient to meet the Employer's costs, the outstanding balance shall be recoverable from the Contractor's dues by the Employer. However, the Contractor may retain on Site, during the Defects Notification Period, such goods as are required for the Contractor to fulfil the obligations under the Contract only on such portion</p>

		and area of the Site as approved by the Engineer or his representative
4.25 Assignment of Contractor's and Sub-contractor's Obligations		
26	4.25	<p><u>Add a new Sub-Clause 4.25 :</u></p> <p>The Contractor shall not assign a right or benefit under the Contract without first obtaining Employer's prior written consent, otherwise than by:</p> <ol style="list-style-type: none"> a. a charge in favour of the Contractor's bankers of any money due or to become due under the Contract, or b. assignment to the Contractor's insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable. <p>If a Subcontractor's obligations extend beyond the expiry date of the Defects Liability Period then the Contractor shall assign the benefits of such obligations to the Employer.</p> <p>In the event that a sub-contractor of any tier provides to the Contractor or any other sub-contractor a warranty in respect of Plant, Materials or services supplied in connection with the Works, or undertakes a continuing obligation of any nature whatsoever in relation to such Plant, Materials or services (including without limitation an obligation to maintain stocks of spare parts) extending for a period exceeding that of the Defects Liability the Contractor shall immediately assign or obtain the assignment of the benefit of such warranty or obligation to the Employer or at the direction of the Employer.</p>
4.26 Compensation for Breach		
27	4.26	<p><u>Add a new Sub-Clause 4.26 :</u></p> <p>Any breach of Sub-Clauses 9 and 26 of Particular Conditions of Contract shall entitle the Employer to rescind the Contract under Sub-Clause 15.2 of GCC and also render the Contractor liable for loss or damage arising due to such termination.</p>
4.27 Sheds, Stores, Yards		
28	4.27	<p><u>Add a new Sub-Clause 4.27 :</u></p> <p>It shall be the responsibility of the Contractor to provide at his own expense the required sheds, store houses, and yards for both Permanent and Temporary Works and provide free access to the Engineer and Employer who will have right of inspection including that of instructing the Contractor to remove a particular material from the stores and not to use the same on the Works.</p>
4.28 Temporary Works		
29	4.28	<p><u>Add a new Sub-Clause 4.28 :</u></p> <p>All temporary works necessary for the proper execution of the Works shall be provided and maintained by the Contractor at his</p>

		cost and subject to the consent of the Engineer shall be removed by Contractor at his own expense when they are no longer required and in such manner as the Engineer shall direct. In case the Contractor fails to remove the temporary works on completion the Engineer is authorized to get the same removed and recover the cost thereof from the Contractor.
4.29 Access for Engineer		
30	4.29	<p><u>Add a new Sub-Clause 4.29 :</u></p> <p>The Contractor shall allow at all times the Engineer or any other person authorised by the Engineer access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where materials or plant are being manufactured, fabricated and/or assembled for the Works. The Contractor shall ensure that sub contracts if any shall contain provisions entitling the Engineer or any person authorised by him to have such access.</p>
4.30 Contractor to keep Site Clear		
31	4.30	<p><u>Add a new Sub-Clause 4.30 :</u></p> <p>On completion of Work the Contractor shall also clear away the labour camps, hutments and other related installations and restore the land to its original condition to the satisfaction of the Engineer within 45 days of the physical completion of Work. The cost on account of delay in return of land and reinstatement of original condition within the stipulated time as determined by Engineer will be recovered from the Contractor's dues.</p> <p>No final payment in settlement of the accounts for Works shall be made till, in addition to any other condition necessary for such final payment, site clearance and clearances of labour camps etc. shall have been effected by him.</p>
4.31 Publicity		
32	4.31	<p><u>Add a new Sub-Clause 4.31 :</u></p> <p>The Contractor shall not publish or otherwise circulate alone or in conjunction with any other person, any articles, photographs or other materials relating to the Contract, the Site, the Works, the Project or any part thereof, nor impart to the press, or any radio or television network any information relating thereto, nor allow any representative of the media access to the Site, Contractor's Works Areas, or off-Site place of manufacture, or storage except with the permission, in writing, of the Employer.</p>
4.32 Disclosure of Relationship		
33	4.32	<p><u>Add a new Sub-Clause 4.32 :</u></p> <p>If the Contractor or any partner of the Contractor or Director of the Contractor's company is closely related to any of the Officers of the Employer or the Engineer, or alternatively, if any close relative of an officer of the Employer or the Engineer has financial</p>

		interest / stake in the Contractor's firm, the same shall be disclosed by the Contractor at the time of filing his tender. Any failure to disclose the interest involved, shall entitle the Employer to rescind the Contract, without payment of any compensation to the Contractor. The Contractor shall note that he is prohibited from developing such interest during the Contract period.
4.33 Use of Explosives		
34	4.33	<p><u>Add Sub-Clause 4.33 with the following:</u></p> <p>Explosives shall not be used on the Works or on the Site by the Contractor without the consent of the Engineer and shall be used in the manner and to the extent permitted by the Engineer. The explosives shall be handled and used under the strict supervision of persons licensed for this purpose under the requisite statutory rules and regulations. When explosives are required for the Works they shall be stored in a special magazine to be provided at the cost of the Contractor in accordance with the requisite statutory rules and regulations. The Contractor shall take all precautions in transporting and using the explosives and avoid damage to nearby structures and utilities. The Contractor shall also obtain necessary licence for the storage and the use of explosives as per the appropriate laws and permitted/approved by the relevant/competent Authority. All operations, in which or for which the explosives are employed shall be at the sole risk and responsibility of the Contractor and the Contractor shall hold the Employer harmless and shall indemnify the Employer in respect thereof.</p>
4.34 Corrupt or fraudulent practices		
35	4.34	<p><u>Add a new Sub-Clause 4.34 :</u></p> <p>i) Will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;</p> <p>(ii) Will recognize a Contractor as ineligible, for a period determined by the Employer, to be awarded a contract, if it at any time determines that the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing, another contract with the Employer.</p>
4.35 Work by Persons Other than Contactor		
36	4.35	<p><u>Add a new Sub-Clause 4.35 :</u></p> <p>If by reason of any accident or failure or other event occurring to, in, or in connection with the Works any remedial or other work shall, be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Engineer may authorise the carrying out of such remedial or other work by a person other than the Contractor. All expenses properly incurred</p>

		<p>in carrying out the same shall be recoverable by the Employer from the Contractor. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.</p> <p>Further, the Employer may enter on to the Site and take over the responsibility for the or part thereof if:</p> <p>(a) the Contractor has failed to remedy any defect or damage which has resulted in the performance requirements of this Contract within a time period set by the Employer or Engineer under the Conditions of Contract; or</p> <p>(b) the Employer considers that it must take over responsibility for the Works or part thereof to prevent a serious threat to health, safety or the environment; or</p> <p>(c) The Employer considers that maintenance of the Works is not being carried out in accordance with the Contract; or</p> <p>(d) If the Employer takes over responsibility for the Works or part thereof, the following shall apply:</p>
		<p>(i) All payment to the Contractor in respect of the Works or part thereof for which the Employer has stepped in shall be suspended, and except as otherwise set out in Terms of Payments, no payment shall be owing to the Contractor in respect of the Works or part thereof performed by the Employer.</p> <p>(ii) All additional costs and expenses properly incurred by the Employer in taking over all or part of the Consultancy, Operation & Maintenance Service in this event shall be recoverable from the Contractor by the Employer.</p>
4.36 Confidentiality of Information		
37	4.36	<p><u>Add a new Sub-Clause 4.36 :</u></p> <p>The Contractor shall not use or divulge, except for the purpose of the Contract or with the written permission of the Employer, any information relating to the Works or the Project provided in the Contract or otherwise provided by the Employer, or the Engineer. The Contractor shall ensure that his sub-contractors of any tier shall be bound by a similar confidentiality undertaking.</p>
5 Design		
5.3 Contractor's undertaking		
38	5.3	<p><u>Add to Sub-Clause 5.3 :</u></p> <p>a. The Contractor shall be fully responsible, for the suitability, adequacy, integrity, durability and practicality of the Contractor's proposal.</p> <p>b. The Contractor warrants that the Contractor's Proposals meet the Employer's Requirements and is fit for the purpose thereof. Where there is any inadequacy, insufficiency, impracticality or unsuitability in or of the Employer's</p>

		<p>Requirements or any part thereof, the Contractor's Proposal shall take into account, address or rectify such inadequacy, insufficiency, impracticality or unsuitability at Contractor's own cost.</p> <p>c. The Contractor shall also provide a guarantee from the Designer for the design for suitability, adequacy, practicality of design for Employer's Requirements</p> <p>d. The Contractor shall indemnify the Employer against any damage, expense, liability, loss or claim, which the Employer might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty set out in this Clause.</p> <p>e. The Contractor further specifies and is deemed to have checked and accepted full responsibility for the Contractor's Proposal and warrants absolutely that the same meets the Employer's Requirements:</p> <p>i. Notwithstanding that such design may be or have been prepared, developed or issued by the Employer, any of the Contractor's consultants, his sub-contractors and/or his qualified personnel/persons or cause to be prepared, developed or issued by others.</p> <p>ii. Notwithstanding any warranties, guaranties and/or indemnities that may be or may have been submitted by any other person.</p> <p>iii. Notwithstanding that the same have been accepted by the Engineer.</p>
38	5.3	<p>The Contractor shall be fully responsible for the Plants, Materials, goods, workmanship, preparing, developing and coordinating all design Works to enable that part of the Works to be constructed and/or to be fully operational in accordance with the Contract's requirements.</p> <p>Apart from the Contractor, the above warranty shall also be applicable for his designer. This warranty shall be a part of his sub contract with the designer and should be made available at the time of signing of the Agreement.</p> <p>No claim for additional payment or extension of time shall be entertained and/or the Contractor shall not be relieved from any obligation/liability under the Contract, for any delay, suspension, impediment to or adverse effect upon the progress of the Works due to any mistake, inaccuracy, discrepancy or omission in or between the Contractor's, the Definitive Design and the final design, or any failure by the Contractor to prepare any Design Data or submit the same to the Engineer in due time and the Contractor shall promptly make good any such defect at his own cost.</p>
5.9 Intellectual Property Rights and Royalties		
39	5.9	<u>Add a new Sub-Clause 5.9 :</u>

		<p>The Contractor shall indemnify the Employer and the Engineer from and against all claims and proceedings on account of infringement (or alleged infringement) of any patent rights, registered designs, copyright, design, trademark, trade name, know-how or other intellectual property rights in respect of the Works, the Contractor's Equipment, machines, work method, or Plant, or Materials, or anything whatsoever required for the Works and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.</p> <p>The Contractor shall, in the event of infringement of Intellectual Property Rights, rectify, modify or replace at his own cost the Works, Plant or materials or anything whatsoever required for the Works so that infringement no more exist or in the alternative shall procure necessary rights/license so that there is no infringement of Intellectual Property Rights.</p>
39	5.9	<p>The Contractor shall be promptly notified of any claim under this Sub- Clause made against the Employer. The Contractor shall, at his cost, conduct negotiations for the settlement of such claim, and any litigation or arbitration that may arise from it. The Employer or the Engineer shall not make any admission which might be prejudicial to the Contractor, unless the Contractor has failed to take over the conduct of the negotiations, litigation or arbitration within a reasonable time after having been so requested. In the event of the Contractor failing to act at the Engineer notice, the Employer shall be at full liberty to deduct any such amount of pending claim from any amount due to the Contractor under this Contract or any other Contract.</p> <p>Insofar as the patent, copyright or other intellectual property rights in any Plant, Design Data, plans, calculations, drawings, documents, Materials, know-how and information relating to the Works shall be vested in the Contractor, the Contractor shall grant to the Employer, his successors and assignees a royalty-free, non-exclusive and irrevocable licence to use and reproduce any of the works, designs or inventions incorporated and referred to in such Plant, documents or Materials and any such know-how and information for all purposes relating to the Works (including without limitation the design, manufacture, installation, reconstruction, Testing, commissioning, completion, reinstatement, extension, repair and operation of the Works) for the Employer's own use.</p> <p>If any patent, registered design or software is developed by the Contractor specifically for the Works, the title thereto shall vest in the Employer and the Contractor shall grant to the Employer a non- exclusive irrevocable and royalty-free licence to use, repair,</p>

		copy, modify, enhance, adapt and translate in any form such Software for Employer's own use.
39	5.9	<p>If the Contractor uses proprietary software for the purpose of storing or utilising records the Contractor shall obtain at his own expense the grant of a licence or sub-licence to use such software in favour of the Employer and shall pay such licence fee or other payment as the grantor of such licence may require provided that the use of such software under the licence may be restricted to use relating to the design, construction, reconstruction, manufacture, completion, reinstatement, extension, repair and operation of the Works or any part thereof.</p> <p>The Contractor's permission referred to above shall be given, inter alia, to enable the Employer to disclose (under conditions of confidentiality satisfactory to the Contractor) programmes and documentation for a third party to undertake the performance of services for the Employer in respect of such programmes and documentation.</p> <p>If any software is developed under the Contract or used by the Contractor for the purposes of storing or utilising records over which the Contractor or a third party holds title or other rights, the Contractor shall permit or obtain for the Employer (as the case may require) the right to use and apply that Software free of additional charge (together with any modifications, improvements and developments thereof) for the purpose of the design, manufacture, installation, reconstruction, testing, commissioning, completion, reinstatement, extension, repair, modification or operation of the Works, or any part thereof, or for the purpose of any Dispute.</p> <p>The Employer reserves the right to use other Software on or in connection with the Works.</p>
6 Staff and Labour		
40	6.1	<p>Add Sub-Clause 6.1.1 as under:</p> <p>The Contractor shall, at his own expenses, maintain sufficient qualified and experienced supervisory staff etc. required for the work and shall make his own arrangement for housing such staff.</p>
6.2 Rates of Wages and Conditions of Labour		
41	6.2	<p><u>Add to Sub-Clause 6.2 with the following:</u></p> <p>Full compliance of statutory requirements apart, the Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or the industry where the work is carried out.</p> <p>The Contractor shall make him aware of all labour regulations and their impact on the cost and build up the same in the Contract Price. During the Contract Period no extra amount in this regard</p>

