



TENDER DOCUMENTS FOR

**“Supply, Installation,
Commissioning, Training &
Acceptance of Battery
Emulators“**

**TENDER NO. 439/GARC/EV/2022-
23/Battery Emulator/23**

Annexure IX General Conditions of Contract

Supply, Installation, Commissioning, Training & Acceptance of Battery Emulator Equipment

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General Conditions of Contract

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In these General Conditions of Contract (“Conditions”) the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them:

“Acceptance Tests” means the tests described as such in the Testing Plans.

“Advance Payment” means a sum equal to the amount named in Special Conditions of Contract and paid to the Contractor by GARC by way of a mobilisation/advance payment in accordance with **Clause 27.5** [Advance Payment].

“Advance Payment Guarantee” means any or all of the guarantees to be procured in accordance with **Clause 27.3**.

“Affected Party” means a Party whose performance of its obligations under the Contract is prevented, hindered or delayed in whole or in part by reason of Force Majeure.

“Applicable Clearances” means any clearance, permit, authorisation, consent, licence (including without limitation, any import or export licences), lease, ruling, exemption, filing, agreements, or approval, required to be obtained and maintained by the Contractor from time to time, in order to complete the Works.

“Applicable Laws” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including any revisions, amendments or re-enactments including without limitation rules, regulations and notifications made there under and judgments, decrees, injunctions, writs, orders and notifications issued by any court of record or any appropriate authorities, as may be in force and effect during the subsistence of the Contract.

“Change” means any change to Conditions of Contract, which is instructed or approved as a Change under **Clause 24**.

“Change Order” shall have the meaning ascribed to it in **Clause 24.2.4**.

“Commencement Date” shall mean the date of execution of the Contract by the Parties.

“Commissioning Spare Parts” means those commissioning spare parts required during the commissioning of the Works.

“Completion Certificate” has the meaning ascribed to it in **Clause 22.3.2**.

“Completion of the Works” means the achievement of the criteria set out in **Clause 22.1** and “Complete” “Completed” “Completion” and “Completing” shall be construed accordingly and as certified by the Completion Certificate.

“Confidential Information” means the Contract and everything contained therein, all documentation, data, particulars of the Works and/or the Project Facility and/or the Project and technical or commercial information made by (or on behalf of) GARC or obtained directly or indirectly from GARC or GARC Representative by the Contractor or which is generated by the Contractor or any subcontractor or any information or data that the Contractor receives or has access to as a result of the Contract, other than information:

- (a) which is generally available in the public domain other than by any unauthorised actions or fault of the Contractor; or
- (b) which is in the possession of the Contractor with a right to disclose;

“Contract” means the Contract Agreement, these Conditions, Special Conditions of Contract, Technical Conditions of Contract, and the further documents (if any) which are listed in the Contract Agreement and initialled by GARC and the Contractor and includes any amendment thereto made in accordance with the provisions hereof.

“Contractor” includes (without limitation to) any person, company, firm, organisation, consortium with whom GARC has entered into a Contract for execution of the Works and the permitted legal successors in title to the Contractor, but not any assignee of the Contractor.

“Contract Agreement” means the agreement entered into or to be entered into by the Parties and forming part of the Contract.

“Contractor’s Documents” means in addition to the documents mentioned in **Clause 1.5.1**, those documents to be prepared by the Contractor under the Contract including without limitation, such technical documents specified in Technical Conditions of Contract and such data, drawings, designs, design information, calculations, schedules, specifications, plans, inspection and test plans, manuals, programmes, erection and test data and all other information and documents including all eye readable or computer or other machine readable data relating to the Execution of the Works or otherwise to performance of the Contract.

“Contractor’s Equipment” means all or any apparatus, machinery, equipment, vehicles, materials, plant, tools and all other things required for the Execution of the Works and the remedying of any defects to be provided by the Contractor but Contractor’s Equipment excludes Equipment..

“Contractor’s Insurances” means the insurance policies to be purchased and maintained in full by the Contractor.

“Contract Price” means the Contract Sum subject to such additions thereto or deductions there from as made in accordance with the Contract.

“Contract Sum” means the sum mutually agreed between GARC and Contractor as the sum payable to the Contractor for the Execution of the Works in accordance with the provisions of the Contract.

“Date of Completion of the Works” means the date certified as such in the Completion Certificate in accordance with **Clause 22.1**.

“Default Interest Rate” shall be the interest rate per annum set out in Special Conditions of Contract.

“Delay Event” means any event set out at **Clause 19.3**.

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Facility and/or the Works, physical encumbrances and encroachments on the Project Site

“Equipment” means any apparatus intended to be procured for the implementation of the Works which may either be manufactured indigenously or may be procured from abroad.

“Execution of the Works” means the design, procurement, supply, assembly, erection, installation, testing, commissioning, trial runs and completion of the Works and the correction of defects in the Works and all works and things required to be undertaken pursuant to the Contract and “Executed”, “Execute” and “Execution” shall be construed accordingly.

“Execution Period” means the period beginning from the Commencement Date and ending on the Date of Completion of the Works.

“Force Majeure Period” means, the period commencing from the date of occurrence of a Force Majeure and ending on the date on which the Affected Party, acting in accordance with the Good Industry Practice, resumes or should have resumed such of its obligations the performance of which was excused in accordance with the Contract.

“Good Industry Practice” means the exercise of the highest degree of skill, diligence, prudence, safety and foresight in compliance with the undertakings and obligations under the Contract which would be expected from a skilled and experienced person engaged in the planning, design, execution, testing, implementation, operation and maintenance or supervision or monitoring thereof or any of them of works of the type, nature and scope similar to that of the Works.

“Intellectual Property” means copyright, all rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trademarks and service marks, registered and unregistered designs, circuit layouts, confidential information, proprietary information and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

“Liquidated Damages” means those damages provided in Special Conditions of Contract to be paid or allowed by the Contractor to GARC as compensation pursuant to **Clause 21**.

“Maintenance Spare Parts” means the maintenance spare parts for the Equipment and includes the critical, replacement and breakdown spare parts.

“Milestone Event” means the completion of a specific activity to be achieved, which reflects progress in the Execution of the Works or the occurrence of an event in each case as identified as such in the Payment Schedule.

“GARC Representative” means the person, company or firm appointed by GARC to act as its representative for the purposes of the Contract so appointed from time to time by GARC.

“Parties” means GARC and the Contractor and “Party” means any one of those Parties.

“Payment Schedule” means the payment schedule described as such and set out in Special Conditions of Contract.

“Performance Guarantee” means the guarantee to be procured in accordance with **Clause 1.7.1**.

“Performance Standards” means such performance standards for the operation and maintenance of the Project Facility as may be applicable pursuant to the Contract.

“Pre- Acceptance Test” means tests described as such in the Testing Plans.

“Project Facility Insurance” means the insurance policies to be purchased and maintained in force by GARC, in respect of risks set out in Part A, Schedule A [Insurances].

“Project Site” means that part of the site as indicated in the Special Conditions of Contract, on, under and over which the Works are to be Executed and any site to which any Contractor's Equipment- and Equipment are to be delivered and any other places as may be specified in the Contract as forming part of the Project Site.

“Punch List Items” means items of works of a minor or snagging nature which do not affect the performance of the Equipment, where agreed with GARC which remain incomplete at the Date of Completion of the Works.

“Quality Assurance Plan” means that plan referred to in **Clause 9.1**.

“Related Works” means works other than the Works, performed or undertaken by GARC or other contractors or suppliers of GARC or any contractor employed in connection with the Project Facility and/or services related thereto or by public or private utilities or by other authorities or by any Relevant Authority, either prior to, concurrently or sequentially with the Works at, on, over or adjacent to the Project Site in connection with or related to the Project Facility and which may be connected to, associated with, ancillary to or otherwise related to or relevant to the Works.

“Related Works Contractor” means any person or persons undertaking Related Works.

“Relevant Authority” includes the Department of Customs and Excise, the Ministry of Finance, the Department of Heavy Industry, Ministry of Heavy Industries and Public Enterprises or any other subdivision or instrumentality thereof, any local authority, or any authority empowered by the Applicable Laws.

“Required Insurances” means collectively the Project Facility Insurances and the Contractor Insurances.

“Required Manufacturers Warranties” means those warranties identified as such in

Technical Conditions of Contract.

“Spare Parts” means the Commissioning Spare Parts and shall include such Maintenance Spare Parts as are instructed to be provided by GARC.

“Special Conditions of Contract” means the document entitled Special Conditions of Contract as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document specifies any special terms and conditions forming part of this Contract.

“Subcontractor” means a Subcontractor to whom a part of the Works has been subcontracted by Contractor or to whom the supply of any goods or materials or labour and services for the Works has been subcontracted as permitted under **Clause 7** and the permitted legal successors in title to such person, but not any assignee of such person.

“Tax” means all forms of taxation, duties, fees, imposts and levies including (but without limitation) income tax including withholding tax, value added tax, sales tax, service tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Contractor, its Subcontractors and any of their employees or GARC (as the case may be and as set out hereunder), and the words “Taxation” and “Taxes” shall be construed accordingly.

“Technical Conditions of Contract” means the document entitled Technical Conditions of Contract, as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document includes the design and /or other technical specifications for the Works.

“Termination Date” means the date specified in the notice of Termination given by either Party to the other Party, from which the Contract shall stand terminated.

“Testing Plans” means those plans referred to in **Clause 17.1.2** which set out the tests and inspections required to be performed by the Contractor in accordance with the Technical Conditions of Contract and the means by which the Contractor intends to conduct and satisfy such tests and inspections.

“Time for Completion” means the time for Completion of the Works as stated in Special Conditions of Contract or such time as may be varied from time to time in accordance with the Contract, calculated from the Commencement Date.