		<p>shall be payable to the Contractor, for whatsoever reason including any revision of rates payable to the labour due to revision of rates payable in Minimum Wages Act.</p> <p>Labour provided by the Contractor, either directly or through sub-contractors, for the exclusive use of the Employer or the Engineer, shall, for the purpose of this Sub-Clause, be deemed to be employed by the Contractor.</p> <p>In the event of default being made in the payment of any money in respect of wages of any person employed by the Contractor or any of its sub-contractors of any tier in and for carrying out of this Contract and if a claim therefor is filed in the office of the Labour Authorities and proof thereof is furnished to the satisfaction of the Labour Authorities, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to the said Labour Authorities and any sums so paid shall be recovered by the Employer from the Contractor.</p>
6.3 Persons in the Service of Employer		
42	6.3	<p><u>Add to Sub-Clause 6.3 :</u></p> <p>The Contractor either at the tendering stage or during construction stage will not employ any retired employee of Employer in any capacity unless such employee has completed at least two years post retirement period or has obtained the no-objection certificate from Employer for being employed with the Contractor. It will be responsibility of the Contractor to collect the Employer's no objection certification from such retired employee and submit the same back to the Employer.</p> <p>The contractor shall not poach any technically qualified engineers from fellow contractor of same project.</p>
6.4 Labour Laws		
43	6.4	<p><u>Add to Sub-Clause 6.4 :</u></p> <p>The Contractor shall be accountable for the violation of any labour laws solely by themselves or their sub-contractors and will pay any such claim/damage to the Relevant Authorities forthwith on demand. If any moneys shall, as a result of any instructions, directions or decisions from the Relevant Authorities or claim or application made under any of the labour laws or regulations, be directed to be paid by the Employer, such moneys shall be deemed to be moneys payable to the Employer by the Contractor and he will pay the same to the Employer forthwith on demand, without demur and without asking for any reasons/explanations from the Employer. On failure of the Contractor to repay the Employer any moneys paid or to be paid by it as aforesaid within seven days after the same shall have been demanded, the</p>

		<p>Employer shall be entitled to recover the amount from any moneys due or accruing to the Contractor under this or any other Contract with the Employer.</p> <p>The Employer is the main employer of labour for this Contract; hence any issues related to labour can be issued directly from the Government to the Employer who shall then copy to the Engineer for distribution to the Contractor.</p> <p>The Contractor shall formally register with the appropriate labour department listing the Employer as the principle employer of labour for this Contract.</p>
43	6.4	<p>All labour laws of government of Maharashtra and government of India will prevail. The Employment of labour, and the labour laws and regulations enumerated in Section 6 of Standard General Conditions of Contract for Construction works published by BMC shall form part of this PCC, and shall be adhered to.</p>
44	6.4.1	<p>Add Sub-Clause 6.4.1 as under:</p> <p>The Contractor shall employ labour in sufficient numbers either directly or through subcontractors to maintain the required rate of progress and of quality to ensure workmanship of the degree specified in the contract and to the satisfaction of the Engineer or his representative.</p> <p>a) The Contractor shall not employ in connection with works, any person who has not completed his eighteenth year of age.</p> <p>b) The Contractor shall not recruit or attempt to recruit his staff and labour from amongst persons in the service of the Employer or the Engineer or his representative.</p> <p>c) The Contractor shall furnish to the Engineer or his representative, fortnightly distribution returns of the number and description by category of works, for which the labours are employed.</p> <p>d) The Contractor shall pay to the labour employed by him, either directly or through sub-contractors, wages not less than fair wages as defined in the Contract Labour Regulations as contained hereinafter in regard to matters provided therein.</p> <p>e) The Contractor shall at all times, indemnify the Employer against all claims, damages or compensation under the provision of Payments of Wages Act 1948, Employees Liability Act 1938, Industrial Dispute Act 1947, Maternity Benefit Act 1961, Contract Labour (Regulation of Abolition) Act 1970 and Inter State Migrant Workman (Regulation of Employment and Condition of Services) Act 1979, or any modifications thereof or any other law relating thereto and rules made there under from time to time, or as a consequence of any accident or injury to any workman or other person in or about works, whether in the employment of the contractor or not and also against all costs, charges and expenses or any suit action or proceedings arising out of such</p>

		<p>accident or injury and against all sum or sum which may, with the consent of the contractor be paid to compromise or compound any such claim without limiting his obligation and liabilities as above, and the contractor shall insure against all claims, damages or compensation payable under the Workmen's Compensation Act 1923, or any modifications thereof or any other law relating thereto and the insurance policy/policies shall be kept valid by the Contractor throughout the period of Contract.</p> <p>f) The Contractor shall indemnify the Employer against any payment to be made under and for the observation of the Regulations aforesaid without prejudice to his right to claim indemnification from his Sub- Contractor.</p> <p>g) The decision of the Engineer or his representative in matters relating to the reports from the Inspecting Officers as defined in "Contractor – Labour Regulation" (Contained hereinafter) shall be final and binding and deductions or recovery in regard to any amount payable to the Contractor.</p> <p>h) The Contractor shall be responsible for the return to the place from where they were recruited or to their domicile of all such persons as he recruited and employed for the purpose of or in connection with the contract and shall maintain such persons as are to be referred in a suitable manner until they shall have left the site.</p> <p>i) The register of workmen and the register of wages cum muster roll required to be maintained under these Regulations shall be preserved for 3 years after the date on which the last entry is made therein.</p> <p>j) On any question as to the application, interpretations or effect of these Rules, the decision of the Chief Labour Commissioner or Deputy Labour Commissioner or any other competent authority shall be final and binding.</p>
45	6.4.2	<p>Add Sub-Clause 6.4.2 as under:</p> <p>Definitions: In these rules/regulations, unless otherwise expressed or indicated, the following words and expressions shall have the meaning hereby assigned to them.</p> <p>a) 'Labour' would mean, "Workmen" as defined in Chapter 1 of the Contract Labour (Regulation and Abolition) Act 1970 as amended from time to time</p> <p>b) 'Fair Wage' means Wages, which shall include wage for weekly day of rest and other allowances whatever for time or piece work taking into consideration prevailing market rates for similar employment in the neighbourhood and shall not be less than the minimum rates of wages fixed under Minimum Wages Act.</p> <p>c) 'Contractor' for the purpose of these Regulations shall include an agent or sub-contractor employing labour on the work taken on Contract.</p>

		<p>d) 'Inspecting Officer' means any Labour Enforcement Officer or Assistant Labour Commissioner of the Chief Labour Commissioner Organization.</p> <p>e) 'Form' means a form appended to these Regulations.</p> <p>f) 'Work Place' means a place at which on an average 20 or more workers are employed.</p> <p>g) 'Large Work Place' means a place at which on an average 500 or more workers are employed.</p>
46	6.4.3	<p>Add Sub-Clause 6.4.3 as under:</p> <p>a) The Contractor shall during the currency of the Contract, when called upon by the Engineer, engage and also ensure engagement by the Sub-contractor and other employed by the Contractor in connection with the works, such number of Apprentices in the categories mentioned in Clause 6.4.2 C and for such period as may be required by the Engineer.</p> <p>b) The Contractor shall train them as required under the Apprentice Act 1961 and shall be responsible for all obligations of the Employer under the Act including the liability to make payment to Apprentices as required under the Act.</p> <p>c) The number of Apprentices to be engaged in different categories shall be as required under "Apprentices Act 1961" and rules and regulations made there under and as amended from time to time.</p> <p>d) The Contractor shall, duly comply with the provision of the Apprentices Act 1961, the rules there under, and the order that may be issued from time to time under the said Act and said rules and on his failure or neglect to do so, he shall be subject to all the liabilities and penalties provided by the said 'Act and said Rules' valid by the contractor throughout the period of contract.</p>
47	6.6	<p>Sub-Clause 6.6 - Facilities for Staff and Labour</p> <p>Delete the first paragraph and replace by:</p> <p>Except as otherwise stated in the Employer's requirements, the Contractor shall provide and maintain such accommodation and amenities as he may consider necessary for all his staff and labour, employed for the purposes of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cook houses, fire prevention and fire-fighting equipment, furniture and other requirements in connection with such accommodation or amenities. On completion of the Contract, unless otherwise agreed with the Employer, the temporary camps/housing provided by the Contractor shall be removed and the site reinstated to its original condition, all to the approval of the Engineer or his representative. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Employer's Requirements</p>

48	6.7	<p>Sub-Clause 6.7 - Health and Safety</p> <p>Add</p> <p>The Engineer will undertake the major roles of the implementation including formulation of the HIV/AIDS Prevention Program, co-working with other stakeholders, supervision and management of the Program implementation progress, undertaking of regular monitoring, evaluating and reporting and supervision of the Contractor's obligations.</p> <p>HIV-AIDS Prevention.</p> <p>The Contractor shall be responsible for co-operating with the Service Provider in implementing the HIV Prevention Programme among the Contractor's Personnel for the duration of the Contractor's contract and commencing as soon as practicable after the Contractor's Personnel arrive at the site(s) in conjunction with occupational health staff of the Contractor and the local health authorities involved in HIV/AIDS prevention.</p> <p>The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.</p>
49	6.8	<p>Sub-Clause 6.8 - Contractor's Superintendence</p> <p>The following shall be added to Clause 6.8</p> <p>The Contractor's Key Staff shall be approved by the Employer before starting working on site. The Employer may require to interview and test the proposed staff before approval.</p>
50	6.10	<p>Sub-Clause 6.10 - Records of Contractor's Personnel and Equipment</p> <p>Add the following:</p> <p>a) The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer or his representative may from time to time prescribe.</p> <p>b) The Contractor shall report to the Engineer or his representative details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer or his representative immediately by the quickest available means.</p>
51	6.12	<p>Sub-Clause 6.12 - Implementation of Labour Welfare Provisions to Contractor's Personnel</p> <p>"During continuance of the contract, the Contractor and his sub-Contractors shall abide at all times by all existing labour</p>

		<p>enactments and rules made there under, regulations, notifications and bye laws of State or Central Government or local authority and any other labour law (including rules), regulations, bye laws that may be passed or notification that may be issued under any labour law in future either by the State or the Central Government or the local authority. Salient features of some of the major labour laws that are applicable to construction industry are given below. The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of any Act or rules made there under, regulations or notifications including amendments. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/acts/rules/regulations including amendments, if any, on the part of the Contractor, the Engineer/Employer shall also have right to recover from the contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.</p>
51	6.12	<p>The employees of the contractor and the sub-contractor in no case shall be treated as the employees of the Employer at any point of time. SALIENT FEATURES OF SOME MAJOR LABOUR LAWS APPLICABLE TO ESTABLISHMENTS ENGAGED IN CONSTRUCTION WORK.</p> <p>(i) Workmen Compensation Act 1923</p> <p>The Act provides for compensation in case of injury by accident arising out of and during the course of employment.</p> <p>(ii) Payment Of Gratuity Act 1972</p> <p>Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if an employee has completed 5 years' service or more or on death at the rate of 15 days wages for every completed year of service. The Act is applicable to all establishments employing 10 or more employees.</p> <p>(iii) Employees PF and Miscellaneous Provision Act 1952</p> <p>The Act provides for monthly contributions by the employer plus workers @ 10% or 8.33%. The benefits payable under the Act are:</p> <p>(a) Pension or family pension on retirement or death as the case maybe.</p> <p>(b) Deposit linked insurance on the death in harness of the worker.</p> <p>(c) Payment of PF accumulation on retirement/death etc.</p> <p>(iv) Maternity Benefit Act 1951</p> <p>The Act provides for leave and some other benefits to women employees in case of confinement or miscarriage etc.</p> <p>(v) Contract Labour (Regulation and Abolition) Act 1970</p>

		<p>The Act provides for certain welfare measures to be provided by the contractor to contract labour and in case the contractor fails to provide, the same are required to be provided by the Principal Employer by Law. The principal employer is required to take Certificate of Registration and the Contractor is required to take a License from the designated Officer. The Act is applicable to the establishments or contractor of principle employer if they employ 20 or more contract labour.</p> <p>(vi) Minimum Wages Act 1948</p>
51	6.12	<p>The employer is supposed to pay not less than the Minimum Wages fixed by appropriate Government as per provisions of the act if the employment is a scheduled employment. Construction of Buildings, Roads, and Runways are scheduled employments.</p> <p>(vii) Payment of Wages Act 1936</p> <p>It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made from the wages of the workers.</p> <p>(viii) Equal Remuneration Act 1979</p> <p>The Act provides for payment of equal wages for work of equal nature to Male and Female workers and not for making discrimination against Female employees in the matters of transfers, training and promotions etc.</p> <p>(ix) Payment of Bonus Act 1965</p> <p>The Act is applicable to all establishments employing 20 or more workmen. The Act provides for payment of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs.3, 500/- per month. or less. The bonus to be paid to employees getting Rs.2, 500/- per month or above upto Rs. 3,500/- per month shall be worked out by taking wages as Rs. 2,500/- per month only. The Act does not apply to certain establishments. The newly set up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of the Act.</p> <p>(x) Industrial Disputes Act 1947</p> <p>The Act lays down the machinery and procedure for resolution of industrial disputes, in what situations a strike or lock-out becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.</p> <p>(xi) Industrial Employment (standing orders) Act 1946</p> <p>It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the States and Central Government to 50). The Act provides for laying down rules governing the conditions of employment by the employer</p>

		on matters provided in the Act and get the same certified by the designated Authority. (xi) Trade Unions Act 1928
51	6.12	<p>The Act lays down the procedure for registration of trade unions of workmen and employers. The trade unions registered under the Act have been given certain immunities from civil and criminal liabilities.</p> <p>(xiii) Child Labour (Prohibition and Regulation) Act 1986 The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes. Employment of child labour is prohibited in Building and Construction Industry.</p> <p>(xiv) Inter-State Migrant Workmen's (Regulation of Employment and Conditions of Service) Act 1979 The Act is applicable to an establishment which employs 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another state).The inter-state migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as housing, medical aid, traveling expenses from home upto the establishment and back, etc.</p> <p>(xv) The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 and the Cess Act 1996 All the establishments who carry on any building or other construction work and employs 10 or more workers are covered under this Act. All such establishments are required to pay cess at rate as may be notified by the Government. The Contractor (employer of the establishment) is required to provide safety measures at the Building or Construction work and other welfare measures, such as Canteens, First-aid facilities, Ambulance, Housing accommodation for Workers near the workplace etc. The employer to whom the Act applies has to obtain a registration certificate from the Registering Officer appointed by the Government.</p> <p>(xvi) The Factories Act 1948 The Act lays down the procedure for approval of plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 persons or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.</p>
52	6.13	Sub-Clause 6.13 - Objection to Contractor's Employees Add