“Training Plan” shall have the meaning assigned to it in **Clause 29.2**.

“Warranty” means an assurance from the Contractor for uninterrupted performance of the Equipment after the acceptance of the Equipment, as per the performance parameters specified under the Contract and includes any alteration, repair or replacement of any defective or damaged part/ design or material used for the Equipment at the cost of the Contractor over the Warranty Period for ensuring such uninterrupted performance.

“Warranty Period” means the period starting from the date of acceptance of the Equipment up to duration as stated in Special Conditions of Contract.

“Works” includes (without limitation to) the designing, manufacturing, assembling and functional testing prior to shipment, delivery, installation, integration of systems and system checking, testing and commissioning of the Equipment and supply of special tools, requisite software, supply of Spare Parts and training to the personnel, operators and mechanics of GARC including Project Facility operations personnel and Project Facility operation trainers and necessary after sales service and maintenance support, as agreed with GARC.

1.2 Interpretation

In the Contract, unless the context otherwise requires or as otherwise expressly stated:

- 1.2.1 The words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- 1.2.2 The Special Conditions of Contract and the Technical Conditions of Contract form an integral part of the Contract and will be in full force and effect as though they were expressly set out in the body of these Conditions. Terms defined in the Special Conditions of Contract, and Technical Conditions of Contract shall have the same meaning throughout the Contract;
- 1.2.3 Definitions within Clauses have the meaning ascribed thereto;
- 1.2.4 Metric system of measurement shall be used exclusively in the Contract.

1.3 Communications

Wherever these Conditions provide for any agreement, or the giving or issuing of any consent, approval, authorisation, notice, certificate, request, determination, information or report ("communication") from or by any Party such communication shall be valid and effectual only if:

- (i) In writing under the hands of a duly authorised representative of such Party and delivered by hand (against receipt), sent by recognised courier, registered mail, or transmitted by facsimile transmission; and
- (ii) Delivered, sent or transmitted to the address for the recipient's communications as stated in Special Conditions of Contract.

1.4 Confidentiality

- 1.4.1 The Contractor shall disclose to GARC any Confidential Information and other information as GARC may reasonably require for verifying the Contractor's compliance with the Contract. Further, the Contractor shall not, without the previous written consent of GARC, use, copy, publish, disclose or otherwise deal with, nor cause nor permit its Subcontractors or any persons for whom it is contractually or otherwise responsible for, to use, copy, publish, disclose or otherwise deal with any Confidential Information, otherwise than for the performance of its obligations under the Contract.
- 1.4.2 The Contractor shall not without the prior written permission of the GARC Representative:
 - (i) Disclose the Contract or any provision thereof or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of GARC in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made

in confidence and shall extend only so far as may be necessary for purpose of such performance;

- (ii) Make use of any document or Confidential Information enumerated in the Contract, except for the purpose of the Contract; and
- (iii) Communicate or use in advertising, publicity, sales, releases or in any other medium, photographs or other reproduction of the Works under this Contract or description of the Project Site, dimensions, quantity, quality or other information, concerning the Works.

1.4.3 Any document, other than the Contract and enumerated in the Contract shall remain the property of GARC and shall be returned (in all copies) to GARC on completion of the Contractor's performance under the Contract, if so required by the GARC Representative.

1.5 Contractor's Documents

1.5.1 The Contractor's Documents shall mean and include the following which shall be deemed to form a part of the Contract:

- (i) Tender Document including letter forwarding the tender documents, instructions to bidders, these Conditions, and all other documents including the Special Conditions of Contract;
- (ii) Specifications of the Equipment to be furnished under the Contract in the Technical Conditions of Contract;
- (iii) Contractor's bid proposal and the documents attached thereto including the letters of clarifications thereto between the Contractor and GARC
- (iv) prior to the award of the Contract except to the extent of repugnancy;
- (v) All the materials, literature, data and information of any sort given by the Contractor along with its bid, subject to the approval of GARC
- (vi) Letter of award and any agreed variations of the conditions of the documents and special terms and conditions of the Contract, if any; and
- (vii) Such additional documents within such times and in such numbers and format as GARC Representative may reasonably require.

1.5.2 The Contractor shall prepare all Contractor's Documents and shall submit the Contractor's Documents to GARC Representative as may be required/ directed by GARC Representative and /or as called for in the Contract and in numbers and format required by the Contract and/ or by GARC Representative.

1.5A Conflict of Documents

1.5 A.1 In case of any inconsistency between any of the constituent documents of the Contract, the following shall be the supervening/prevailing order of priority for such documents:

- (i) Contract Agreement;

- (ii) The Special Conditions of Contract;
- (iii) Technical Conditions of Contract;
- (iv) Other Contractor's Documents;
- (v) General Conditions of Contract.

It is specifically clarified that in case of conflict between any timelines set out in these Conditions with those in the Special Conditions of Contract, those in the Special Conditions of Contract shall prevail and apply.

15 A.2 In the event of any conflict between the above mentioned documents, the decision of the GARC Representative shall be final and binding upon the Parties.

1.6 GARC Representative's Instructions

1.6.1 All instructions given by GARC Representative or by any person executing delegated functions will be issued in writing and in such form as will be advised to the Contractor after the Effective Date.

1.6.2 Where the Contractor fails to comply with an instruction, GARC may engage others to give effect to the instruction. All costs and charges incurred by GARC in engaging others shall be paid by the Contractor to GARC or may, without prejudice to any other method of recovery, be deducted by GARC from any monies due to the Contractor or may be recovered as a debt due and payable to GARC on demand.

1.7 Guarantees

1.7.1 The Contractor shall, within 15 (fifteen) days from the date of receipt of the 'Letter of Acceptance', provide to GARC the Performance Guarantee from a scheduled bank in India with a branch at CHENNAI, in a sum equal to the amount specified in Special Conditions of Contract and in the form appearing in the Tender Documents for the due observance and performance by the Contractor of the Contract and which shall be maintained by the Contractor at its own expense in full force and effect until the date set out in Special Conditions of Contract and until the completion of Warranty Period.

2. THE GARC REPRESENTATIVE

2.1 The GARC Representative's duties and authorities

The GARC Representative shall be appointed by and shall be responsible to, GARC and shall carry out the duties specified in, or necessarily implied from the Contract and shall exercise the authority delegated to it by GARC. The Contractor shall take instructions, notices, communications, decisions and approvals only from GARC Representative.

The GARC Representative shall have no authority to amend the Contract, to release the Contractor of any of his duties, liabilities or obligations under the Contract, nor, create estoppel against it or GARC in respect thereof, nor except as expressly provided hereunder or elsewhere in the Contract, to order any Work involving delay or any extra payment by GARC, nor to make any variation of or in the Works nor to waive any right of GARC under the Contract.

2.2 GARC Representative's authority to delegate

2.2.1 GARC Representative may from time to time delegate any of its functions to assistants and may at any time revoke any such delegation. It shall notify the Contractor of the names, duties and scope of authority of such assistants. GARC Representative may not delegate any duty or authority, and such assistants shall have no authority, to initiate any Change or to issue any certificates, notices, instructions or decisions which may lead to any increase in the Contract Sum or any extension of time.

2.2.2 Any written communication between the Contractor and any assistant of GARC Representative shall immediately and contemporaneously be copied by the Contractor to GARC Representative.

2.2.3 Any examination, testing or similar act by any assistant of GARC Representative, in accordance with its delegation, shall have effect as though it had been an act of GARC Representative.

However, if the Contractor questions any communication of an assistant of GARC Representative, the Contractor shall, not later than [7 (seven)] days after receipt of such communication, refer the matter to GARC Representative, who shall confirm, reverse or vary such communication.

2.3 Duration of powers and authorities

The powers and authorities vested in the GARC Representative and the functions of any assistant of GARC Representative under the Contract shall continue and be in force until the duties of GARC Representative set out in the Contract have been fully discharged or until GARC Representative revokes or removes the assistant's powers and authorities or until the period specified in the delegation to it expires.

2.4 GARC protection

The Parties acknowledge and agree that provisions in the Contract to the effect that work to be done under the Contract shall be carried out with the consent, non-objection or to the satisfaction of or be certified, determined, accepted, confirmed or inspected by the GARC Representative are inserted as protection to GARC and it is the sole responsibility of the Contractor to ensure that the Works are Executed in all respects in accordance with the Contractor's obligations under the Contract. The Contractor further acknowledges and agrees that no payment by GARC nor any expression or implication of satisfaction or acceptance nor any action, examination, comment, rejection, confirmation, certification, determination, consent, non-objection, approval or notice by the GARC Representative or failure to do the same shall restrict, debar, exclude or waive any claims, rights or actions whatsoever by GARC for any breach of any such obligation by the Contractor.

3. COMMENCEMENT**3.1 Condition Precedent**

The Contract shall become legally binding and in force only upon:

3.1.1 The submission of the Performance Guarantee; and

3.1.2 Satisfaction of any other condition(s) required by GARC.

4. THE PROJECT SITE

4.1 Access to and possession of the Project Site

4.1.1 Save insofar as the Contract may prescribe:

- (i) The extent of portions of the Project Site of which the Contractor is to be given access from time to time; and
- (ii) Order in which portions shall be made available to the Contractor;

GARC will, simultaneously from the Commencement Date, give to the Contractor uninterrupted access to and possession of only so much of the Project Site as may be reasonably required by the Contractor to commence and proceed with the Execution of the Works. The Contractor represents that it shall not part with or create any Encumbrance on the whole or any part of the Project Site and shall not, without the prior written consent of GARC, use the Project Site for any purpose other than for the purpose of the Execution of the Works and shall bear all costs and charges for any access required by it additional to those provided by GARC.