		If the proficiency in the English Language and capabilities required of the Contractor's Key Staff is found not to be acceptable, the Engineer may require the employee replaced by one acceptable to the Engineer.
53	6.14	<p>Sub-Clause 6.14 -Measures against Insect and Pest Nuisance</p> <p>Add</p> <p>The Contractor shall at all times take the necessary precautions to protect all staff and labour employed on the site from insect nuisance, rats and other pests and reduce the dangers to health and the general nuisance occasioned by the same. The Contractor shall provide his staff and labour with suitable prophylactics for the prevention of malaria and take steps to prevent the formation of stagnant pools of water. He shall comply with all the regulations of the local health authorities in these respects and shall in particular arrange to spray thoroughly with approved insecticide all buildings erected on the Site. Such treatment shall be carried out at least once a year or as instructed by the Engineer. The Contractor shall warn his staff and labour of the dangers of Bilharzias and wild animals.</p>
54	6.15	<p>Sub-Clause 6.15 - Supply of Water and Other requirements</p> <p>Add</p> <p>The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of his staff and labour. The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.</p>
55	6.16	<p>Sub-Clause 6.16 - Festivals and Religious Customs Add</p> <p>The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs. The Contractor shall in all dealings with his staff and labour have due regard to all recognized festivals, days of rest and religious or other customs.</p>
56	6.17	<p>6.17 Prohibition of Child Labour</p> <p>The Contractor shall not employ any child to perform any work.</p>
57	6.18	<p>6.18 Employment Records of Workers Add</p> <p>The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and shall be available for inspection by the Engineer during normal working hours. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].</p>

58	6.19	<p><u>Add to Sub-Clause 6.19 :</u></p> <p>The Environmental Impact Assessment (EIA) Report has to set limits for the impact of the Contractor's activities and the Contractor's Environmental Plan must ensure that the construction activities shall not exceed any of these limits. (EIA Report shall be prepared by the contractor).</p> <p>The EIA Report recommends specific mitigation measures. The Contractor shall implement these measures where applicable.</p> <p>The Employer will be undertaking Environmental Monitoring and Audits during construction to measure the environmental impacts. Should the impact measurements exceed the respective limits detailed in the EIA Report, the Contractor shall be required to review and to implement effective measures as required to ensure that the impact of the construction works will not exceed the respective limits set forth in the EIA report.</p>
7.4 Testing		
59	7.4	<p>Clause 7.4 -</p> <p>Para 5 sub para (b) deleted</p>
60	7.4.1	<p>Add Sub-Clause 7.4.1as under:</p> <p>Laboratory for Testing</p> <p>The Contractor shall, for the purpose of testing the material, establish a field Laboratory of adequate floor area as approved by the Engineer or his representative at the Contractor's cost. The Contractor shall provide all equipment's as per list attached elsewhere in this document.</p>
61	7.4.2	<p>Add Sub-Clause 7.4.2 as under: Office Laboratory Testing</p> <p>The material, for which tests cannot be carried out at the field laboratory, shall be tested at the laboratory approved by the Engineer or his representative and in presence of the Engineer or his representative.</p>
62	7.4.3	<p>Add Clause 7.4.3 with :</p> <p>The expense of conducting all Tests and expenses towards travel and accommodation for Employer or the Engineer attending the test for the purpose of clause 7.3, 7.4 and 7.5 shall be borne by the Contractor.</p>
63	7.9	<p>Add Sub-Clause 7.9 as under: Taxation</p> <p>The Contractor and his staff shall pay all taxes, duties, levies, outgoings etc. (present as well as future) of the Government of India and the Government of the State of Maharashtra or other competent authorities as per the laws for the time being in force and applicable in India or in the said State in relation to the work.</p>

		<p>Sub-Clause 7.9.1 Add Deduction of Income Tax and other taxes, if any, shall be made from each certificate of payment as per the relevant provision of the Income Tax Act or the rules framed there under and as per the prevailing Tax laws</p>
63	7.9	<p>Sub-Clause 7.9.2 Add Foreign Taxation The Tendered Amount by the Contractor shall include all the duties and other charges (present as well as future) imposed outside the Employer's country on the production, manufacture, sale and transport of the Constructional Plant, Materials and Supplies to be used on or furnished under the Contract and on the service performed under the Contract. It shall be the exclusive responsibility of the Contractor to bear the same</p> <p>Sub-Clause 7.9.3 Add Local Taxation The Bid is deemed to include all excise duties, custom duties, import duties, sale tax, Royalties, toll charges and other local direct/indirect taxes etc. that may be levied according to the laws and regulations for the time being in force, on the construction plants materials and supplies (both permanent, temporary and consumable) acquired for the purpose of the contract and on the services performed under the contract. Nothing in the contract shall relieve the Contractor from his responsibilities to pay any tax that may be levied in the Employer's country on profits made by him in respect of the contract.</p> <p>Sub-Clause 7.9.4 Add Income Tax on Staff The Contractor's staff, personnel and labour will be liable to pay personnel income taxes in the Employers country in respect of such of their salaries and wages as are chargeable under the laws and regulations in force and the Contractor shall perform such duties in regard to such laws and regulations.</p>
63	7.9	<p>Sub-Clause 7.9.5 Add GST G.S.T and other state levies/cess which are not subsumed under GST will be applicable. The tenderer shall quote inclusive of all taxes. It is clearly understood that BMC will not bear any additional liability towards payment of any Taxes & Duties. Wherever the Services to be provided by the Tenderers fall under Reverse Charge Mechanism, the Price quoted shall be exclusive of GST, but inclusive of Taxes/Duties/Cess other than GST, if any. Rates accepted by BMC shall hold good till completion of work and no additional individual claim shall be admissible on account of</p>

		<p>fluctuations in market rates: increase in taxes/any other levies/tolls etc. except that payment /recovery for overall market situation shall be made as per Price Variation.</p> <p>“Chapter XXI-Miscellaneous, section 171(1) of GST Act, 2017 governs the ‘Anti Profiteering Measure’ (APM). As per the provision of this section, ‘Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to recipient by way of commensurate reduction in prices’</p> <p>Accordingly, the contractor should pass on the complete benefit accruing to him on account of reduced tax rate or additional input tax credit, to BMC.</p>
8. Commencement, Delays and Suspension		
8.1 Commencement of Works		
64	8.1	<p><u>Replace Sub-Clause 8.1 with the following:</u></p> <p>The Contractor shall commence the Works on the date specified in the Form FT — 1 of Volume 1. Thereafter the Contractor shall proceed with due diligence, without delay, and in accordance with the programme or any revised or modified programme of the Works.</p> <p>The Contractor shall not commence the construction, manufacture or installation of the Works or of any part of the Works unless and until the Engineer has endorsed the relevant Construction Reference Drawings in accordance with the Employer's Requirements.</p>
65	8.2	<p><u>Sub-Clause 8.2 Time for Completion</u></p> <p>Add</p> <p>The Contractor shall complete the sections of the works and each section (with in the Mile — Stone given in Sub-Clause 8.7 below) so as to allow the use by the Traffic within the Time for completion.</p>
8.3 Programme		
66	8.3	<p><u>Add to Sub-Clause 8.3 with the following:</u></p> <p style="text-align: center;">8.3.1 Design Submission Programme</p> <p>The Contractor shall submit to the Engineer, the Design Submission Programme and updated versions thereof in the form and content and at the times prescribed in the Employer's Requirements — Design, including the dates on which major decisions should be made.</p>

		<p>In the second and subsequent submissions of the Design Submission Programme, the Contractor shall not, without the prior written consent of the Engineer:</p> <ul style="list-style-type: none"> (a) revise the description or content of any design package (as referred to in the Employer's Requirements - Design) identified in the initial version of Design Submission Programme; (b) reduce the periods provided for review by the Employer/Engineer of any submission of Design Data as set out in the initial version of the Design Submission Programme; (c) revise the sequence of submissions of Design Data shown in the initial version of the Design Submission Programme. <p>Any amendment of the Design Submission Programme in breach of the above requirements shall have no effect whatsoever under the Contract.</p> <p style="text-align: center;">Monthly Payment Curves</p> <p>Within 30 days of the date of consent of works programme, the Contractor shall, submit to the Engineer Monthly Payment Curves. The Monthly Payment Curves shall be revised from time to time as the Works Programme will be revised in accordance with the above provision.</p> <p style="text-align: center;">8.3.2 Three Month Rolling Programme</p> <p>Within 45 days of the Commencement Date, & thereafter at the end of each calendar month, the Contractor shall submit to the Engineer his Three Month Rolling Programme for each agreed major section of Works in the Contract, in the form and detail prescribed in Part 2 - Employer's Requirements setting out the work to be carried out during the following three months.</p>
8.4 Extension of Time for Completion		
67	8.4	<p><u>Replace Sub-Clause 8.4 with the following:</u></p> <p style="text-align: center;">8.4.1 Extension of Time</p> <p>The Contractor may apply for an extension of the Time for Completion if the Work is or will be delayed either before or after the Time for Completion by any of the following causes:</p> <ul style="list-style-type: none"> a. "Force Majeure" referred to in Clause 19.0 b. Instruction of the Engineer to suspend the Works and the Contractor not being in default as to reasons of suspension.

		<p>c. Acts or omissions of other Designated Contractors in executing work not forming part of this Contract and on whose performance, the performance of the Contractor necessarily depends.</p> <p>d. Any act of prevention or Breach of the Contract by the Employer and not mentioned in this Clause</p> <p>e. Any order of Court restraining the performance of the Contract in full or in any part thereof and the Contractor not being in default as to reason of such order of court.</p> <p>f. Any other event or occurrence which, according to the Employer is not due to the Contractor's failure or fault, and is beyond his control without the Employer being responsible for the same.</p> <p style="text-align: center;">8.4.2 Extension of Time not permissible</p> <p>However, the Contractor shall not be entitled to any extension of time where the instructions or acts of the Employer or the Engineer are necessitated by or intended to cure any default of or breach of Contract by the Contractor or where any delay is due to</p> <p>a. the failure of sub-contractor, to commence or to carry out work in duetime,</p> <p>b. non-availability, or shortage of Contractor's equipment, labour, utilityservices, Plant and Materials,</p> <p>c. inclement weather conditions, other than once in 50 year cycle, and</p> <p>d. the Contractor not fulfilling his obligations under Sub-Clause 4.6.</p>
67	8.4	<p>If the Contractor considers himself to be entitled to an extension of time for Completion, he shall give notice to the Engineer of such intention as soon as possible and in any event within 28 days of the start of the event giving rise to the delay and full and final supporting details of his application within 21 days of the last day of delay, together with any notice required by the Contract and relevant to such Clause. If the cause of delay continued for a period exceeding 7 days, the Contractor shall submit interim details at intervals of not more than 28 days (from the first day of such delays).</p> <p>The Engineer shall proceed in accordance with Sub-Clause 3.5 to agree or determine either prospectively or retrospectively such extension of the Time for Completion as may be due. The Engineer shall notify the Contractor accordingly.</p> <p>8.4.3 Extension of time for completion for other reasons</p>

		<p>Whether or not the Contractor fails to achieve any Milestone by reason of any delay shall not by itself be material to the Contractor's entitlement to an extension of time. Any extension to a Key Date shall not by itself entitle the Contractor to an extension to any other Key Date and the Time for Completion.</p> <p>8.4.4 Extension of time for delays due to Contractor</p> <p>If the delay in the completion of the whole Works or a portion of the Works, for which an earlier completion period is stipulated, is due to the Contractor's failure or fault, and the Engineer is of the view that the remaining Works or the portions of Works can be completed by the Contractor in a reasonable and acceptable short time, then, the Engineer may allow the Contractor extension or further extension of time at its discretion with or without penalty for the delay in achieving the Key Date, for completion, as he may decide.</p>										
68	8.5	Please replace the last sentence by "sub paragraph (f) of PCC Sub-Clause67 (GCC.8.4.1)										
69	8.7	Sub-Clause 8.7 Delay damages for the Works As per Appendix to tender.										
8.9 Consequences of Suspension												
70	8.9	<p><u>Add to Sub-Clause 8.9 :</u></p> <p>The Contractor shall not be entitled to extra cost (if any), incurred by him,during the period of suspension of Work, if such suspension is</p> <ol style="list-style-type: none"> a. provided for in the Contract, or b. necessary for proper execution of Works or by reasons of weather condition or by some default on the part of the Contractor, or c. necessary for the safety of Works or any part thereof or d. necessary for the safety of adjoining public or other property or safety of the public or workmen or those who have to be at the site or e. to ensure safety and to avoid disruption of traffic and utilities, as also to permit fast repairs and restoration of any damaged utilities. <p>The following are the details of compensation for various periods of suspension.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">Sl . No.</th> <th style="width: 30%;">Suspension Period</th> <th style="width: 15%;">Extensio n of Time</th> <th style="width: 20%;">Compensati on forthe suspension period</th> <th style="width: 30%;">Remarks</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Sl . No.	Suspension Period	Extensio n of Time	Compensati on forthe suspension period	Remarks					
Sl . No.	Suspension Period	Extensio n of Time	Compensati on forthe suspension period	Remarks								