4.1.2 The Contractor shall not be entitled to uninterrupted access to or exclusive possession of any part of the Project Site during Execution of the Works at the Project Site and the Contractor's rights of access to and possession of any part of the Project Site shall in addition be subject to:

- (i) Any rights of public passage or access existing over any part of the Project Site from time to time;
- (ii) The right of GARC, the GARC Representative, the Related Works Contractors, and representatives of any statutory authority, to have access to:
 - (a) View the Works or any operations at the Project Site on reasonable notice; and
 - (b) Visit any site or workshop where goods, materials or equipment are being manufactured, prepared or stored, on reasonable notice and during normal working hours, for the purposes of general inspection and of attending any test or investigation being carried out in respect of the same; and
 - (c) Visit and use, and their staff and visitors may visit and use, any facilities provided on the Project Site for their use; and
 - (d) The Project Site at any time in an emergency situation as any of them (acting reasonably) considers necessary in the circumstances;

provided always that such persons shall comply with all relevant safety procedures.

4.1.3 The Contractor shall liaise with each of the Related Works Contractor(s) in relation to when the various portions of the Project Site will be made available to the Contractor. The Contractor shall keep the GARC Representative fully informed as to all communications with such Related Works Contractors.

4.2 Unauthorised persons

The Contractor shall be fully responsible for the presence on or around or for the entry to the Project Site or for any other act, omission, default or interference affecting the Project Site or the Execution of the Works, by or caused by any person not authorised to be on the Project Site and any such act, omission, default or interference shall not be a breach of the obligations of GARC to provide access to the Project Site.

5. CONDITION OF THE PROJECT SITE

5.1 Information from GARC

The Contractor acknowledges and agrees that any information and data on climatic, hydrological, topographical and general conditions relating to the Project Site made available to it by GARC has been done so for the convenience of the Contractor and that the Contractor enters into the Contract based upon its own investigations and determinations.

5.2 Contractor to inspect

The Contractor warrants that it has, to its complete satisfaction, examined and inspected the Project Site and its surroundings and where applicable, any existing structures or works on, over and under the Project Site and is familiar with and has satisfied itself with the Project Site conditions including the climate, topography, access to and from the Project Site, safety, availability of labour, water and electricity. No claim by the Contractor regarding misunderstanding or misapprehension in respect of matters related to this Clause shall be maintainable.

6. THE CONTRACTOR

6.1 The Contractor's general responsibilities

6.1.1 Subject to and in accordance with the terms and conditions of the Contract, the Contractor shall to the satisfaction of GARC and GARC Representative, Execute the Works and carry out its other obligations under and/or in relation to the Contract and provide all personnel and labour, including the supervision thereof, materials, offices, workshops, tools, machinery, equipment and all other resources and things, whether of a temporary or permanent nature, required herein, and shall assume full responsibility for the same so as to meet the Time for Completion.

6.1.2 The Contractor shall at its own expense:

- (i) Take full responsibility for the adequacy, stability and safety of the Works, labour, equipment and of all on-site and off-site operations and methods of manufacture,

construction, and installation, commissioning, testing and reliability and acceptance procedures;

- (ii) Do everything necessary (including the payment of all relevant fees) to acquire and maintain all Applicable Clearances.;
- (iii) At all times ensure that it has sufficient, suitable and qualified personnel at the Project Site and in sufficient number to undertake the responsibilities imposed upon the Contractor under the Contract and to provide full attention to the Execution of the Works.

6.2 The Contractor's representations and warranties

The Parties agree that the principal objective of the Contract is the timely completion of the Project Facility of which the Works form an integral part and that time is the essence of the Contract. The Contractor warrants that it is fully experienced in the planning, programming, design (to the extent required by the Contract), procurement and supply, erection, installation, testing, commissioning of equipments for the scope, complexity, size and technical sophistication of the Works and that it possesses the level of skill and expertise commensurate with such experience, upon which skill and expertise GARC is entirely reliant and the Contractor hereby represents and warrants to GARC that:

Design (to the extent required by the Contract)

- 6.2.1 It has satisfied itself as to, and adopts and accepts full responsibility for any design of the Works contained in and reflected by Technical Conditions of Contract;
- 6.2.2 It shall exercise in the design and specifications for the Works all the skill, care and diligence to be expected of professionals experienced in and possessing all the expertise necessary for similar projects of the size, scope, complexity and technical sophistication of the Works;
- 6.2.3 The Works have been and will continue to be designed and specified utilising state of the art systems, procedures and technology, high quality goods, materials and equipment and the high standards of workmanship and fabrication in compliance with Technical Conditions of Contract;
- 6.2.4 The Contractor further warrants that upon the Date of Completion of the Works, the Works will be in a condition which will enable GARC to meet those Performance Standards which relate to the Works;
- 6.2.5 That it recognises that the process of producing, optimising, developing and finalising the design of the Works will require the closest consultation, co-operation and co-ordination between itself, GARC, the GARC Representative, any Relevant Authority and the Related Works Contractors and that it has taken account of the same in the Contract Sum.
- 6.2.6 That it is fully responsible for the integration of and for the full and complete co-ordination of the Works with the Related Works and that:

- (i) The Contract Sum is inclusive of the cost of the Contractor's compliance under this **Clause 6.2** and **Clause 13**; and
- (ii) The Contractor has programmed and will continue to programme the Execution of the Works in such a way as to ensure its compliance with its obligations in respect of Related Works as set out in **Clause 13**.

Workmanship

- 6.2.7 the Works will be Executed and defects, remedied in accordance with Good Industry Practice, using state of the art systems and technology and accepted professional standards, codes of practice and regulations, and shall meet the intents and objectives of the Contract and comply with all Applicable Laws and be in accordance with Technical Conditions of Contract and other requirements of the Contract;
- 6.2.8 the personnel to be employed by the Contractor shall be properly skilled, competent and experienced having regard to the nature and extent of the Works;
- 6.2.9 the Works and every part thereof will be complete in all parts, will be free from defects in materials and workmanship and will be in conformity with Technical Conditions of Contract;

Equipment

- 6.2.10 it will ensure that the Works will comprise only Equipment which is of sound and merchantable quality and which is manufactured and prepared in accordance with the Applicable Laws and with Good Industry Practice applicable at the time of construction and/or installation;
- 6.2.11 that the Equipment, notwithstanding any acceptance by GARC, shall where appropriate be manufactured specifically for the Contract and be new and unused, will be complete in all its parts, free from defects and will meet the requirements of the Contract and in particular, but without limiting the generality of the foregoing will be such that the Works as a whole and each and every part thereof shall meet Technical Conditions of Contract;

6.3 Indemnity

- 6.3.1 The Contractor shall at all times save harmless and indemnify GARC from and against all claims, liabilities, expenses, costs, damages and losses suffered or incurred by GARC including consequential losses and damages which may arise out of or in connection with any defect, damage during transportation, inadequacy or unsuitability of the design, manufacture, workmanship or materials or failure to meet in any or all respects the requirements of the Contract or the remedying thereof either by the Contractor, GARC, or by others employed by GARC.
- 6.3.2 GARC rights under this **Clause 6.3.2** are without prejudice to any other right which it may have whether at law or otherwise.

7. JV / CONSORTIUM / SUBCONTRACTOR**7.1 JV / Consortium / Sub contractor**

The Contractor shall not subcontract any part of the Works without the prior consent of the GARC Representative. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and the Contractor shall be responsible for the acts, defaults, omissions and neglects of any Sub-Contractor, his agents, servants or workmen.

The Contractor may subcontract any part of the Works but not subcontract the whole of the Works under any circumstance. Each Subcontractor's part shall not be worth more than the percentage of the Contract Sum as specified in Special Conditions of Contract. Any company responsible for Works more than this percentage of the Contract Sum shall be a Joint Venture or Consortium Partner.

7.2 Subcontractor's Warranty and Assignment of Sub-Contractor's Obligations

The Contractor shall procure the assignment of warranties by the Subcontractor in favour of GARC without any costs to the account of GARC.

In respect of the work Executed, or Equipment supplied by a Subcontractor, any continuing obligation of a Subcontractor extending for a period exceeding that of the Warranty Period, shall be disclosed to GARC Representative by the Contractor and be assignable to GARC or its nominee. The Contractor shall ensure that the Subcontractor shall at any time, assign to GARC, at Representative's request, such continuing obligation of a Subcontract exceeding the Warranty Period and the benefit of such obligation for the un-expired duration thereof.

7.3 Responsibility

7.3.1 Subcontracting does not relieve the Contractor from any of its liabilities or obligations under the Contract.

7.3.2 The Contractor shall be fully responsible for the acts, defaults, omissions and neglects of any Subcontractor and their agents, employees, servants and workmen, as fully as if they were the acts, defaults, omissions and neglects of the Contractor.

7.4 Subcontract Terms

The Contractor shall procure that:

7.4.1 every Subcontractor has knowledge of the relevant terms of the Contract and provisions in the Contract relating to confidentiality and each Subcontract entered into by the Contractor shall be let on such terms and conditions as are reasonably necessary for the Contractor to ensure compliance with its obligations under the Contract;

7.4.2 the Subcontractor provides like warranties and indemnities as given by the Contractor to GARC.

8. SUFFICIENCY OF THE CONTRACT SUM

The Contractor shall be deemed to have satisfied itself before entering into the Contract as to the correctness and sufficiency of the Contract Sum and of the rates and prices. The Contract Sum is a lump sum fixed price and will not be adjusted save as expressly provided in the Contract.

9. QUALITY ASSURANCE PLAN

9.1 The Contractor shall within 30 days (thirty days) from the Commencement Date submit a Quality Assurance Plan. The Contractor shall also submit to the GARC Representative all inspection / test reports and processes and quality standards which are adhered to while manufacturing of Equipment as per Quality Assurance Plan at least 15 (fifteen) days before the pre-acceptance Date.. . GARC Representative or its nominee or any other person designated by GARC may inspect / witness the manufacturing processes and other information provided by the Contractor as mentioned in the Quality Assurance Plan. The Contractor agrees that neither the submission of Quality Assurance Plan nor the submission of quality / test certificate releases the Contractor from any of its responsibilities, obligations, or liabilities (including repair or replacement of any Equipment or part of the Works damaged during the carrying out of any Tests) under the Contract.

9.2 The Contractor shall at its own cost provide all access, assistance and facilities to enable GARC Representative to verify the implementation of the Quality Assurance Plan.

10. SPARE PARTS

10.1 The Contractor shall be responsible, at its own cost, for the provision of the Spare Parts. Such cost shall include all costs such as customs duty for imported Spare Parts, left behind items, replacement or breakdown spare parts as well as costs for storage and insurance costs in relation to the maintenance of the Spare Parts in storage.

10.2 The Contractor shall ensure that:

- (i) as at the Completion of the Works, there is a full complement of Spare Parts safely stored and packed in accordance with the Contract.
- (ii) if a Maintenance Spare Part is used by the Contractor during the commissioning/ Acceptance Tests due to shortage of Commissioning Spare Parts, the Contractor shall immediately replace, at his own cost, the Maintenance Spare Parts to ensure a full complement of Maintenance Spare Parts at the end of commissioning/ Acceptance Tests.

10.3 The Contractor warrants the performance of all Maintenance Spare Parts for period that expires on the later of:

- (i) the manufacturer's warranty period for the applicable Maintenance Spare Parts.; and
- (ii) the Warranty Period.

The Contractor shall revise and update any list of Spare Parts in accordance with the instructions of the GARC Representative, and a list of Spare Parts shall be submitted to the

GARC Representative before the Pre-commissioning of any part of the Works to which such Spare Parts relate.

- 10.4 Where the Contractor is to supply the Spare Parts in accordance with this Clause 10.4 without prejudice to the foregoing, the Spare Parts shall be delivered to GARC in accordance with the Contract and without prejudice to **Clause 14** the packing and storage of the Spare Parts shall be in accordance with the Contract.

11 ENVIRONMENTAL COMPLIANCE

The Contractor shall comply with all environmental requirements stipulated in the Contract and with all Applicable Laws and regulations having application to the Project Facility, including but not limited to standards for noise and vibration levels and airborne and waterborne pollutants.

12. ELECTRICITY, WATER

12.1 General arrangements

- 12.1.1 The Contractor shall be responsible for making all its arrangements, for and paying all charges in connection with the supply and consumption of electricity and water and the disposal of sewage and other waste as may be necessary for the Execution of the Works up to the date of issue of the Completion Certificate for the Works.

- 12.1.2 Without absolving in any manner, the responsibility of the Contractor to make arrangements for supply of water and electricity necessary for the Execution of the Works, electricity and water for the purpose of construction, erection, testing and commission may be provided by GARC at a convenient point within the Project Site to enable the Contractor to carry on its obligations under this Contract without any hindrance, on chargeable basis.

13. RELATED WORKS

13.1 Acknowledgement

The Contractor acknowledges that Related Works shall be performed and that it is of paramount importance that the Execution of the Works are fully and completely co-ordinated with the Related Works in view of their concurrent and sequential nature and that such coordination is of the utmost importance to the successful integration of the Works with the Related Works and to the timely completion of the Project Facility and the avoidance of unnecessary duplication of efforts. The Contractor agrees that it shall take all necessary steps to coordinate with the Related Works Contractors for the integration of the Works and the Related Works.

13.2 Failure to co-ordinate

In the event that the Execution of the Works and execution of the related works are not being co-ordinated and integrated to the reasonable satisfaction of GARC, GARC may issue such instructions as are necessary including, but not limited to:

- 13.2.1 suspending the progress of the Execution of the Works or any part thereof; and/or

- 13.2.2 changing the Works including the omission of work from the Contract and its execution by others.

For the avoidance of doubt, where GARC acting reasonably, determines that an instruction under this Clause 13.2.2 is required as a result of a breach by the Contractor of its obligations under this Clause 13.2.2, the Contractor shall not be entitled to any payment whatsoever in respect of any such instruction or to any extension of time in respect thereof and the costs to GARC of such instruction including the cost of any such suspension, or removal and execution by others shall, without prejudice to GARC's other rights under the Contract, be deducted from the Contract Sum.

13.3 Contractor to bear costs

The Contractor shall bear all costs and expenses associated with any Change or remedied work rendered necessary for the Execution of the Works or the work of any Related Works Contractor as a result of any failure on the Contractor's part to comply with the provisions of this Clause. Subject always to this Clause 13.3, if in the opinion of GARC Representative any cost is or is likely to be incurred as a result partially of a failure by the Contractor and partially as a result of a failure by a Related Works Contractor, then in the event that the Contractor and the Related Works Contractor are unable to agree on the apportionment of such costs between them, the GARC Representative may instruct the Contractor to make a Change or carry out any repair it deems necessary and, notwithstanding the provisions of **Clause 24** in valuing such Change or repair, it shall be entitled to make what it, in its absolute discretion considers a fair reduction, in any payment to the Contractor to reflect its assessment of the Contractor's responsibility for the necessity to make such Change or repair as a result of the Contractor's failure to comply with the requirements of this **Clause 13**.

13.4 Contractor's indemnities

The Contractor shall indemnify and keep indemnified GARC against all claims, proceedings, damages, costs, losses, charges and expenses of any nature whatsoever including any consequential losses or damages arising from the Contractor's failure to comply with its obligations under this **Clause 13**.

14. DELIVERY TO THE PROJECT SITE

14.1 Delivery to the Project Site

- 14.1.1 The Contractor supplying indigenously manufactured Equipment shall at its own risk and expense, be fully responsible for the proper packing, marking, loading, delivery up to Project Site, insurance, freight costs, , interface management, detailed design, detailing, coordination, value engineering, specialist system procurement, provision, erection and/or installation, testing, commissioning, documentation, training, defects rectification and its related works. However, in case of imported Equipment, the Contractor shall not be responsible for shipment costs, transit insurance charges from FOB port of shipment or Airport upto the Project Site, charges for custom clearances etc., as the same shall be borne by GARC. All transit insurance charges for transit up to FOB Port of shipment or Airport as well as loading charges on to the ship/ airplane shall be responsibility of the Contractor supplying imported Equipment.

- 14.1.2 When marking any Equipment, , the Contractor shall be responsible for ensuring that such Equipment and any part thereof and their transportation containers are properly marked and consigned.

14.2 Packing List

A packing list itemising the contents of each case shall be enclosed in each package. A copy of the packing list, together with despatch details shall be provided forthwith by the Contractor upon despatch to the GARC Representative. The Contractor supplying indigenously manufactured Equipment shall provide all attendance, handling and transport up to and including off-loading into the appropriate Project Site storage area.

14.3 Importation

The Contractor shall be responsible at its own cost for obtaining any Applicable Clearances necessary for the export of Equipment, from the country of origin.

14.4 Customs Clearance

GARC will obtain the necessary customs clearance for the Equipment being imported.

14.5 Documents

Upon despatch of each shipment of significant items of Equipment, the Contractor shall notify the GARC Representative by facsimile or email of the description of the Equipment and the point and means of the despatch and the estimated time and point of delivery and the Contractor shall furnish GARC with all relevant documentation in respect of such Equipment, including without limitation:

14.5.1 ocean bills of lading / Airway bill (these must be a full set of "clean on-board" bill of lading.);

14.5.2 commercial invoices;

14.5.3 packing lists;

14.5.4 certificate of origin;

14.5.5 inspection and pre-acceptance test certificate;

14.5.6 customs declaration details.

15. OWNERSHIP OF EQUIPMENT AND OTHER PROVISIONS

15.1 Passing of property

- 15.1.1 Equipment supplied or to be supplied pursuant to and in compliance with the terms of the Contract shall become the property of GARC at whichever is the earliest of the following times:

- (i) when any sum is included in a Certificate of Payment in respect thereof; or
- (ii) for Equipment manufactured indigenously when such Equipment is delivered to the Project Site pursuant to the Contract and for imported Equipment, when such Equipment is loaded on to the aircraft or when the Equipment passes over the ship's rail.

15.1.2 Equipment in which property has passed to GARC shall be in the care and possession of the Contractor solely for the purposes of the Works and shall not be within the ownership or disposition of the Contractor. Notwithstanding the ownership of the Equipment in accordance with Clause 15.1.1 the responsibility for care and custody together with the risk of loss or damage of such Equipment remains with the Contractor pursuant to Clause 31.5.1.

15.2 Marking of Equipment

Where the property in Equipment passes to GARC, the Contractor shall so far as is practicable and it has not done so previously, set the same aside and mark the same as the property of GARC. The Contractor shall procure that the GARC Representative at any time upon reasonable notice may inspect any Equipment which have become the property of GARC and shall grant to the GARC Representative or procure the grant of access to the Contractor's premises for such purposes or any other premises where such Equipment may be located.

15.3 Exclusion of Lien

Neither the Contractor or a Subcontractor nor any other person shall have a lien on or other property interest in any Equipment which have vested in GARC under this Clause 15 for any sum due or accepted due to the Contractor, Subcontractor or other person and the Contractor shall take such steps as may be necessary to ensure that the title of GARC and the exclusion of such lien and other property interest are brought to the express notice of Subcontractors and other persons dealing with or transporting any such Equipment.