		1	Upto 14 days	NO	NO	Engineer may give extension of time in Exceptional circumstances.
		2	15 - 30 days	YES	NO	Extension of time as considered proper by the Engineer
		3	Above 30 days upto 90 days	YES	<ul style="list-style-type: none"> • As per Daily rate of wages for idle labour / employees. • 70% of the rate for hire charges for idle plant and machinery (excluding cost of fuel and lubricants) • 15% above all these items to cover overhead costs. 	Compensation as assessed by the Engineer on submission of documentary proof by the Contractor to the Engineer's satisfaction, and is final.
		4	Above 90 days	NO	NO	Contractor may ask for closure of the Contract, or deletion from the Contract of that part of works which has been suspended.
71	10.2	Add new Sub-Clause Sub-Clause 10.2 Taking over of Parts of the Works: Add as Second Para Notwithstanding anything contained in the provisions of other clauses of the contract, Parts of the Works of the Sections when substantially completed shall be handed over by the Contractor for use of the Employer without any cost to the Employer arising out wear and tear, before carrying out "Tests after completion"				
72	10.3	Sub-Clause 10.3 Interference with Tests on Completion: 10.3 para 3 sub para (b) - deleted				
73	10.3.1	Add Sub-Clause 10.3.1 as under: Prevention from Testing				

		<p>If the Contractor is prevented from carrying out the tests on completion by a cause for which the Employer or the Engineer or his representative or other Contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the works on the date when the tests on completion would have been completed. But for such prevention, the Engineer or his representative shall issue a Taking over Certificate accordingly, provided always that the works shall not be deemed to have been taken over if they are not substantially completed in accordance with the contract.</p> <p>If the works are taken over under this Sub-Clause the contractor shall nevertheless carry out the tests on completion during the Defects Liability period. The Engineer or his representative shall require the tests to be carried out by giving 14 days- notice.</p> <p>Any additional costs to which the Contractor may be put, in making the tests on completion during the Defects Liability Period shall be added to contract price.</p>
11 Defects Liability		
74	11.1.1	<p>Sub-Clause 11.1.1</p> <p>Visit of Contractor during Defect Notification Period</p> <p>The Contractor shall carry out inspection once in every 3 months during the first year after completion of the work and carry minimum 2 inspections per year for the remaining years of Defect Liability Period. The inspection shall be in the company of the representative of Engineer and representative of Employer. The defects noticed during the inspections shall be recorded and signed by the Contractor and representative of Engineer and representative of Employer. The Contractor shall rectify the defects, if any, within 15 days or such period as may be notified by the Engineer or his representative.</p> <p>The defect rectification period shall be 24 months.</p>
11.12 Emergency defect rectification		
75	11.12	<p><u>Add a new Sub-Clause 11.12 :</u></p> <p>Emergency defect rectification</p> <p>If any defect or damage is one requiring immediate attention from safety, environmental or operational viewpoint, the Engineer has the authority to proceed with rectification at the cost of the contractor in any manner suitable and deduct such sums from the Contract Price.</p>
12. Tests After Completion		
76	12.1	Procedure for Tests after Completion:

		<p>12.1 Delete 12.1 (a) Add at the end of 12.1:</p> <p>If the Contractor fails to carry out the Tests after Completion the Employer may (at his option): Carryout the Tests himself or by others, in a reasonable manner and at the Contractors Cost but the Contractor shall have no responsibility for this Tests; and the Contractor shall subject to Sub-Clause 2.5: Employer's Claims, pay to the Employer the costs reasonably incurred by the Employer in carrying out the Tests.</p>
77	12.4	<p>12.4 Failure to Pass Tests after Completion</p> <p>Add at the end of 12.4:</p> <p>If the Contractor fails to carry out the adjustments or modifications to pass a Test after Completion to the Works or such Section the Employer may (at his option): Carryout the adjustments or modifications himself or through some other agency, in a reasonable manner and at the Contractors Cost but the Contractor shall have no responsibility for this adjustments or modifications and the Contractor shall subject to Sub-Clause 2.5(Employer's Claims) pay to the Employer the costs reasonably incurred by the Employer in carrying out the adjustments or modifications.</p>
13 Variations and Adjustments		
13.1 Right to Vary		
78	13.1	<p><u>Add to Sub-Clause 13.1 :</u></p> <p>No Variation shall in any way vitiate or invalidate the Contract. The Contractor shall not make any alteration and/or modification of the Works, unless and until the Engineer instructs or gives consent to a Variation. If the Construction and/or Manufacture Documents or Works are not in accordance with the Contract, the rectification shall not constitute a Variation.</p>
13.3 Variation Procedure		
79	13.3	<p><u>Replace Sub-Clause 13.3 with the following:</u></p> <p>"Employer's Variation" means a change in the Employer's Requirements which makes necessary alteration or modification of the Design, quality or scope of Works as described by or referred to in the Employer's Requirements. Changes to any sequence, method or timing of manufacture, testing and Commissioning including Integrated Testing and Commissioning and changes to any part of the Site or access thereto will not constitute Employer's Variation.</p> <p>An Employer's Variation shall be requested and implemented in accordance with and subject to the following provisions:</p> <p>(a) within 14 days (or such other period as the Employer /Engineer may allow) of the Employer /Engineer informing the Contractor in writing of the intention to request an</p>

		<p>Employer's Variation, the Contractor shall notify the Employer/Engineer in writing whether in his opinion the Employer's Variation would, if ordered:</p> <ul style="list-style-type: none"> (i) give rise to any entitlement to an extension of time; or (ii) affect the achievement of any Milestone; or (iii) give rise to any entitlement to additional payment; or (iv) affect the warranties of the Contractor set out in Clause 4.2 and shall submit his proposals as to the terms upon which he would agree to implement the Employer's Variation. The Contractor shall furnish sufficient information in terms of rates/prices of the equipment/components manufactured by the Contractor or sourced from the Vendors/Sub-contractors such as: estimated man-hours, man-hours rates for manufactured items, design costs, basic rate of materials, sub-assemblies, taxes, duties, overheads & profits and inflation rate, so as to establish the reasonableness of the variation price.
79	13.3	<p>(b) any agreement between the Employer/Engineer and the Contractor as to the terms upon which an Employer's Variation may be implemented shall have no contractual or other legal effect, until it is in writing and is signed by the Contractor and the Employer/Engineer. The Employer/Engineer before signing such agreement shall take prior approval of the Employer. The terms of this agreement will be binding upon the Contractor and the Employer. This agreement shall determine the amount which should be added to or deducted from the relevant Cost Centre Amount and/or the revisions (if any) which should be made to the Milestone Payment Schedules as a result of the Variation.</p> <p>In the event of the Employer/Engineer and the Contractor failing to reach agreement on the revisions to be made to the Cost Centre Amounts, the Employer/Engineer shall, with the approval of the Employer, determine the amount which should be added or deducted from the relevant Cost Centre amount which shall be binding on the Contractor. In case the Contractor supplies part/incomplete information or refuses to supply the required information, the Employer shall determine the cost of Variation based on the information available to him from any sources which in his judgment can be used to determine the case. The Contractor will proceed with the Work on this basis but may submit his Claim if necessary, in accordance with Clause 20.</p> <p>In assessing work covered by any sub-contract, the Employer/Engineer will have, where he deems necessary, access to the original sub-contract conditions, rates, prices and details of the variation claimed, to assist in evaluating any Variations.</p>

		<p>(c) if the Employer/Engineer withdraws the request for an Employer's Variation, the Contractor shall have no claim of any kind whatsoever arising out of or in connection with any of the proposals made or any failure to reach agreement. In case the Employer's Variation involves omission of part of the Works, the agreement shall address the issue of reduction in the Contract Price.</p>
13.7 Taxes and Duties		
80	13.7	<p><u>Add to Sub-Clause 13.7 :</u></p> <p>Taxes and Duties</p> <p>13.7.1 The Contract Price, subject to any adjustment thereto in accordance with the Contract shall be inclusive of all taxes, duties, royalties, cess, etc. including Value Added Tax (VAT)/GST, paid under Maharashtra VAT Act 2002 where work is done in Maharashtra and Value added tax(VAT) paid under other state Governments VAT act work is done in that state.</p> <p>13.7.2 Taxes and duties paid by the sub-vendors shall not be paid separately and therefore are to be included in the price.</p> <p>13.7.3 Nothing extra shall be payable over the quoted rates, notwithstanding any provision to the contrary in any law for the time being in force, save and except what is specifically provided in the GCC.</p> <p>13.7.4 In the event of exemption of custom duties, excise duties, CST/VAT/GST or any other cess/levy being granted by the Government in respect of the Works, the benefit of the same shall be passed on to the Employer. The Contractor shall therefore maintain meticulous records of all taxes and duties paid and provide the same as and when required by the Employer, so that the Employer is able to avail the reimbursement for which the Employer may issue a procedure order separately. Alternately, the Employer may direct the Contractor to get the reimbursement based on exemption certificate/ government's order and it shall be obligatory on part of the Contractor to get the reimbursement from the statutory authorities and pass on the benefit to the Employer.</p>
80	13.7	<p>13.7.6 In case of Contractor's failure in availing the exemption as stipulated above, the recovery of equivalent amount will be made from Contractor's bills.</p> <p>The contract price shall be adjusted to take into account of any increase or decrease in cost resulting from a change in the Laws of the Country/ State/ Urban Local Body (including the introduction</p>

		<p>of new Laws and the repeal or modification of existing laws) or in the judicial or official government interpretation of such Laws, made after the Base Date (28 days prior to Bid Due Date), which affect the contractor in the performance of obligations under the Contract. This increase or decrease in cost resulting from a change in the legislation shall be evaluated as follows —</p> <p>13.7.1 If as a result of change in Law, the Contractor suffers any additional costs in the execution of the works or in relation to the performance of its other obligations under this Agreement, the Contractor shall notify the Authority of such additional cost due to Change in Law.</p> <p>13.7.2 If a result of Change in Law, the Contractor benefits from any reduction in costs for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall notify the other Party of such reduction in cost due to Change in Law.</p> <p>13.7.3 The Authority's Engineer shall on receipt of the notice from the Contractor or the Authority determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.</p>
13.8 Price Variation		
81	13.8	<p><u>Add to Sub-Clause 13.8:</u></p> <p>13.8 Price Variation</p> <p>The rates and price as per Pricing document, shall be applicable till the completion of the Work and will be varied only to the extent of permissible price variation under this Clause. However, this adjustment shall be to the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the Price variation formula, the rates and price in the Pricing Document shall be deemed to include amounts to cover the contingency of such rise or fall of costs.</p> <p style="text-align: center;">Price Variation Formula</p> <p>Payment as per the Contract shall be subject to adjustment in accordance with the following Price Variation formula, and other terms given herein, to provide for variation in the market rates of inputs like labour, materials and fuel / energy during the currency of the Contract:</p> <p style="text-align: center;">Price Adjustment:</p> <p>Contract price shall be adjusted for increase or decrease in rates and prices of labour materials, fuels and lubricants in accordance with the following principles and procedures and as per formula given hereunder.</p> <p>Formula for Price variation:</p>

		<p>$P_n = a + b \frac{L_n}{L_o} + c \frac{E_n}{E_o} + d \frac{M_n}{M_o} + e \frac{S_n}{S_o} + f \frac{T_n}{T_o}$</p> <p>$P_n$ = Is the adjustment multiplier to be applied to the current interim payment certificate (IPC) for increase/decrease in the cost of the work done during the month.</p> <p>a = Fixed co-efficient, representing non-adjustable portion in IPC. In this case 'a' = 15% (0.15)</p> <p>b = Percentage of Labour components of the work is 25% (0.25)</p> <p>L_o = Consumer Price Index for industrial workers for Mumbai as available on the date of 28 days prior to the date of submission of tender as published by Economic Advisor, Govt. of India.</p> <p>L_n = Consumer Price Index for industrial workers for Mumbai as available on the 1st day of the month preceding the month under consideration as published by Economic Advisor, Govt. of India.</p>
81	13.8	<p>c = percentage of cement component of the work is 15% (0.15)</p> <p>E_o = Wholesale price index for cement (cement lime and plaster) for Mumbai as available on the date of 28 days prior to the date of submission of tender as published by Economic Advisor, Govt. of India.</p> <p>E_n = wholesale price index for cement (cement lime and plaster) for Mumbai as available on the 1st day of the month preceding the month under consideration as published by Economic Advisor Govt. of India.</p> <p>d = percentage of fuel and lubricant component of the work is 10% (0.10)</p> <p>M_o = wholesale price index of Fuel and Power for Mumbai as available on the date of 28 days prior to the date of submission of tender, as published by Economic Advisor, Govt. of India.</p> <p>M_n = wholesale price index of Fuel and Power for Mumbai as on the 1st day of the month preceding the month under consideration, as published by Economic Advisor, Govt. of India.</p> <p>e = percentage of steel component of the work is 25% (0.25)</p> <p>S_o = whole sale price index of mild steel long for Mumbai as available on the date of 28 days prior to the date of submission of tender, as published by Economic Advisor, Govt. of India.</p>

		<p>S_n = whole sale price index of mild steel long for Mumbai as on the 1st day of the month preceding the month under consideration as published by Economic Advisor, Govt. of India.</p> <p>f = percentage of plant & machinery component of the work is 10%(0.10)</p> <p>T_o = whole sale price index of construction machinery and parts for Mumbai as available on the date of 28 days prior to the date of submission of tender, as published in RBI Bulletin, Govt. of India.</p> <p>T_n= whole sale price index for construction machinery and parts for Mumbai as available on the 1st day of the month preceding month under consideration as published in RBI Bulletin, Govt. of India.</p>
81	13.8	<p>Period of Work under consideration will mean as under:</p> <p>i. In the case of first Interim Payment the period from the Commencement Date to the date of measurement of the first Interim Payment.</p> <p>ii. In the case of second and subsequent Interim Payment and Final Payment, the Period from the date of measurement for previous payment to the date of measurement of that Payment .</p> <p>Procedure in case of Delay in Availability of Final RBI Indices</p> <p>Where the final Price Indices are not available in the Reserve Bank of India Bulletins, while making payment towards Interim Payments payment towards Price Variation will be made on provisional basis based on the indices available, to be adjusted in subsequent Payment as and when the final Indices figures become available.</p> <p>Limit of Adjustment on Account of Price Variation</p> <p>Adjustment on account of Price Variations may be positive (in which case extra amount shall be paid to the Contractor), or negative (in which case the amount of Price Variation shall be recovered from the Contractor). Adjustment on account of Price Variation shall be calculated separately, for each period, between two successive dates of measurements for Payments and paid along with each Payment.</p> <p>1. Maximum Price Variation (during construction) shall be as follows:</p>

Time Period of Project	Cumulative Maximum limit of Price Variation
Within 42 months and above	Based on price variation formula given in the bid document. No limit is prescribed.
<p>Note: 1) This clause shall be applicable only if the permissions to start the project is granted within the given time frame, however the price variation shall not be applicable, if the delays of the project is not attributable to the contractor, and is accountable to delay in granting the permission as mentioned in the clause 3 of Tender Notice.</p>	
<p>2) Operative period shall mean original or extended time period of contract.</p>	
<p>For example:</p>	
Extension of Time period	Maximum Price Variation
If original period of 11 months including monsoon extends to 16. The operative period will be 11+5 months.	No variation allowed
If original period of 11 months excluding monsoon extends to 16. The operative period will be 11+5 months.	Maximum 5% variation allowed
<p>Price Variation during Extended Period of Contract:</p>	
<p>i. Extension Due To Modification & Extension for delay due to BMC :</p> <p>The price variation for the period of extension granted shall be limited to the amount payable as per the Indices. In case the indices increases or decreases, above/below the indices applicable, to the last month of the original or extended period vide clause 8(l)(a)(i) and (ii) of standard GCC</p> <p>ii. Extension Of Time For Delay Due To Contractor :</p> <p>a) The price variation for the period of extension granted shall be limited to the amount payable as per the Indices in case the indices increase, above the indices applicable, to the last month of the original completion period or the extended period vide above clause 8(l)(a)(i) and (ii) of standard GCC.</p> <p>b) The price variation shall be limited to the amount payable as per the indices, in case the</p>	

		<p>indices decrease or fall below the indices applicable, to the last month of original / extended period of completion period vide above clause 8(l)(b) of standard GCC, then lower indices shall be adopted.</p> <p>iii. Extension of Time For Delay due to reasons not attributable to BMC and Contractor(Reference Cl.8(d) of Standard GCC):</p> <p>The price variation for the period of extension granted shall be limited to the amount payable as per the Indices in case the indices increases or decreases, above/below the indices applicable, to the last month of the original period.</p> <p>Price Variation during Extended Period of Completion</p> <p>The price adjustment as worked out above i.e. either increase or decrease will be applicable up to the stipulated date of completion of the work including the extended period of completion where such extension has been granted under Sub-Clause 8.4.1. However, where extension has been granted under Sub-Clause 8.4.3, price adjustment will be due as follows:</p> <p>In case the indices increase above the indices applicable to a payment made on the last date of original completion period or the extended period under Sub-Clauses 8.4., the price adjustment for the period of extension under Sub-Clause 8.4.3 will be limited to the amount payable as per the indices applicable to a Payment made on the last date of the original completion period or the extended period under Sub-Clauses 8.4.1 as the case may be.</p>
81	13.8	<p>In case the indices fall below the indices applicable to a payment made on the last date of the original or extended period of completion, then the lower indices will be adopted for Price Adjustment for the period of extension under Clause 8.4.3.</p> <p>Price Variations for Extra/Varied Item</p> <p>Normally, no price variation clause shall be applicable to any extra item/new rates not originally included in the accepted Pricing Document and for which the rates are fixed separately under Clause 12. It shall, however, be open to the Employer/Engineer to accept Price Variation clause in such cases where the rates are not based on actuals and the work is likely to continue for more than one year.</p>
14. Contract Price and Payment		
14.2 Advance Payment		
82	14.2	<u>Replace Sub-Clause 14.2 with the following: Add new Sub-Clauses :</u>

	14.2.1	<p style="text-align: center;">14.2.1 Mobilisation Advance</p> <p>Interest free Mobilization Advance Payment shall be paid in Indian Rupees up to 10% of the Contract Price in two equal installments. The first installment shall be paid on Submission of BG and second shall be paid after Engineer/ Employer has confirmed satisfactory utilization of the first advance payments and submission of BG. Satisfactory utilization means establishment of casting yard, batching plant, mobilizations of important machineries, construction of jetty, mobilizations and carrying out of works at multiple fronts wherever necessary etc.</p> <p>The Mobilization Advance shall carry on simple interest at Bank Rate + 300 basis points of interest and shall be paid within 30 days after receipt of the Contractor's written request by the Employer and submission of the Performance Guarantee and Bank Guarantees for 110% of advance Payment. "Bank Rate" means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.</p>
82	14.2.3	<p style="text-align: center;">14.2.3 Recovery of Advances</p> <p>a. The recovery of the Mobilization Advance shall each be made in equal instalments commencing from, when 20% of Contract Sum is paid and completed before 85% of Work is paid or the original period of completion whichever is earlier.</p> <p>b. Bank Guarantee shall be submitted as per Schedule 8 of PCC. Following 50% recovery by the Employer, the Contractor may be permitted to submit a corresponding Bank Guarantee at the discretion of the Employer.</p>
82	14.2.4	<p style="text-align: center;">14.2.4 Advances to be Used only for This Work.</p> <p>The advances shall be used by the Contractor strictly for the purpose of the Contract, and for the purpose for which they are paid. Under no circumstances, shall the advances be diverted for other purposes. Any such diversion shall be construed as a breach of the Contract and the Contractor shall be asked to return the advance at once. The Contractor shall return the advance in one go without demur.</p> <p>The Employer reserves the right for any other remedy prescribed for breach of Contract in this regard.</p> <p>The Contractor, if required by the Employer shall provide the details of Mobilization advance expended or to be expended.</p>
14.3 Application for Interim Payment Certificates		
83	14.3	<u>Add to Sub-Clause 14.3 :</u>

		<p>The Contractor shall not submit more than one request for interim payment per month subject to the Contractor's Monthly Statement meeting the minimum value of 1% of Contract Price or otherwise agreed by Employer / Engineer.</p> <p>Add at end of Sub-Clause 14.3</p> <p>The percentage of retention in each interim payment shall be seven percent (7%) starting from the first IPC, until the limit of Retention Money equal to Five percent (5%) of the Contract Price is reached. Minimum 1% amount of contract price shall be withheld by BMC. Amount exceeding 1% of contract price shall be released on receipt of valid bank guarantee of equivalent amount. The bank guarantee shall be revalidated from time to time.</p>
84	14.5	<p>14.5 Plant & Machinery Intended for Works</p> <p>Delete Sub-Clause 14.5</p>
14.7 Payment		
85	14.7 (b)	<p><u>Replace Sub-Clause 14.7 (b) with the following:</u></p> <p>(a) After scrutiny and certification by the Engineer within 28 days of submission of statement and supporting documents, the payment of the certified interim amount shall be made by the Employer within 21 days from the date of issue of Interim Payment Certificate by the Engineer.</p> <p>(b) All payments to the Contractor shall be made by RTGS/NEFT. The Contractor is entitled to a simple interest at 8% PA for any sum paid after 56 days from the date of certification. This shall not apply to the final payment.</p>
14.9 Payment of Retention Money		
86	14.9	<p><u>Replace Sub-Clause 14.9 with the following:</u></p> <p>Retention money is 5% of the Contract Sum which will be recovered as stated in FT – 1, Volume 1 and retained by the Employer.</p> <p>The Retention monies shall be held by the Employer without obligation to invest them or account for interest thereon or to place them in a designated account. No interest of whatsoever nature and type will be paid to the Contractor by the Employer in respect of Retention monies.</p> <p>The Retention monies shall become due to the Contractor within 28 days of issuing the Performance Certificate.</p>
14.15 Currencies of Payment		
87	14.15	<p><u>Replace Sub-Clause 14.15 with the following:</u></p> <p>All payments and deduction made by the Employer pursuant to the terms of the Contract shall be in Indian Rupees (INR).</p>
14.18 Tax Deduction at Source		

88	14.18	<p><u>Add a new Sub-Clause :14.18</u></p> <p>Tax Deduction at Source</p> <p>Tax deductions will be made at source as per statutory requirement from every payment made to the Contractor at rates notified from time to time.</p>
14.20 Recovery of money due to the Employer		
89	14.20	<p><u>Add a new Sub-Clause :14.20</u></p> <p>Recovery of money due to the Employer</p> <p>All damages (including, without limitation, liquidated damages), costs, charges, expenses, debts, or sums for which the Contractor is liable to the Employer under any provision of the Contract may be deducted by the Employer from monies due to the Contractor under the Contract including, without limitation, and the Employer shall have the power to recover any balance not so deducted from monies due to the Contractor under any other contract between the Employer and the Contractor.</p>
15 Termination by Employer		
15.2 Termination by Employer		
90	15.2	<p>Sub paragraph (c) of Sub-Clause 15.2 is replaced with the following:</p> <p>(c) Without reasonable excuse fails to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension] and in the case of delay, incurs a delay in the completion of the works and such delay is not remedied by the contractor within 30 days from receipt by the Contractor of a notice from the Employer of such delay. For purposes of this Sub-Clause 15.2, the term “delay” shall mean a slippage of 10% of the physical progress from the approved works programme,</p>
91	15.2.2	<p><u>New Sub-Clause 15.2.2</u></p> <p>On termination of Contract due to Contractor’s default, the Employer shall be entitled to</p> <p>a. forfeit the whole or such portion of the Performance Guarantee amount as he may consider fit.</p>
17. Risk and Responsibility		
92	17.2.1	<p>Add Sub-Clause 17.2.1 as under:</p> <p>All operations necessary for the execution and completion of the works and the remedying of any defects therein shall, so far as compliance with the requirements of the contract permits, be carried on so as not to interfere unnecessarily or improperly with:</p> <p>(a) The convenience of the public, or</p>

		<p>(b) The access to use, and occupation of public or private roads or railway and any other right of way and footpaths to or of properties whether in the possession of the Employer or of any other person or any other departments.</p> <p>The contractor shall hold harmless and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of, or in relation to, any such matters insofar as the Contractor is responsible therefore.</p>
93	17.2.2	<p>Add Sub-Clause 17.2.2 as under:</p> <p>In case any operation connected with traffic necessitates diversion, obstruction or closure of any road, existing road, railway or any other right of way, the approval of the Engineer or his representative and the concerned authorities shall be obtained well in advance by the Contractor.</p>
94	17.2.3	<p>Add Sub-Clause 17.2.3 as under:</p> <p>If it is found necessary for the Contractor to move one or more loads of heavy constructional plant and equipment, materials of pre-constructed units or part of units of work over roads, highways, Flyovers on which such oversized and over-weight items are not normally allowed to be moved, the Contractor shall obtain prior permission from the relevant authorities. Payments for complying with the requirements, if any, for protection of or strengthening of the roads, highway or Flyovers shall be made by the Contractor and such expenses shall be deemed to be included in his bid price.</p>
95	17.5 17.5.1	<p>Sub-Clause 17.5 Intellectual and Industrial Property Rights</p> <p>Sub-Clause 17.5 is deleted in it's entirely and replaced with the following;</p> <p>17.5.1 Infringement</p> <p>a) The Contractor agrees to defend or settle at its own expense all suits for infringement of any patent, copyright, trademark or other form of intellectual property right in any country of the works, for the use and operation of the Works as supplied by Contractor and for any component part thereof or material or equipment used therein (or the manufacture of any material or the normal use thereof) provided by the Contractor or on its behalf pursuant to this Contract and will hold the Employer harmless from all expense of defending any such suit and all payments for final judgment assessed on account of such infringement, except such infringement or claim arising from :</p> <p>(i) the contractor's adherence to the Employer's directions in the design and configuration of the Works or to use materials, parts or equipment of the Employer's selection;</p>

		<p>(ii) such material, parts or equipment furnished to the contractor by the Employer, other than in each case, items of the Contractor's design or selection or the same as any of the Contractor's commercial merchandise or in processes or machines of the Contractor's design or selection used in the manufacture of such standard products or parts;</p> <p>(iii) use of the Works or the materials, parts or equipment furnished by contractor other than for the purposes indicated in, or reasonably to be inferred from, this Contractor</p> <p>(iv) modification of the Works or the materials, parts or equipment furnished by the Contractor, or connection of the works to another system by any person or entity other than Contractor, without prior approval by Contractor.</p>
		<p>(b) The Employer will, at its own expense, defend all suits against the Contractor for such excepted infringement and hold the Contractor harmless from all expense of defending any such suit and from all payments by final judgment assessed against the Contractor on account of such excepted infringement.</p> <p>(c) The Parties agree to give each other prompt written notice of claims and suits for infringement, full opportunity and authority to assume the sole defence, including appeals and, upon request and at its own expense, the other agrees to furnish all information and assistance available to it for such defence.</p>
95	17.5.1	<p>(d) If all or any portion of the Work or any material, part or equipment provided by the Contractor or on its behalf is held to constitute an infringement (excluding such excepted infringements specified in Sub-Clause 17.5.1(a)) and is subject to an injunction restraining its use or any order providing for its delivery up to or destruction, or it in respect of any such claim of infringement the Contractor deems it advisable to do so, the Contractor shall at its own expense either:</p> <p>(i) Procure for the Employer the right to retain and continue to use the Work, the affected portion thereof, or any such material, part or equipment without interruption for the Employer;</p> <p>(ii) Replace or modify the Work, the affected portion thereof, or any material, part or equipment so that it becomes non-infringing while continuing to meet the Employer's Requirements or</p> <p>(iii) If the remedies specified in Sub-Clause 17.5.1(d)(i) and 17.5.1(d)(ii) are not feasible, refund to the Employer the full purchase price paid for the Works, the affected portion thereof, or any material, part of equipment found to be infringing.</p>
96	17.5.2	<p>17.5.2 Safeguarding of Information and Technology</p> <p>(a) In performance of this Contract, it may be mutually advantageous to the Parties hereto to share certain specifications, designs, plans, drawings, software, market research or operating data, prototypes, or other business,</p>