15.4 Delivery of Equipment upon Termination

Upon Termination or upon termination of the performance of the whole or any part of the Works before Completion of the whole of the Works, the Contractor shall deliver Equipment to GARC, the property in which has vested in GARC by virtue of this Clause 15. If it shall fail to do so GARC may enter any premises of the Contractor, any Subcontractor or other person or any off site place of manufacture or source of Equipment (and the Contractor hereby grants GARC the necessary licence to do so and undertakes to procure the same right for GARC from all Subcontractors and other persons as the case may be) and seize such Equipment and recover the expense involved in so doing from the Contractor.

15.5 Manufacturer's warranties

Without prejudice to the Contractor's obligations and liabilities under the Contract, the Contractor must obtain for GARC, from the respective manufacturers, legally enforceable

warranties for the Equipment which shall ensure to the benefit of GARC for the entire term of the warranties.

15.5 Contractor's Equipment

15.5.1 All Contractor's Equipment provided by the Contractor or its Subcontractors shall, when brought on to the Project Site, be deemed to become the property of GARC in the event of Termination of Works on account of default of the Contractor and to be exclusively intended for the Execution of the Works and the Contractor shall not remove the same or any part thereof, except for the purpose of moving it from one part of the Project Site to another, without the consent of the GARC Representative. Provided that such consent shall not be required for vehicles engaged in transporting any staff, labour, Contractor's Equipment to or from the Project Site.

15.5.2 The Contractor shall upon written request by the GARC Representative produce to the GARC Representative all documents evidencing title to or the contractual basis of the Contractor's right to use any item of Contractor's Equipment. In the event of failure to comply with such a request within 7 (seven) days, without prejudice to any other rights or remedies available to GARC, GARC may withhold any payments otherwise due to the Contractor in accordance with the Contract.

15.5.3 In case of import of any Contractor's Equipment necessary for the Execution of the Works, the Contractor shall be solely responsible for (without limitation to) its transportation, importation, customs clearances and re-exports.

15.6 GARC not liable for damage

GARC shall not at any time be liable for the loss of or damage to any of the Contractor's Equipment.

15.7 Conditions of hire of Contractor's Equipment

15.7.1 With a view to securing, in the event of Termination, the continued availability, for the purpose of Executing the Works, of any hired Contractor's Equipment, the Contractor shall not bring on to the Project Site any hired Contractor's Equipment unless there is an agreement for the hire thereof (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner will, on request in writing made by GARC within [7 (seven)] days after the Termination Date and on GARC undertaking to pay all hire charges in respect thereof from such date, hire such Contractor's Equipment to GARC on the same terms in all respects as the same was hired to the Contractor, save that GARC shall be entitled to permit the use thereof by any other contractor employed by it on occasion of the Contractor's termination.

15.7.2 The Contractor shall upon request made by the GARC Representative at any time in relation to any item of hired Contractor's Equipment immediately notify to the GARC Representative in writing the name and address of the owner thereof and shall certify that the contract for the hire thereof contains a provision in accordance with the requirements of Clause 15.7.1. The Contractor shall also upon request as aforesaid give a like notification (but without

certification) in regard to any Contractor's Equipment held under a contract of hire purchase thereof.

15.7.3 In the event of GARC entering into any agreement for the hire of Contractor's Equipment pursuant to Clause 15.7.1 all sums properly paid by GARC under the provisions of any such agreement and all costs incurred by it (including stamp duties) in entering into such agreement shall be deemed to be part of the costs of Executing the Works.

15.8 Hire purchase payments by GARC

GARC, shall in order to avoid seizure by the owner of any Contractor's Equipment held under a contract of hire purchase thereof, be entitled to pay to such owner the amount of any overdue instalment or other sum payable under any contract for hire purchase and in the event of its doing so any amount so paid by GARC shall be a debt due from the Contractor to GARC and may be deducted by GARC from any monies due or that may become due to the Contractor under the Contract or may otherwise be recovered by GARC from the Contractor.

15.9 Re-export of Contractor's Equipment

In respect of any Contractor's Equipment which the Contractor imports for the purpose of the Execution of the Works, the GARC Representative may use its reasonable endeavours to assist the Contractor if so requested and to the extent it is able to do so in procuring any Applicable Clearances for the re-export of such Contractor's Equipment by the Contractor upon the removal thereof as aforesaid.

15.10 Approval not implied

The operation of this Clause 15 shall not be deemed to imply any approval by the GARC Representative of the Contractor's Equipment or any part thereof, or other matters referred to therein nor shall it prevent the GARC Representative's right to order the removal of any such Contractor's Equipment or part thereof, at any time.

15.11 Incorporation of Clause into Subcontracts

The Contractor shall, where entering into any key or major subcontract for the Execution of any part of the Works, incorporate in such subcontract (by reference or otherwise) the provisions of this Clause 15 in relation to plant, equipment and tools and temporary works brought on to the Project Site by the Subcontractor.

15.12 Revesting and removal of Contractor's Equipment

Upon removal of any Contractor's Equipment which have been deemed to become the property of GARC under Clause 15.5 with the GARC Representative's consent, as aforesaid, the property therein shall be deemed to re-vest in the Contractor and upon Completion of the Works the property in the remainder of such Contractor's Equipment as aforesaid shall, subject to the termination provisions of the Contract, re-vest in the Contractor who shall remove the same. If the Contractor shall fail to remove any Contractor's Equipment as aforesaid within such reasonable time after Completion of the Works as may be allowed by

the GARC Representative or should fail to comply with its obligations under Clause 34.3, GARC may:

15.12.1 sell any such Contractor's Equipment ; or

15.12.2 return any hired Contractor's Equipment at the Contractor's expense to the person, firm or company from whom such Contractor's Equipment was hired by the Contractor

and after deducting from any proceeds of sale the cost, charges and expenses of and in connection with such sale and in connection with such return as aforesaid, GARC shall, subject to any right of set-off, pay the balance (if any) to the Contractor but to the extent that the proceeds of any sale or return are insufficient to meet all such costs, charges and expenses the excess shall be a debt due from the Contractor to GARC and shall be deductible or recoverable by GARC accordingly as aforesaid.

16. LABOUR AND CONTRACTOR'S PERSONNEL

16.1 Labour Compliances

16.1.1 In the employment of labour for the Execution of the Works the Contractor shall comply and shall require its Subcontractors to comply without limitation, with all requirements of any Applicable Law relating to the employment of workmen or any subsequent modification or re-enactment thereof including but not limited to, matters relating to timely payment of wages and allowances, payment of minimum wages, payment of overtime, grant of leave, payment of workmen's compensation, working hours, safety, maternity benefits, holidays, framing of standing orders, disciplinary action against employees, payment of provident fund contributions, payment of gratuities and payment of bonuses.

16.1.2 Medical Facilities at Project Site:

The Contractor shall, at its own cost, provide first aid and medical facilities, at the Project Site as may be prescribed by the GARC Representative, on advice of medical authority in relation to the strength of the Contractor's staff and workmen employed on the Works, directly or through petty contractors or Sub-Contractors.

16.2 Contractor to indemnify

The Contractor shall indemnify GARC against any claim for legal action arising out of the Applicable Laws due to the failure of non-compliance of the provisions of the Applicable Laws which arise out of or in connection with the employment of any labour for the Execution of the Works and penalty or any other amount levied by the authorities from GARC, shall be recoverable from the payments due to the Contractors or from the security deposit or both, as debt due and payable on demand.

16.3 Engagement of Labour

The Contractor shall make its own arrangements for the engagement of all labour, local and otherwise, skilled, semi-skilled and unskilled, as may be required for the proper and timely Execution of the Works and shall use all diligence in arranging for a sufficient and suitable

supply of such labour but all such arrangements in India shall be in accordance with the general local usage and subject to the Applicable Laws.

16.4 Project Site records and returns

The Contractor shall maintain and keep at the Project Site, wage books and time sheets showing the wages paid to and time worked by all labour employed by the Contractor and its Subcontractors in and about the Execution of the Works or any part thereof and all records, forms, declarations, registers, notices, and copies of filings made with labour authorities as are required to be maintained by the Contractor pursuant to the Applicable Laws and the Contractor shall produce such wages books, time sheets and records for inspection by GARC Representative.

16.5 Contractor's Personnel

16.5.1 General

The Contractor shall at all times ensure that it has sufficient, suitable and qualified personnel at the Project Site and in sufficient number to undertake the responsibilities imposed upon the Contractor under the Contract and to provide full attention to the Execution of the Works.

16.5.2 The Contractor's Project Organisation Chart

16.5.2.1 The Contractor's Project Organisation Chart to be submitted by the Contractor to the GARC Representative shall show the proposed organisation to be established by the Contractor for carrying out the Works and shall be consistent with the Contractor's project organisation chart submitted with the Tender submission. The chart shall evidence that the Contractor has the requisite organisation in place and that it has designated and proposed suitable persons as Key Personnel, whose identities and bio-data it shall include with the Contractor's Project Organisation Chart, to supervise the Execution of the Works and to deal with GARC or the GARC Representative as appropriate.

16.5.2.2 The Contractor shall promptly notify the GARC Representative of any proposed revision or alteration of the Contractor's Project Organisation Chart.

16.5.3 Key Personnel

16.5.3.1 The GARC Representative shall be entitled to interview any or all of the persons designated and proposed as Key Personnel before deciding whether or not to consent to their appointment. If GARC interviews any of the proposed Key Personnel, GARC shall be deemed to consent to such Key Personnel if it makes no objection within [3 (three)] days of the interview of the last proposed person to be interviewed. If GARC objects to any of the proposed Key Personnel within such 3 (three) day period, then the Contractor must nominate a replacement or replacements, as applicable within [7 (seven)] days and this Clause 16.5.3.1 applies to such nomination.