		<p>financial, and /or technical information related to products, services, or systems which are proprietary to the disclosing Party or its affiliates (and in the case of Contractor, Contractor's Parent company) (together with this Contract and related documents, "Information").The parties recognize and agree that Information includes information that was supplied in contemplation here of prior to execution of this Contract, and further agree that information includes information in both tangible and intangible form.</p>
96	17.5.2	<p>(b) Unless such Information was previously known to the Party receiving such Information free of any obligation to keep it confidential, or such Information has been or is subsequently made public through other than unauthorized disclosure by the receiving Party or is independently developed by the receiving Party (as documented by the records of the receiving Party), it shall be kept confidential by the party receiving such information, shall be disclosed only in the performance of this Contract, and may not be disclosed for any other purposes except upon such terms as may be agreed upon in writing by the Party owning such Information. The receiving Party may disclose such Information to other persons, upon the furnishing Party's prior written authorization, but solely to perform acts which this Sub-Clause expressly authorizes the receiving Party to perform itself and further provided such other person agrees in writing (a copy of which writing will be provided to the furnishing Party at its request) to the same conditions respecting disclosure and use of Information contained in this Sub-Clause and to any other reasonable conditions requested by the furnishing Party. Nothing herein shall prevent a Party from disclosing Information (i) upon the order of any court or administrative agency, (ii) upon the request or demand of, or pursuant to any regulation of, any regulatory agency or authority, (iii) to the extent reasonably required in connection with the exercise of any remedy hereunder and (iv) to a Party's legal counsel or independent auditors.</p>
97	17.6	<p>Sub-Clause 17.6 – Limitation of Liability</p> <p>Add the following paragraph at the end of this Sub-Clause:</p> <p>Notwithstanding anything stated elsewhere in this document, the following provision shall prevail: reason and entrust this to another agency for execution at the risk and cost of the Contractor. In the event of Contractor going bankrupt, the Employer at the recommendation of Engineer may withdraw /omit part of the contract work, for whatever reason and entrust this to another agency for execution at the risk and cost of the Contractor. In the event of contractor failing to achieve any mile stone, at the recommendation of Engineer, the Employer may withdraw /omit part of the contract work, for whatever reason and</p>

		give this to another agency for execution at the risk and cost of the Contractor.
98	17.7	<p>Sub-Clause 17.7 - Urgent Repairs</p> <p>Add</p> <p>If, by reason of any accident, or failure, or other event occurring to or in connection with the Works, or any part thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work or repair shall, in the opinion of the Engineer, be urgently necessary for the safety of the Works and the Contractor is unable or unwilling at once to do such work or repair, the Employer may employ and pay any other Contractor to carry out such work or repair as the Engineer may consider necessary.</p> <p>If the work or repair so done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all expenses properly incurred by the Employer in so doing shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any monies due or which may become due to the Contractor. Provided always that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.</p>
18 Insurance		
99	18.1	<p>Sub-Clause 18.1 General Requirements for Insurances</p> <p>Add the following to the end of Sub-Clause 18.1:</p> <p>Insurances (Contractor All Risk Policy) obtained by the Contractor under this Clause must meet the requirements of and be acceptable to the Employer. The Contract Price is inclusive of all costs related to these insurances.</p> <p>18.1.1 The contractor whose tender is accepted will be required to produce to satisfaction of the Concerned Authority valid and current license issued in his favour under the provision of the contract labour (Regulations and abolition) Act 1970 and in case of failure to do so the acceptance of the tender would be liable to be withdrawn and earnest money forfeited.</p>
99	18.1	Contractor shall take out necessary Insurance Policy/Policies so as to provide adequate insurance cover for execution of the awarded contract work from the "Directorate of Insurance, Maharashtra State, Mumbai - 400 051" only. Insurance Policy / Policies taken out from any other insurance Company will not be accepted. However, if the contractor desires to effect insurance with the local office of any insurance company, the same should be under the co-insurance-cum-servicing arrangements (with

		G.I.F.'s share at 60% and insurance Company's share at 40%) approved by the Directorate of Insurance. If the policy taken out by the contractor is not on co-insurance basis the same will not be accepted and the amount of premium calculated by the Directorate of Insurance will be recovered directly from the amount payable to the contractors for the executed contract work.
18.5 Insurance for Design		
100	18.5	<p><u>Add a new Sub-Clause : 18.5</u> Insurance for Design</p> <p>The Contractor shall effect and maintain professional indemnity insurance for the amount in Indian Rupees stipulated in Appendix to the Form of Tender in respect of any design of the Works to be carried out by, or on behalf of the Contractor. This insurance, which shall ensure the Contractor's liability by reason of professional negligence and errors in the design of the Works, shall be valid from the date of commencement of Works, until after the date of issue of Performance Certificate with a clause in the Insurance Policy stipulating the discovery period of claim for 5 years from the date of issuance of Performance Certificate.</p> <p>The Engineer will not issue Final Payment Certificate until the Contractor has produced evidence that coverage of the professional indemnity insurance has been provided for the aforesaid period.</p>
101	18.5	<p>Sub-Clause 18.5 Insurance for Automobile Liability</p> <p>Add the following Sub-Clause 18.5:</p> <p>The Contractor shall effect and maintain comprehensive (or business) automobile liability insurance for all owned (if any), non-owned and hired vehicles written in an amount with combined single limits not less than the amount required by Indian Laws.</p>
19 Force Majeure		
19.8 Resumption of Work		
102	19.8	<p><u>Add a new Sub-Clause : 19.8</u> Resumption of Work</p> <p>The obligations under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.</p> <p>In case of doubt or dispute, whether a particular occurrence should be considered an "event" as defined under this clause, the decision of the Engineer shall be final and binding.</p> <p>Works that have already been measured shall be paid for by the Employer even if the same is subsequently destroyed or damaged as a result of the event. The cost of rebuilding or replacing any work that has been measured shall be borne by the Employer.</p>
20 Claims, Disputes and Arbitration		

20.2 Dispute to be referred to Additional Municipal Commissioner		
103	20.2	Replace Sub-Clause: 20.2 with the following: The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or the interpretation thereof. If any dispute or differences of any kind whatsoever other than those in respect of which, the decision of any person is, by the Contract, expressed to be final and binding shall arise between the Employer and the Contractor or the Engineer and the Contractor in connection with or arising out of the Contract or carrying out of the Works (Whether during the progress of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract), if the aggrieved party may refer such dispute within a period of 7 days to the concerned Additional Municipal Commissioner who shall constitute a committee comprising of three officers i.e. concerned Deputy Municipal Commissioner or Director (ES&P), Chief Engineer other than the Engineer of the Contract and concerned Chief Accountant. The Committee shall give decision in writing within 60 days, if 60 th day happens to be holiday then the following working is considered. Appeal on the Order of the Committee may be referred to the Municipal Commissioner within 7 days. Thereafter the Municipal Commissioner shall constitute a Committee comprising of three Additional Municipal Commissioners including Addl. Municipal Commissioner in charge of Finance Department. The Municipal Commissioner shall give written notice of committee's decision to the Contractor as given in further clause.
20.3 Dispute to be referred to Commissioner		
103a	20.3	Replace Sub-Clause : 20.3 & 20.4 with the following :
	20.4	
		If any dispute or differences of any kind whatsoever other than those in respect of which, the decision of any person is, by the Contract, expressed to be final and binding) shall arise between the Employer and the Contractor or the Engineer and the Contractor in connection with or arising out of the Contract or carrying out of the Works (Whether during the progress of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract) it shall in the first place be referred to and settled by the Commissioner who within a period of 90 days after being requested to do so shall give written notice of his decision to the Contractor. Save as herein provided such decision in respect of every matter so referred shall be final and binding upon both parties until the completion of the works, and shall forthwith be given effect to by the Contractor who shall proceed with the works with due diligence, whether he requires arbitration as hereinafter provided or not. If the Commissioner has given written notice of his

		decision to the Contractor and no Claim to arbitration has been communicated within a period of 90 days from receipt of such notice the said decision shall remain final and binding upon the Contractor.
20.6 Arbitration		
104	20.6	<p>Replace Sub-Clause : 20.6 Arbitration with the following :</p> <p>If the Commissioner shall fail to give notice of his decision as aforesaid within a period of 90 days after being requested as aforesaid, or if the Contractor be dissatisfied with any such decision, then and in any such case the Contractor may within 90 days after receiving notice of such decision or within 90 days after the expirations of the first named period of 90 days (as the case may be) require that the matter or matters in dispute be referred to arbitration as hereinafter provided. All disputes or differences in respect of which the decision (if any) of the Commissioner has not become final and binding as aforesaid shall be finally settled by arbitration as follows:</p> <p>Arbitration shall be effected by a single arbitrator agreed upon by the parties. The sole arbitrator shall be appointed as follows:</p> <p>The Employer will nominate a panel of three arbitrators. The arbitrators shall be internationally / nationally recognised technical experts or Engineers of repute with extensive knowledge and experience in the area and in relation to the matter of dispute. The Contractor will be asked to choose one arbitrator from the panel, who will act as the sole arbitrator.</p> <p>The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and Mumbai Centre for International Arbitration as amended from time to time, and shall be held at such place and time within the limits of Brihan Mumbai as the arbitrator may determine. The decision of the arbitrator shall be final and binding upon the parties hereto and the expense of the arbitration shall be paid as may be determined by the arbitrator. Performance under the Contract shall, if reasonably be possible, continued during the arbitration proceedings and payment due to the Contractor by the Employer shall not be withheld unless they are the subject matter of arbitration proceedings.</p> <p>The said arbitrator shall have full power to open up, review and revise any decision, opinion, direction, certification or valuation of the Commissioner and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Commissioner for the purpose of obtaining his said decision. No decision given by the Commissioner in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on</p>

		<p>any matters whatsoever relevant to the disputes or difference referred to the arbitrator as aforesaid.</p> <p>All awards shall be in writing and for claims equivalent to INR 5,00,000 or more such awards shall state reasons for amounts awarded. The expenditure of arbitration shall be paid as may be determined by arbitrator. The arbitration expenditure shall be shared equally between Employer and Contractor</p>
104a	20.6	<p>Add at the end of replaced Clause 20.6 :</p> <p>Substitute Arbitrators</p> <p>If for any reason an arbitrator is unable to perform his function, a substituteshall be appointed in the same manner as the original arbitrator.</p>
20.9 No legal action Till Dispute Settlement Procedure is Exhausted		
105	20.9	<p><u>Add a new Sub-Clause : 20.9</u></p> <p>No legal action till Dispute Settlement Procedure is exhausted</p> <p>Any and all Disputes shall be settled in accordance with the provisions of Clause 20. No action at law concerning or arising out of any Dispute shall be commenced unless and until all applicable Dispute resolution procedures set out in Clause 20 shall have been finally exhausted in relation to that Dispute or any Dispute out of which that Dispute shall have arisen with which it may be or may have been connected.</p>
20.10 Notice of Dispute		
106	20.10	<p><u>Add a new Sub-Clause : 20.10</u></p> <p style="text-align: center;">Notice of Dispute</p> <p>For the purpose of notice of dispute, a Dispute shall be deemed to arise when one party serves on the other party a notice in writing (hereinafter called a "Notice of Dispute") stating the nature of the Dispute, provided thatno such notice shall be served later than 28 days after the date of issue of Performance Certificate by the Engineer.</p>
20.11 Rules for Arbitration& Jurisdiction of Court		
107	20.11	<p><u>Add a new Sub-Clause 20.11:</u></p> <p>Arbitration shall be conducted in accordance with</p> <p>a. "The Arbitration and Conciliation Act -1996" and amendment at 2015 Mumbai Center for International Arbitration Rules andas amended from time to time.</p> <p>b. The place of Arbitration shall be Mumbai</p> <p>c. Courts at Mumbai shall have the exclusive jurisdiction to try all disputesbetween the parties.</p>

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PARTICULAR CONDITIONS OF CONTRACT

SCHEDULES TO PARTICULAR CONDITIONS OF CONTRACT

TABLE OF CONTENTS**SCHEDULES TO PARTICULAR CONDITIONS OF CONTRACT**

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Note: The Schedules as above may be modified as considered necessary at the time of finalisation of the Contract.

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PARTICULAR CONDITIONS OF CONTRACT

SCHEDULE 1

CONTRACT AGREEMENT

Refer Annexure 7 of Volume 1

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PARTICULAR CONDITIONS OF CONTRACT

SCHEDULE 2

PERFORMANCE GUARANTEE

Refer Annexure 6 of Volume 1

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PARTICULAR CONDITIONS OF CONTRACT

SCHEDULE 3

PARENT COMPANY UNDERTAKING

PARENT COMPANY UNDERTAKING
(Refer Sub - Clause 4.2 of PCC)

THIS UNDERTAKING is made the day of

BY [] [whose registered office is at]/[of] [] ("the Parent Company").
 TO BRIHANMUMBAI MUNICIPAL CORPORATION together with its successors and assigns, "the Employer") of: Municipal Commissioner of Mumbai (BMC), 2nd Floor, Municipal Head Office, Mahapalika Fort, Mumbai – 400 001.

WHEREAS

- (A) By a Contract No. MCRP/South/P-II dated [] ("the Contract") made between (1) The Brihanmumbai Municipal Corporation ("the Employer") and (2) [] ("the Contractor") the Contractor has agreed to design, execute, complete and remedy any defects in the works ("the Works") upon the terms and conditions contained in the Contract.
- (B) Pursuant to the terms of the Contract, the Contractor has agreed to procure the provision of an undertaking in the terms hereof.
- (C) The Parent Company is the beneficial owner of [] % [see Note 1] of the issued share capital of [the Contractor] [see Note 2].
- (D) At the request of the Contractor, the Parent Company has agreed to provide this undertaking.

NOW IT IS HEREBY UNDERTAKEN AND AGREED as follows:

1. In consideration of the Employer entering into the Contract with the Contractor, the Parent Company hereby undertakes to the Employer that, without the written consent of the Employer, it will not [and will ensure that none of the companies referred to in Recital (C) will] [see Note 5]:-
 - (a) sell transfer assign or otherwise dispose of or deal with ownership of the whole or any part of EITHER [the share holding or other interest in the [Contractor] [see Note 3] OR [the share holdings or other interests] [see Note 4] referred to in Recital (C) in any way which will affect the beneficial ownership and control in [the Contractor] [see Note 3] of the Parent Company [and the other companies referred to in Recital (C)] [see Note 5]; and
 - (b) take any action which may result in the Contractor being unable to comply with his obligations or perform in any way his duties under the Contract [or take any action which may result in [the subsidiary forming part of the Contractor] [see Note 3] being unable to comply with his obligations or perform in any way his duties under the [joint venture or other relevant]

agreement] [see Note 6]

until such time as the Works shall have been completed, all the Contractor's obligations under the Contract shall have been performed and the Maintenance and Defects Liability Period (as defined in the Contract) for the whole and every part of the Works shall have elapsed and further that it will ensure [that the subsidiary forming part of the Contractor will take all steps necessary to ensure [see Note 6] compliance by the Contractor with the provisions of the Contract.

2. The obligations of the Parent Company under this Undertaking shall remain in full force and effect and shall not be affected or discharged in any way and the Parent Company hereby waives notice of:-
 - (a) any suspension of the Works, variation or amendment to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Employer in respect of the Contractor's obligations [and/or the obligations of [] [see Note 7];
 - (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
 - (c) the termination of the Contract or of the employment of the Contractor [and/or [] [see Note 7] under the Contract for any reason;
 - (d) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor [and/or [] [see Note 7] or negligence by the Employer in enforcing any such right of action or remedy;
 - (e) any bond, undertaking, security or other guarantee held or obtained by the Employer for any of the obligations of the Contractor [and/or [] [see Note 7] under the Contract or any release or waiver thereof.
3. This Undertaking shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Employer and the Contractor [and/or [] [see Note 7] and for the avoidance of doubt the Parent Company hereby authorises the Employer and the Contractor [and/or [] [see Note 7] to make any such amendment, variation or supplemental agreement.
4. All documents arising out of or in connection with this Undertaking shall be served:
 - (a) upon the Employer: Municipal Commissioner of Mumbai (BMC) Ground Floor, Municipal Head Office, Mahapalika Fort Mumbai – 400 001.
 - (b) upon the Parent Company, at [] India. [Note 8]
5. The Employer and the Parent Company may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.

6. This Undertaking shall be governed by and construed according to the laws for the time being in force in India and the Parent Company agrees to submit to the jurisdiction of the courts of India.

IN WITNESS where of this Undertaking has been executed as a deed on the date first before written. THE COMMON SEAL of ()

[()] ()

was affixed hereto ()

in the presence of:- ()

Notes: (for preparation of but not for inclusion in the engrossment of this Undertaking)

1. If the Parent Company is not the immediate parent company, the chain of ownership must be recited, identifying each company in the chain and the shareholdings or other interests in each subsidiary.
2. If the Contractor comprises more than one company, that fact and the joint venture or other relevant agreement must be recited. In such case, insert the name of the subsidiary forming part of the joint venture or partnership, and in respect of which the parent company undertaking is being given.
3. If Note 2 applies, refer to the subsidiary of the Parent Company and not the Contractor.
4. If Note 1 applies, use this alternative.
5. If Note 1 applies, add this provision.
6. If Note 2 applies, add this provision.
7. If Note 2 applies, add this provision and insert the name of the subsidiary.
8. The address for service shall be in India.

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PARTICULAR CONDITIONS OF CONTRACT

SCHEDULE 4

PARENT COMPANY GUARANTEE

PARENT COMPANY GUARANTEE
(Refer Sub - Clause 4.2 of PCC)

THIS GUARANTEE is made the day of

BETWEEN:-

(1) [] whose registered office is at [] [and [] whose registered office is at [] ("the Guarantor").

TO THE BRIHANMUMBAI MUNICIPAL CORPORATION (together with its successors and assigns, "the Employer") of:

Municipal Commissioner of Mumbai (BMC), 2nd Floor, Municipal Head Office, Mahapalika Fort, Mumbai — 400 001.

WHEREAS

(A) By a contract MCRP/ South/ P-II- dated [] ("the Contract") made between (1) THE BRIHANMUMBAI MUNICIPAL CORPORATION ("the Employer") and

(2) [] ("the Contractor"), the Contractor has agreed to design, execute, complete and remedy any defects in the Works upon the terms and conditions contained in the Contract.

(B) Pursuant to the terms of the Contract, the Contractor has agreed to procure the provision of a guarantee in the terms hereof. [see Note 1].

(C) At the request of the Contractor, the Guarantor has agreed to guarantee performance of the Contract by the [Contractor] [see Note 2] as set out herein.

IT IS HEREBY AGREED AS FOLLOWS:

1. In consideration of the Employer entering into the Contract with the Contractor, the Guarantor irrevocably and unconditionally guarantees to the Employer as a primary obligation and not as a surety due performance by the [Contractor] [see Note 2] of all of its obligations and liabilities under and in accordance with the Contract save that nothing herein shall be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the [Contractor] [see Note 2] in the Contract.

2. The obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by and the Guarantor hereby waives notice of:-

(a) any suspension of the Works, variation to or amendment of the Contract (including without limitation extension of time for performance) or any concession or waiver by the Employer in respect of the Contractor's obligations [and/or the obligations of [] [see Note 3] under the Contract;

- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (c) the termination of the Contract or of the engagement of the Contractor [and / or [...]] [see Note 3] under the Contract for any reason;
- (d) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor [and / or [...]] [see Note 3] or negligence by the Employer in enforcing any such right of action or remedy;
- (e) any bond, undertaking, security or other guarantee held or obtained by the Employer for any of the obligations of the Contractor [and / or [...]] [see Note 3] under the Contract or any release or waiver thereof.
3. This Guarantee shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Employer and the Contractor [and/or []] [see Note 3] and for the avoidance of doubt the Guarantor hereby authorises the Employer and the Contractor [and/or []] [see Note 3] to make any such amendment, variation or supplemental agreement.
4. This Guarantee is a continuing guarantee and accordingly shall cover all of the obligations and liabilities of the [Contractor] [see Note 2] under the Contract and remain in full force and effect until all the said obligations and liabilities of the Contractor shall have been carried out, completed and discharged in accordance with the Contract. This Guarantee is in addition to any other security which the Employer may at any time hold and may be enforced without first having recourse to any such security or taking any steps or proceedings against the Contractor.
5. Until expiry of the Maintenance and Defects Liability Period (as defined in the Contract) for the whole and every part of the Works, the Guarantor shall not on any ground whatsoever make any claim or threaten to make any claim whether by proceedings or otherwise against the Contractor [and/or []] [see Note 3] for the recovery of any sum paid by the Guarantor pursuant to this Guarantee. Any such claim shall be subordinate to any claims (contingent or otherwise) which the Employer may have against the Contractor [and/or []] [see Note 3] arising out of or in connection with the Contract until such time as such claims shall be satisfied by the Contractor [and/or []] [see Note 3] or the Guarantor as the case may be. To that intent the Guarantor shall not claim or have the benefit of any security which the Employer holds or may hold for any monies or liabilities due or incurred by the Contractor [and/or []] [see Note 3] to the Employer and, in case the Guarantor receives any sum from the Contractor [and/or []] [see Note 3] in respect of any payment by the Guarantor hereunder, the Guarantor shall hold such sum in trust for the Employer for so long as any sum is payable (contingently or otherwise) under this Guarantee.
6. The Employer shall be entitled to assign the benefit of this Guarantee at any time

without the consent of the Guarantor or the [Contractor] [see Note 2] being required.

7. All documents arising out of or in connection with this Guarantee shall be served:
 - (a) upon the Employer: Municipal Commissioner of Mumbai (BMC), 2nd Floor, Municipal Head Office, Mahapalika Fort, Mumbai – 400 001.
 - (b) Upon the Guarantor, at [] India [Note 4]
8. The Employer and the Guarantor may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.
9. This Guarantee shall be governed by and construed according to the laws for the time being in force in India and the Contractor agrees to submit to the jurisdiction of the courts of India.

IN WITNESS whereof this Guarantee has been executed as a deed on the date first before written. THE COMMON SEAL of)

[])

was affixed hereto in)

the presence of: -)

Notes (for preparation of but not inclusion in the engrossment of this Guarantee)

1. If the Contractor comprises more than one company, that fact, the joint venture or other relevant agreement and the relationship of the Guarantor to its subsidiary forming part of the Contractor must be recited.
2. If Note 1 applies, replace the word "Contractor" with name of the subsidiary being guaranteed.
3. If Note 1 applies, add additional wording and insert the name of the subsidiary being guaranteed.
4. The address for service shall be in India

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SCHEDULE 5

CONTRACTOR'S WARRANTY

CONTRACTOR'S WARRANTY
(Refer Sub-Clause 4.2 of PCC)

THIS WARRANTY is made the day of

BY [] of [] [and [see Note 1]] ([jointly] "the Contractor")

TO [] [of]/[whose registered office is at] [] (together with its successors and assigns, "the Employer")

WHEREAS

(A) By a contract No. MCRP/South/P-II- dated [] ("the Contract") made between (1) The Brihanmumbai Municipal Corporation ("the Employer") and (2) the Contractor, the Contractor has agreed to design, execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defect in the Works upon the terms and conditions contained in the Contract.

(B) [See Note 3].

(C) At the request of the Employer and pursuant to the terms of the Contract the Contractor has agreed to provide this Warranty.

NOW IT IS AGREED AS FOLLOWS:

1. The Contractor hereby warrants and undertakes that:

- (a) the Contractor will design, execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defect in the Works in accordance with the terms of the Contract; and
- (b) the Contractor owes a duty of care to the Employer in relation to the performance of its duties under the Contract; and
- (c) the Contractor will replace free of cost to the Employer any defect or failure of equipment provided in the Works for a period of 24 months from the date of taking over of whole of the Works; and
- (d) the Contractor agrees that should any design modification be required to any equipment or component as a consequence of failure analysis, the period of 24 months shall re-commence from the date when the modified part is commissioned into service if the date of modification is later than the date of taking over of last whole of the Works, and such modification shall be carried out free of cost to the Employer in the Works; and
- (e) the Contractor shall maintain the manufacture & supply of spares

(including those of his Sub-Contractors/Vendors) for the equipments supplied in the Contract for at least 10 years from the date of Completion of the Contract; and

- (f) the Contractor has exercised and will continue to exercise in the design of the Underground Stations and Tunnels including Ventilation and Air conditioning all the skill and care to be expected of a professionally qualified and competent designer experienced in work of similar nature and scope as the Works; and
 - (g) the Works will, when completed, comply in all respects with the Employer's Requirements, the Contractor's Technical Proposals, the Final Design Document and the intended use of the Works; and
 - (h) the Works has been or will be designed, manufactured, installed and otherwise constructed and to the highest standards available using internationally proven up-to- date good practice; and
 - (i) the Works will, when completed, comply with enactments and regulations relevant to the Works; and
 - (j) no Materials generally known to be deleterious or not in accordance with good engineering practice have been or will be specified or selected or incorporated in the Works by the Contractor.
 - (k) The design of the Works and manufacture of Plant have taken or will take full account of the effects of the intended manufacturing and installation methods, Temporary Works and Contractor's Equipment.
2. The liability of [the companies comprising [see Note 3]] the Contractor under this Warranty [shall be joint and several and [see Note 3]] shall not be released, diminished or in any way affected by any independent inquiry or investigation into the Works or any matter related to the Contract whether carried out by or on behalf of the Employer or any liability or right of action which may arise out of such inquiry or investigation.
 3. Insofar as the copyright or other intellectual property rights in any plans, calculations, drawings, documents, materials, plant, know-how and other information relating to the Works shall be vested in the Contractor, the Contractor grants to the Employer his successors and assigns a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub- licences) to use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works for the Project including without limitation the design, manufacture, installation, completion, testing and commissioning (including Integrated Testing and Commissioning) reinstatement, extension and the remedy of any defect in the Works. To the extent that beneficial ownership of any such copyright or other intellectual property rights is vested in anyone other than the Contractor, the Contractor shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.
 4. The provisions of this Warranty shall be without prejudice to and shall not be

- deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Contractor, whether in tort or otherwise .
5. Nothing contained in this Warranty shall vary or affect the Contractor's rights and obligations under the Contract.
 6. The address for service of all documents arising out of or in connection with this Warranty shall be:-
 - (a) Upon the Employer Brihanmumbai Municipal Corporation; Municipal Commissioner of Mumbai (BMC), Ground Floor, Municipal Head Office, Mahapalika Fort, Mumbai — 400 001.
 - (b) Upon the Contractor at [] India. [Note 4]
 7. The Employer and the Contractor may change their respective nominated addresses to another address in India but only by prior written notice to each other. All notices must be in writing.
 8. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
 9. (1) Any dispute or difference of any kind whatsoever between the Employer and the Contractor arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the Conciliation and Arbitration rules set out in the General Conditions of Contract. "Dispute" as defined in the Contract shall be deemed to include any such dispute or difference between the Employer and Contractor.
 - (2) In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under out of or in connection with the Contract ("the Contract Dispute") then provided that an arbitrator has not already been appointed pursuant to Clause 9(1), the Employer may by notice in writing to the Contractor require and the Contractor shall be deemed to have consented to the referral of such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.
 - (3) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objections relating to the dispute.
 - (4) Subject to the foregoing provisions of this clause 9, the Employer and the Contractor agree to submit to the jurisdiction of the Courts of India at Mumbai.

IN WITNESS whereof this Warranty has been executed as a deed on the date written

at the headhereof.