16.5.3.2 The Key Personnel are to be engaged throughout the period of the Contract and shall include suitably qualified and experienced personnel for one or more of the positions as set out in the Special Conditions of Contract.

16.5.4 Technical Assistants

16.5.4.1 The Contractor and, where appropriate any Subcontractor shall provide and employ in connection with the Execution of the Works only such engineers and technical assistants as are skilled and experienced in their respective callings and such engineers, managers, sub-representatives, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise.

16.5.5 Removal of Contractor's employees

The GARC Representative may object to and require the Contractor to immediately remove from the Works at the Contractor's expense any person employed by the Contractor or its Subcontractors in relation to the Works and such person shall not be employed again upon the Works without the written permission of the GARC Representative. Any person so removed from the Works shall, unless the GARC Representative specifies otherwise, be replaced, at the Contractor's expense as soon as possible by a competent substitute approved by the GARC Representative.

17. TESTING

17.1 General

17.1.1 All materials and workmanship shall be of the respective kinds and standards described in the Contract and in accordance with GARC Representative's instructions and shall be subjected from time to time to such tests as provided for in the Contract. The Contractor shall provide such assistance, instruments, machines, consumables and artificial loads and labour and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any material used and shall supply samples of materials before incorporation in the Works for testing as set out in the Testing Plans.

17.1.2 The Testing Plans shall be submitted to GARC Representative in the manner stated in the Contract or as otherwise directed by GARC Representative.

17.1.3 GARC Representative or its nominee and any other person designated by GARC may attend and witness the Equipment at any manufacturing stage.

17.1.4 The Contractor agrees that neither the execution of any test nor the issue of any test certificate releases the Contractor from any of its responsibilities, obligations, or liabilities (including repair or replacement of any Equipment or part of the Works damaged during the carrying out of any Tests) under the Contract.

17.2 Testing Costs

The cost of making any test or inspection under the Contract shall be borne by the Contractor if such test or inspection is intended by or provided for in the Contract or should have

reasonably been anticipated by the Contractor as likely to be required including any costs relating to accommodation and travel incurred by the GARC personnel for such test/inspection..

Save, as aforesaid, where any test is ordered by the GARC Representative which is neither intended nor provided for by the Contract nor could reasonably have been anticipated by the Contractor, then the cost of such test shall be borne by the Contractor if the test shows any workmanship or Equipment not to be in accordance with the Contract or the GARC Representative's instructions, or if the test was required as a result of any failure of the Contractor to comply with its obligations under the Contract.

17.3 Pre- Acceptance Tests and Project Site Tests

17.3.1 The Contractor must:

- (i) procure the carrying out of the Pre-acceptance Tests and the Project Site Tests; and
- (ii) not allow an item of Equipment to be transported to the Project Site unless it has successfully completed the Pre- Acceptance Tests .

17.3.2 Within [7 (seven)] days of completion of any Pre- Acceptance Tests or the Project Site Tests, the Contractor must give the GARC Representative a report of the test results in a form approved by the GARC Representative.

17.3.3 The GARC Representative may, within [7 (seven)] days of receipt of a report produced in accordance with **Clause 17.3.2**, give the Contractor a notice that it considers:

- (i) such report is deficient in any way, and that it directs the Contractor to correct and re-submit the report and the Contractor must re-submit the report;
- (ii) in its reasonable opinion, that the Contractor has failed the test; or
- (iii) that the relevant test has been successfully performed.

17.3.4 If, in the reasonable opinion of the GARC Representative, the Equipment/ Works fail any Pre-Acceptance Test or Project Site Test (as applicable), the Contractor must:

- (i) give the GARC Representative notice of the cause of the failure and the remedial action to be taken;
- (ii) remedy the cause of the failure; and
- (iii) reschedule, re-perform and report on results of the test in accordance with this **Clause 17.3**.

17.4 Pre-Acceptance Tests

The Contractor shall carry out the Pre-Acceptance Tests of each Equipment in the presence of GARC representative as per the agreed plan prior to the shipment of the Equipment, at the Contractor's site.

17.5 Acceptance Tests

The Contractor shall carry out the Acceptance test of each Equipment in presence of GARC Representative as per the agreed plan with the GARC Representative after the completion of commissioning of the Equipment, at the Project Site.

18. TIME FOR COMPLETION

The Contractor shall Complete the Works within the Time for Completion or such other time as may be determined in accordance with **Clause 19**.

19. EXTENSION OF TIME FOR COMPLETION**19.1 Contractor's notice of event likely to cause delay**

The Contractor shall closely monitor the progress of the Works and shall give written notice to GARC Representative, with a copy to GARC:

19.1.1 as soon as it can foresee any incident, circumstance and/or event of any nature affecting or likely to affect the progress of the Works such that the Completion of the Works will be or is likely to be delayed; or

19.1.2 should it have been unable to foresee such a incident, circumstance and/or event, then as soon as it becomes aware of the commencement of the incident, circumstance and/or event which has affected or is likely to affect the progress of the Works such that Completion of the Works will be or is likely to be delayed.

19.2 Reasons for delay and extension of time

It shall be a condition precedent to any extension of time by GARC under any provision of the Contract, that in respect of each and every incident, circumstance or event identified in the notice given in accordance with **Clause 19.1**, the Contractor shall, as soon as possible after such notice but in any event not later than [30 (thirty)] days after such notice or such longer period as GARC Representative may in its absolute discretion determine, notify GARC Representative in writing of any factors and the relevant Contract provision which it considers may entitle it to claim an extension of time together with a statement, providing details, reasons, explanation and any further substantiation for the delay.

19.3 Delay Events

Subject to the other provisions of this **Clause 19**, the Contractor will only be entitled to an extension of the Time for Completion where a delay to the achievement of Completion is caused by:

19.3.1 the Contractor not being given access to the Project Site or any part thereof ; or

19.3.2 a Change instructed other than where such Change is instructed as a consequence of any default or breach of the Contract by the Contractor; or

19.3.3 any act, omission, default or breach by GARC; or

19.3.4 a Force Majeure Event.

19.4 GARC Representative to determine extension

Subject always to proper compliance by the Contractor with the provisions of this **Clause 19**, GARC Representative shall determine any extension of the Time for Completion and shall notify GARC and the Contractor accordingly.

19.5 Compliance

19.5.1

- (i) the Contractor shall constantly use its reasonable endeavours to prevent and/or minimise delay in the progress of the Works, howsoever caused, and to prevent Completion of the Works being delayed or further delayed beyond the Time for Completion and the Contractor shall not be entitled to an extension of time in respect of any cause of delay nor for any period of delay which by the exercise of reasonable endeavours could be avoided or reduced (to the extent that such could have been reduced). The onus of proving that the Contractor has exercised all reasonable endeavours, and that despite such endeavours, the delay could not be avoided or reduced, shall in all cases rest with the Contractor;
- (ii) the Contractor shall not under any circumstances be entitled to an extension of time where the delay or likely delay is, or would be, attributable to the default, breach, negligence, improper conduct or lack of endeavour of the Contractor or any persons for whom it is contractually or otherwise responsible;
- (iii) the Contractor shall have kept and maintained such records (including those referred to in the notices under this **Clause 17** [Extension of Time for Completion] as may be reasonably necessary to support any claim for an extension of time it may subsequently wish to make;

19.5.2 The GARC Representative shall not be obliged to take into account any circumstances which are not notified to it in accordance with the periods referred to in this **Clause 19** but may upon the written request of the Contractor extend the said periods if it considers the request for such extension reasonable.

20. PROCEDURE FOR CLAIMS

20.1 Notice of claims

If the Contractor considers that it may have grounds to claim any additional payment or any extension of time pursuant to any Clause of the Conditions or otherwise, it shall in addition to compliance with any other procedure or obligation in relation thereto, give notice to the GARC Representative, with a copy to GARC, within fourteen [14 (fourteen)] days after the event giving rise to the claim has first arisen. The notification shall include details of the clause under which the claim is made, the circumstances in which the claim arises and details of the records that the Contractor will maintain to substantiate the amount of its claim.

20.2 Substantiation of claims

Within [28 (twenty eight)] days, or such lesser time as may be reasonably required by the GARC Representative, of giving notice under Clause 20.1, the Contractor shall send to the GARC Representative an account giving detailed particulars of the amount claimed and the grounds upon which the claim is based. Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the GARC Representative may reasonably require, send further interim accounts detailing the aggregate amount of the claim and any further grounds upon which it is based. In cases where interim accounts are sent to the GARC Representative, the Contractor shall send a final account within [28 (twenty-eight)] days of the end of the effects resulting from the event. The Contractor shall, if required by the GARC Representative so to do, copy to GARC all accounts sent to the GARC Representative pursuant to this Clause 20.2.

21. LIQUIDATED DAMAGES

21.1 Liquidated Damages

21.1.1 If the Contractor fails to Complete the Works in accordance with the Contract so that the Date of Completion of the Works has not occurred within the Time for Completion or in the event the Contractor defaults or is in breach of any of its obligations under the Contract or the Contractor is non-compliant with or negligent in relation to any condition specified under the Contract, then the Contractor shall pay or allow to GARC Liquidated Damages for such default/ breach/ delay/ non-compliance which is a genuine pre-estimation of and reasonable compensation for the loss and damage that will be suffered by GARC, for every day which shall elapse between the Time for Completion and the date stated in the Completion Certificate as being the Date of Completion of the Works or for every day for which such breach or default (if capable of remedy as determined by the GARC Representative) continues till the date of remedy. Provided always that the aggregate liability of the Contractor for Liquidated Damages under this **Clause 21.1** shall not exceed the percentage of the Contract Sum as specified in Special Conditions of Contract.

21.1.2 The payment of Liquidated Damages does not in any way relieve the Contractor from any of its obligations to complete the Works or from any other obligations and liabilities of the Contractor under the Contract.

21.1.3 For the avoidance of doubt and without prejudice to any continuing obligations of the Contractor under the Contract or otherwise, the issue of any Completion Certificate does not relieve the Contractor in respect of Liquidated Damages which have accrued up to the date of such Completion Certificate, but which have not yet been paid by the Contractor.

21.2 Genuine Pre-estimate of Damages

The Parties recognise the expense and inconvenience likely to be incurred from any need to prove the loss and damage that will be suffered by GARC in the event of a failure by the Contractor to achieve Completion of the Works by the relevant Time for Completion or for breach or omission or non-performance of any obligation/ condition by the Contractor under the Contract. The Parties acknowledge that the Liquidated Damages is a genuine pre-

estimation of and reasonable compensation for the loss and damage that will be suffered by GARC in the event of any such failure on the part of the Contractor.

22. Completion of Works

22.1 The Date of Completion of the Works shall be the date upon which the following criteria have been satisfied or waived in writing by GARC at its sole discretion:

- (i) the Execution of the Works, other than the performance of obligations to be performed during the Warranty Period, has been completed in accordance with the Contract, save in respect of the Punch List Items;
- (ii) all outstanding work which GARC Representative requires to be completed before issue of the Completion Certificate, has been satisfactorily completed;
- (iii) the Contractor has been issued the acceptance certificate post the completion of the Acceptance Tests; and
- (iv) all the training obligations of the Contractor to be performed during the Execution Period have been satisfactorily completed in accordance with the Contract;
- (v) the Contractor has provided to the GARC Representative any amendment or update of any information and documentation, which is required by the GARC Representative;
- (vi) any Spare Parts and other items which the Contractor is required to supply and deliver to GARC in accordance with the Contract and which were used or consumed during the any of the tests mentioned in the Contract have been replaced by the Contractor at its own cost.

22.2 The Contractor acknowledges that until the Works are Complete, GARC shall not be able to commence the Project Facility operations.

22.3 Application for and issue of the Completion Certificate

22.3.1 The Contractor shall make a written application to GARC Representative with a copy to GARC for a Completion Certificate no later than [2 (two)] days of from the conclusion of the Acceptance Tests. Such application shall be accompanied by an undertaking to finish any outstanding work in accordance with **Clause 22.3.2**.

22.3.2 GARC Representative shall, within [7 (seven)] days after receiving the Contractor's application in accordance with **Clause 22.3.1** issue the Completion Certificate to the Contractor with a copy to GARC and GARC stating the date upon which the Works achieved Completion and specifying any outstanding work, if any, which the Contractor is required to complete and the period or periods within which such work is required to be completed, such work to include:

- (a) the Punch List Items; or

- (b) any other outstanding work notified to the Contractor by GARC Representative.

22.4 Completing Punch List Items and any other outstanding works

22.4.1 During the Acceptance Tests, the Contractor shall provide in writing to GARC Representative reasonable notice of its reasonable requirements with respect of access to and use of the Works for the carrying out of:

- (i) the outstanding Works including any Punch List Items specified in the Completion Certificate;
- (ii) any rectification, repair or replacement of any items in accordance **Clause 23.1**.

22.4.2 GARC shall use reasonable endeavours to secure such access for the Contractor. When carrying out such work the Contractor shall comply with all reasonable instructions of GARC with regard to the safety of the Works and the ongoing performance by GARC of its obligations and shall complete the work in such manner that, so far as reasonably practicable, does not prevent, hinder or otherwise interfere with the performance of GARC of its obligations and the exercise of its rights during the Project Facility operations period.

22.4.3 The Contractor shall complete any Punch List Items specified in the Completion Certificate within the time instructed reasonably by GARC Representative.

23. WARRANTY PERIOD

23.1 The GARC Representative shall have the right, but not the obligation, to instruct the Contractor in writing to Execute all such work of repair, amendment, replacement of any parts of the Equipment, rectification of defects, imperfections or other faults in the Works and any part thereof, as the case may be, at any time during the Warranty Period.

23.2 All such work instructed under **Clause 23.1** shall be carried out by the Contractor at its own expense.

23.1.3 At all times during the Warranty Period GARC shall be fully entitled to Execute all work of repair, amendment, replacement of any parts of the Equipment, rectification of defects, imperfections or other faults in the Works and any part thereof, as the case may be, by its own workmen or by other contractors and if the necessity thereof shall in the opinion of the GARC Representative be due to the use of materials or workmanship not in accordance with the Contract or the neglect or failure on the part of the Contractor, GARC shall be entitled to recover from the Contractor the cost thereof or may deduct the same from any monies due or that become due to the Contractor.

23.2 Continuing Obligations

23.2.1 Notwithstanding the expiry of the Warranty Period the Contractor shall remain liable for the fulfilment of any obligation incurred under the provisions of the Contract prior to the expiry of the Warranty Period which remains unperformed upon the expiry of the Warranty Period and, for the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force between the Parties.

23.2.2 Notwithstanding the expiry of the Warranty Period and / or maintenance contract if any, the Contractor shall provide necessary Spare Parts, sales, services and support for the performance of the Equipment on payment basis to be mutually agreed to between the Contractor and GARC Representative.

23.3 Maintenance Obligations

23.3.1 The Contractor shall take full responsibility for the maintenance and upholding of the permanent structures at the Project Site and the site offices (if any) used by the Contractor during the Warranty Period.

23.3.2 The Contractor shall ensure that its maintenance obligations are performed in such a manner as will permit the proper performance by GARC in its operation of the Project Facility and so as not to affect the activities of the Project Facility users.

24. CHANGES

24.1 General

24.1.1 The Contractor shall not carry out any Change except as directed by GARC Representative. The GARC Representative shall have the power to, from time to time, for the Execution of the Works, to instruct the Contractor, by notice in writing to carry out Changes without prejudice to the Contract.

24.1.2 The Contractor acknowledges and accepts that no Change shall in any way vitiate or invalidate the Contract.

24.1.3 Subject to the terms of this **Clause 24**, the Contractor will be required to perform any Change howsoever initiated and be bound by the same conditions as far as applicable, as though the said Changes occurred in the Contract.

24.1.4 GARC Representative reserves the right to increase or decrease the quantities of items under the Contract but without any change in the unit price for such item. Such a Change in the quantity shall not be subjected to any limitations for the individual items but the total Change for all such items shall be limited to the estimate (if any) provided.

24.2 Procedure for Changes

24.2.1 GARC Representative has the right to initiate a Change at any time by either:

(i) instructing in writing a Change Order in which case the Contractor shall comply with **Clause 24.2**; or

(ii) issuing a written notice proposing a Change (a "Change Notice").

24.2.2 Within [14 (fourteen)] days of receipt of a Change Notice, the Contractor shall provide to GARC Representative a written statement setting out detailed particulars of any effect the

proposed Change would have on the Works and Related Works and/or on any other provisions of this Contract if the proposed Change is effected (a "Change Notice Response").

24.2.3 Following receipt of a Change Order, the Contractor must immediately implement the Change subject to the following terms:

- (i) the Contract Sum will, be amended in accordance with the principles to be mutually agreed between GARC and the Contractor;
- (ii) any extension of time will be determined and GARC Representative is entitled to take account of the Contractor's estimate (if any) when determining such extension of time;
- (iii) these Conditions (as amended from time to time) will apply to the Change as though it formed part of the Works.

24.2.4 Following receipt of a Contractor's Change Notice Response, GARC Representative may either:

- (i) issue a written Change Order to the Contractor, on such terms and conditions as GARC Representative may deem appropriate; or
- (ii) withdraw the Change Notice.

The Contractor shall not be entitled to any costs or extension of time as a result of preparing a Change Notice Response.

24.2.5 If:

- (i) the Contractor fails to comply with its obligation under **Clause 24.2**; or
- (ii) if the GARC Representative rejects the information provided by the Contractor pursuant to **Clause 24.2** ;

GARC shall be entitled, following notification to the Contractor, to engage a third party to perform the Change, in which case the Contractor shall cooperate fully with any such third party.

24.3 Contractor's Changes

24.3.1 The Contractor may, from time to time during its performance of the Contract, propose to GARC Representative any Change which the Contractor considers:

- (i) necessary for the proper Execution of the Works; or
- (ii) which adopted will:
 - (a) substantially reduce the cost of Executing, maintaining and operating the Works or the Project; or

- (b) improve the efficiency or value to GARC of the Completed Works(including a reduction in the life cycle costs associated with the Project); or
- (c) otherwise be of benefit financial or otherwise, to GARC

and such proposal must be in writing and shall be in the form of and contain such information as required of a Change Notice Response referred to in **Clause 24.2.2**.

24.3.2 Where **Clause 24.3.1(i)** applies GARC Representative may either:

- (i) issue a written Change Order to the Contractor and the Contractor shall implement the Change in accordance with **Clause 24.2.2**; or
- (ii) reject the Change proposed by the Contractor.

The Contractor shall not be entitled to any costs or extension of time as a result of preparing a proposal in accordance with **Clause 24.3.1**.

24.3.3 GARC Representative may, at its sole discretion, accept or reject the Contractor's proposed Change and failure by GARC Representative to respond within [14 (fourteen)] days shall be deemed to be a rejection.

24.3.4 If in the opinion of the Contractor, any Change proposed by GARC Representative prevents or is likely to prevent the Contractor from fulfilling his obligations under the Contract, the Contractor shall notify the GARC Representative thereof in writing and the GARC Representative shall decide forthwith whether or not the same shall be carried out by the Contractor. In case the GARC Representative confirms that the Change shall be carried out, the Contractor's obligations under the Contract shall be modified to an extent as may be mutually agreed to between the Parties.