THE COMMON SEAL of)

[])

was affixed hereto in)

the presence of:-)

Notes (for preparation of and not inclusion in the engrossment of this Warranty)

- (1) If the Contractor comprises more than one company, each such company shall be a party and liability under this warranty will be joint and several, with consequential grammatical changes.
- (2) If Note 1 applies, that fact and the joint venture or other relevant agreement must be recited.
- (3) Delete if Note 1 does not apply.
- (4) The address for service shall be in India.

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SCHEDULE 6

DESIGNER'S WARRANTY

DESIGNER'S WARRANTY
(Refer Clause 5.3 of the PCC)

THIS WARRANTY is made the ___ day of _____

BETWEEN:

(1) [_____] [whose registered office is at]/[of] [_____] ("the Designer"); and

Brihanmumbai Municipal Corporation (together with its successors and assigns, "the Employer") of Municipal Commissioner of Mumbai (BMC), 2nd Floor, Municipal Head Office, Mahapalika Fort, Mumbai — 400 001.

(2)

WHEREAS:

(a) By a contract_____dated [_____] ("the Contract") made between (1) Brihanmumbai Municipal Corporation ("the Employer") and (2) [_____] ("the Contractor"), the Contractor has agreed to design, execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defect in the Works upon the terms and conditions contained in the Contract.

(b) The_____Name of the Contractor/Designer_hereinafter called "Designer" has had an opportunity of reading and noting the provisions of the Contract (other than details of the Contractor's prices and rates).

(c) Pursuant to the Contract, the Contractor wishes to enter into an agreement with the Designer and Designer agrees to the wishes of the Contractor (the Consultancy agreement) to carry out the Contractor's obligations under the Contract in relation to the design and functions ascribed to the Designer in the Contract.

(d) The Contract stipulates that [the Contractor shall ensure that] the Designer executes a warranty agreement in favour of the Employer.

[] in case Contractor is the Designer also, the remarks within [] to be deleted

NOW IT IS HEREBY AGREED as follows:

1. In consideration of the Employer not objecting to the Contractor and the Designer entering into the Consultancy Agreement, the Designer warrants and undertakes to the Employer that he has exercised and will continue to exercise all the skill and care to be expected of a professionally qualified and competent designer experienced in work of similar nature and scope as the Works in carrying out the design of the temporary and Permanent Works and in performing the other duties and functions ascribed to him in the Contract.

2. The Designer agrees that, in the event of the termination of the Contract by the Employer, the Designer will, if so required by notice in writing given by the

Employer, accept subject to Clause 4 the instructions of the Employer or his appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Works upon the terms and conditions of the Consultancy Agreement.

3. The Designer further agrees that he will not, without first giving the Employer not less than 21 days' previous notice in writing, exercise any rights it may have to terminate the Consultancy Agreement or to treat the same as having been repudiated by the Contractor or to discontinue the performance of any duties to be performed by the Designer pursuant thereto. The Designer's right to terminate the Consultancy Agreement or to treat the same as having been repudiated or to discontinue the performance thereof shall cease if, within such period of notice and subject to Clause 4, the Employer shall give notice in writing to the Designer requiring the Designer to accept the instructions of the Employer or his appointee to the exclusion of the Contractor in respect of the carrying out and completion of the Contract Works upon the terms and conditions of the Consultancy Agreement.
4. Any notice given by the Employer under Clause 2 or 3 shall state that the Employer or his appointee accepts liability for payment of the fees payable to the Designer under the Consultancy Agreement and for performance of the Contractor's obligations under the Consultancy Agreement, including payment of any fees outstanding at the date of such notice.
5. The Employer shall be entitled to assign the benefit of this Warranty at any time without the consent of the Designer being required.
6. All documents arising out of or in connection with this Warranty shall be served:
 - (1) upon the Employer: Brihanmumbai Municipal Corporation; at
Municipal Commissioner of Mumbai (BMC), 2nd Floor, Municipal Head Office, Mahapalika Fort, Mumbai — 400 001 India.
 - (2) upon the Designer at [].
7. The Employer and the Designer may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.
8. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
9. Except to the extent (if any) expressly permitted by the Consultancy Agreement, the Designer shall not sub-contract any of the Designer's obligations under the Consultancy Agreement without the prior written consent of the Employer's Representative.
10. Without prejudice to its obligations under this Warranty, the Designer shall maintain

with well- established underwriters of repute and on terms and conditions reasonably acceptable to the Employer, Professional Indemnity Insurance (as per Sub-Clause 18.6 of the Particular Conditions of Contract and Form of Tender — Appendix FT-1) in respect of the Designer and its sub-consultants in relation to his design of the Works for any one occurrence or series of occurrences arising out of any one event from the date of Letter of Acceptance until 5 years after the issue of Performance Certificate for the whole of works. The Designer shall immediately inform the Employer if for any reason Professional Indemnity Insurance is not maintained in accordance with this Warranty or becomes void or unenforceable.

11. Insofar as the patent, copyright or other intellectual property rights in any Design Data (as defined in the Contract), plans, calculations, drawings, documents, materials, computer software, know-how and information relating to the Works shall be vested in the Designer, the Designer grants to the Employer his successors and assigns a royalty-free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works (including without limitation the design, construction, reconstruction, completion, reinstatement, extension, repair and operation of the Works). To the extent beneficial ownership of any such patent, copyright or other intellectual property right is vested in anyone other than the Designer or the Contractor, the Designer shall use his best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. Any such licence granted shall not be determined if the Designer shall for any reason cease to be employed in connection with the Works.
12. (1) Any dispute or difference of any kind whatsoever between the Employer and the Designer arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with Clause 104 of PQC "Dispute" as defined in t Contract shall be deemed to include any such dispute or difference between the Employer and the Designer.
- (2) In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under out of or in connection with the Contract ("the Contract Dispute") then provided that an arbitrator has not already been appointed, the Employer may by notice in writing to the Designer require and the Designer shall be deemed to have consented to the referral of such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.
- (3) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, statement of objection, determination, certificate, assessment or valuation by the Employer's Representative or the Contractor, relating to the dispute or difference.

IN WITNESS whereof this Warranty has been executed as a deed on the date first before written.

THE COMMON SEAL of)

[Designer])

was affixed hereto in)

the presence of:-)

Note : In case of Contractor and Designer being the same, the wordings of the Para to be suitably modified acceptable to the Employer.

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SCHEDULE 7

SUB-CONTRACTOR'S WARRANTY

the terms of the Sub-contract (as the same may from time to time be varied or amended with the consent of the Employer); and

- (b) he will supply to the Contractor and in specific cases wherever required to the Employer's Representative with all information as may be required from time to time in relation to progress of the Sub-contract Works.
2. The Sub-contractor undertakes to indemnify the Employer against each and every liability which the Employer may have to any person whatsoever and against any claims, demands, proceedings, loss, damages, costs and expenses sustained, incurred or payable by the Employer provided that the Sub-contractor shall have no greater liability to the Employer by virtue of this Warranty than the liability of the Contractor to the Employer under the Contract insofar as and to the extent that the same has arisen by reason of any breach by the Sub-contractor of his obligations under the Sub-contract.
3. No allowance of time by the Employer hereunder or by the Contractor under the Sub-contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning this Warranty or the Sub-contract on the part of the Employer or the Contractor, nor anything that the Employer or the Contractor may do or omit or neglect to do, shall in any way release the Sub-contractor from any liability under this Warranty.
4. The Sub-contractor agrees that he will not without first giving the Employer not less than 21 days prior notice in writing exercise any right he may have to terminate the Sub-contract or treat the same as having been repudiated by the Contractor or withhold performance of its obligations under the Sub-contract.
5. (1) In the event that the Contract or the employment of the Contractor under the Contract is terminated for any reason whatsoever and if so requested by the Employer in writing within 21 days of such termination, the Sub-contractor shall carry out and complete his obligations under this Warranty and shall enter into a novation agreement with the Employer and the Contractor in which the Sub-contractor will undertake inter alia to perform the Sub-contract and be bound by its terms and conditions as if the Employer had originally been named as a contracting party in place of the Contractor. The said novation agreement will be in such form as the Employer may reasonably require.
- (2) In the event that the Employer does not require the Sub-contractor to enter into a novation agreement as required by Sub-Clause 5(1), the Sub-contractor shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with this Warranty.
6. Insofar as the copyright or other intellectual property rights, in any plans, calculations, drawings, documents, materials, know-how and information relating to the Sub-contract Works shall be vested in the Sub-contractor, the Sub-contractor grants to the Employer, his successors and assignees a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to

use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works of Project, without limitation the design, manufacture, installation, reconstruction, completion, reinstatement, extension, remedy of any defect of the Works. To the extent beneficial ownership of any such copyright or other intellectual property right is vested in anyone other than the Sub-contractor, the Sub-contractor shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Sub-contractor shall for any reason cease to be employed in connection with the Sub-contract Works.

7. In the event of any ambiguity or conflict between the terms of the Sub-contract and this Warranty, the terms of this Warranty shall prevail.
8. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Sub-contractor whether in tort or otherwise.
9. Nothing contained in this Warranty shall vary or affect the Sub-contractor's rights and obligations under the Sub-contract.
10. The Employer shall be entitled to assign the benefit of this Warranty at any time without the consent of the Sub-contractor being required.
11. All documents arising out of or in connection with this Warranty shall be served:
 - (1) Upon the Employer: Brihanmumbai Municipal Corporation; at Love Grove Sewage Pumping Station
Dr. Annie Besant Road, Worli

Mumbai – 400 018 India. Marked for the attention of Managing Director.
 - (2) Upon the Sub-contractor, at [] India.
12. The Employer and the Sub-contractor may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.
13. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
14. (1) Any dispute or difference of any kind whatsoever between the Employer and the Sub-contractor arising out of or in connection with this Warranty shall be referred to arbitration in accordance with the Arbitration as described in the Contract.
 - (2) In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or

difference arising under out of or in connection with the Contract ("the Contract Dispute") then provided that an arbitrator has not already been appointed pursuant to Clause 14(1), the Employer may by notice in writing to the Sub-contractor require and the Sub-contractor shall be deemed to have consented to the referral of such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.

- (3) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objection, assessment or valuation by the Employer's Representative or the Contractor relating to the dispute or difference.

IN WITNESS whereof this Warranty has been executed as a deed on the date first before written.

THE COMMON SEAL of)

[])

was affixed hereto in)

the presence of:-)

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PARTICULAR CONDITIONS OF CONTRACT

SCHEDULE 8

FORM OF BANK GUARANTEE FOR ADVANCE PAYMENTS

FORM OF BANK GUARANTEE FOR ADVANCE PAYMENTS
(Refer. Sub - Clause 14.2 of PCC)

(To be stamped in accordance with Stamp Act, if any, of the country of issuing bank)

Ref _____

Bank Guarantee _____

Date _____

Dear Sir,

In consideration of M/s. __ (hereinafter referred as the "Employer" \, which expression shall, unless repugnant to the context or meaning thereof include it successors, administrators and assigns) having awarded to M/s.__(hereinafter referred to as the "Contractor" which expression shall unless repugnant to the context of meaning thereof, include its successor, administrators, executors and assigns), a contract by issue of Contract Agreement No. dated_ and the same having been unequivocally accepted by the Contractor, resulting in a Contract valued at _____ for _____ Contract (hereinafter called the "Contract").

and the Employer having agreed to make an advance payment to the Contractor for performance of the above Contract amount to _____(in words and figures) as an advance against Bank Guarantee to be furnished by the Contractor.

We _____ (Name of the Bank) having its Head Office at _____(hereinafter referred to as the Bank, which expression shall unless repugnant to the context of meaning thereof, include its successors, administrators executors and assigns) do hereby unconditionally, irrevocably and without demur guarantee and undertake to pay the Employer immediately on demand any or, all monies payable by the Contractor to the extent of _____ as aforesaid at any time upto _____@ without any demur reservation, context, recourse or protest and or without any reference to the Contractor. Any such demand made by the Employer on the Bank shall be conclusive and binding notwithstanding any difference between the Employer and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable till the Employer discharges this guarantee.

The Employer shall have the fullest liberty without affecting in any way the liability of Bank under this Guarantee, from time to time to vary the advance or to extend the time for performance of the contract by the Contractor. The Employer shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Employer and to exercise

the same at any time in any manner, and either to enforce or to forebear in enforce any
convents, contained or implied, in the Contract between the Employer and Contractor
any other course or remedy or security available to the Employer. The bank shall not
be relieved of its obligation under these presents by any exercise by the Employer of its
liberty with reference to the matters aforesaid or any of them or by reason of any other
act or forbearance or other acts of omission or commission on the part of the Employer
or any other indulgence shown by the Employer or by any other matter or thing
whatsoever which under law would but for this provision have the effect of relieving the
Bank

The Bank also agrees that the Employer at his option shall be entitled to enforce this
Guarantee against the Bank as a principal debtor, in the first instance without proceeding
against the Contractor and notwithstanding any security or other guarantee that the
Employer may have in relation to the Contractor's liabilities.

The outstanding liability of the Bank under this guarantee will reduce by such amounts
as may be notified to the Bank in your authorised writing and stated to be the reduction
of this guarantee required to be made in accordance with the Contract by reason of the
repayments made by the Contractor.

Courts at Mumbai, India will have exclusive jurisdiction for contesting legal cases arising
out of encashment of the Guarantee.

Notwithstanding anything contained herein above, or liability under this guarantee
is limited to and it shall remain in force until the Employer receive full repayment of the
same amount from the Contractor, and shall be extended from time to time for such period
as may be desired by M/s.

_____ on whose behalf this guarantee has been given.

Dated this _____ day of _____ 19____ at _____

WITNESS

(Signature)

(Name)

(Signature)

(Name)

(Office Address)
stamp)

Designation (with Bank

Attorney as Power of
Attorney No. _____

Date _____

@ The date will be ninety

(90) days after the date of completion of the Works.

Notes:

1. The stamp papers of appropriate value shall be purchased in the name of the Bank, who issues the 'Bank Guarantee'.
2. The 'Bank Guarantee' shall be from an Indian Schedule bank located in Mumbai (excluding Cooperative Banks) or from a schedule Foreign Bank located in Mumbai, as defined in Section 2(e) of RBI Act 1934 read with Second Schedule..