24.4 Omissions

24.4.1 The Contractor acknowledges that a Change may involve the omission of any part or parts of the Works up to 10% (ten percent) of the total Contract Price and the Contractor acknowledges and agrees that GARC may engage others to carry out that part or parts so omitted.

24.4.2 On the omitted Works, the Contractor shall be entitled to payment, 10% (ten percent) of the value of omission which shall include Contractor's profits and overheads.

24.5 Valuation of Changes

24.5.1 The valuation of a Change to be paid by GARC to the Contractor, or by the Contractor to GARC, as the case may be, shall be calculated as follows:

- (i) the Parties will endeavour to agree to the valuation; and
- (ii) failing agreement under **Clause 24.5.1(i)** within a reasonable time (but no more than [28 (twenty-eight)] days after the GARC Representative's direction in accordance with **Clause 24.2.4 (i)**, GARC will determine the valuation, subject to the following:

- (a) in the event that the Change involves additional works, the increase to the Contract Price will be no more than the estimate (if any) provided; and
- (b) in the event that the Change involves the omission of part of the Works or results in a saving to the Contractor, the reduction in the Contract Price will be no less than the estimate (if any);

the following valuation principles shall apply:

1. where the varied work is similar in character to and Executed under similar conditions to work priced as per the Payment Schedule , such work shall be valued at the applicable rates and prices in the Contract;
2. where the varied work is not of a similar character to or not Executed under similar conditions to work priced in the price breakdown then the GARC Representative shall establish a new rate for such work based upon the rates or prices contained in the Contract insofar as may be reasonable making such allowances thereto by way of additional or deductions as may be necessary to take account of any dissimilarity in the character of the work or the conditions under which the work was Executed;
3. where work is omitted, the rates and prices in the Contract shall be used to value the work omitted provided that if part only of an item of work is omitted their GARC Representative shall establish a new rate or price by which to value the omitted work which shall be fair and reasonable.
4. where the varied work cannot be properly valued in accordance with the provisions of **Clauses 24.5.1(ii) (1), (2) or 3** above, the GARC Representative shall establish a new rate or price for such work which shall be fair and reasonable.

24.5.2 Without prejudice to **Clause 24.2**, the GARC Representative may, in its absolute discretion, instruct a Change Order in circumstances where, in its absolute discretion, the Contractor will fail to meet any of its obligations under the Contract or where it is necessary on account of some default or breach of the Contract by the Contractor or those for whom it is responsible for, in which case the Contractor shall not be entitled to any extension of time or any increase in the Contract Sum, and any adjustment to the Time for Completion.

25. INTELLECTUAL PROPERTY

25.1 Intellectual Property

25.1.1 All Intellectual Property which is proprietary to GARC or the Contractor shall be the exclusive property of GARC or the Contractor respectively, as the case maybe.

25.1.2 All Intellectual Property jointly developed by GARC and the Contractor or developed by the Contractor for the purposes of the performance, execution and implementation of the Works shall be the exclusive property of GARC. The Contractor shall however be entitled to use such Intellectual Property for a period of 5 (five) years without payment of any charges to

GARC provided that such Intellectual Property is used by the Contractor itself for development of facilities owned by the Contractor. The use of any Intellectual Property for any facility other than facility owned by the Contractor shall be permitted subject to the execution of a non-exclusive and revocable licence agreement with GARC on such terms and conditions as may be agreed to between GARC and the Contractor.

25.2 Infringing Matter

25.2.1 The Contractor warrants and represents that:

- (i) it has all rights and licences necessary to grant, assign and transfer to GARC licences and assignments in accordance with this **Clause 25.1.2**; and
- (ii) there is and will be no infringement of any Intellectual Property, in respect of the rights licensed and transferred to GARC pursuant to **Clause 25.1.2** or assigned otherwise used in connection with the Works.

25.2.2 The Contractor shall indemnify and hold harmless GARC against all issues, claims, damages, liabilities, costs and expenses (including legal costs) incurred by it in respect of any breach of the warranty in **Clause 25.2.1**.

25.2.3 If either GARC or the Contractor is prevented from operating or using the Works or any Intellectual Property or any part thereof ("Infringing Matter"), the Contractor must at its own expense, in addition to its other obligations under the Contract, take all steps necessary to procure for GARC the right to operate or use the Infringing Matter for its intended purpose.

25.3 Patent Rights and Royalties

25.3.1 Royalties and fees for patents covering equipments, materials, articles, apparatus, devices or processes used in the Works shall be deemed to have been included in the Contract Sum. The Contractor shall satisfy all demands that may be made at any time for such royalties or fees and the Contractor shall be liable for any damages or claims for patent infringements and shall keep GARC indemnified in this regard. The Contractor shall, at his own cost and expense, defend all suits or proceedings that may be instituted for alleged infringement of any patents involved in the Works and in case of any award of damages, shall pay for such damages. In the event any apparatus or equipment or any part thereof furnished by the Contractor, is in a suit or proceeding is held to constitute infringement and its use is enjoined, the Contractor shall at his option and his own expense, either procure for GARC, the right to continue the use of such apparatus, equipment or part thereof, replace it with non-infringing apparatus or equipment or modify it so it becomes non-infringing.

26. INSURANCES

26.1 Project Facility Insurances

GARC shall at its cost and expense, purchase and maintain in force (or procure that they are taken out and maintained in force) with reputable insurers, the Project Facility Insurances.

26.2 Contractor Insurances

The Contractor shall at its cost and expense, purchase and maintain in force (or procure that they are taken out and maintained in force) with reputable insurers, the Contractor's Insurance.

26.3 Required Insurances

The terms of the Required Insurances shall entitle GARC to maintain the policies in force after termination of the Contractor's employment under the Contract.

26.4 Evidence

Either Party, at the request of the other shall, from time to time, provide to the other Party copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained in accordance with the Contract (including the provision of copies of renewal confirmations as soon as possible).

26.5 Premiums

26.5.1 GARC will bear the cost of all insurance premiums in relation the Project Facility Insurances, and the Contractor will bear the cost of all insurance premiums in relation to the Contractor's Insurances.

27. PAYMENT

27.1 Payment Schedule

The Payment Schedule shall be as per the Special Conditions of Contract.

27.2 Terms of Payment

The Terms of Payment shall be as provided in the Special Conditions of Contract.

27.3 Currency of Payment

The Contract Price and all payments to be made to the Contractor in respect thereof shall be Indian Rupees or Euros or a combination of any one of these currencies with Indian Rupees.

27.4 GARC right to set off

GARC shall, notwithstanding any provision to the contrary included in the Contract, be entitled to deduct from and set off against any amount due to the Contractor under the Contract, any amount or amounts which the Contractor is liable to pay to GARC under the Contract.

27.5 Advance Payment

The Contractor shall, together with Request for Payment containing an application for the Advance Payment, provide to GARC an Advance Payment Guarantee, valid for atleast 12 months from a Scheduled bank in India to which GARC has given its prior approval in writing and in a sum equal to the Advance Payment. GARC shall pay the Advance Payment within [7(seven)] days of the receipt of the Advance Payment Guarantee. The advance payment shall be charged with an interest 6%annum from the date of issue of advance payment and the interest will be calculated on unadjusted amount from time to time.

28. TAXES AND DUTIES

28.1 Contractor to pay Taxes

Unless specifically stated elsewhere in the Contract, the Contractor is solely liable for payment of, and warrants that it will pay, or ensure the payment of:

- 28.1.1 all Taxes imposed and assessments made in relation to the Contractor's Equipment;
- 28.1.2 all contributions payable by any Applicable Law, award and pursuant to any contract with all industrial or trade union or other association of employees or otherwise with respect to or ascertained by reference to the wages, salaries or other compensation paid to employees of the Contractor or its Subcontractors in respect of the Works, including Taxes or contributions for workers' compensation, unemployment or sickness benefit, old age benefit, welfare funds, pensions and disability insurance;
- 28.1.3 the cost of all import or export licences if required in respect of the Contractor's Equipments and Spare Parts;
- 28.1.4 the cost of any port dues including (but not by way of limitation) wharfage dues, storage, charges, quay rent, craneage, shipping dues, pilotage fees, anchorage, berthage and mooring fees, quarantine dues, loading, portorage and overtime fees for any goods, materials and Contractor's Equipments and Spare Parts to be used in connection with the Execution of the Works;
- 28.1.5 all charges and other expenses in connection with the landing and shipment of all goods and equipment and any part thereof, materials and other things of whatsoever nature brought into or despatched from India for the purposes of the Contract; and
- 28.1.6 the Contractor indemnifies and keeps indemnified GARC against all liability for payment of all of the above Taxes, assessments and contributions, duties, costs and fees and all liability arising in respect of any non-payment;
- 28.1.7 The Contractor supplying indigenously manufactured Equipment shall be responsible for payment of all Taxes up to the delivery of such Equipment to the Project Site.
- 28.1.8 The Contractor, being the foreign supplier of any Equipment, shall be responsible for payment of all taxes and duties applicable in the country of origin/ despatch of the Equipment. GARC shall be responsible for payment of all freight charges, insurance costs, customs duty, octroi and other Taxes up to delivery of such Equipment being

supplied from such Contractor to the Project Site including obtaining custom and/or any other applicable clearances for such Equipment for delivery up to the Project Site.

28.2 Withholding Tax/Income Tax deducted at source

The Contractor shall be responsible for payment of all Taxes on the income, surcharge on income tax and corporate tax in respect of the Contract, irrespective of the mode of contracting. GARC or GARC Representative shall not in any way be liable for payment of such taxes. GARC shall be entitled to deduct in accordance with Applicable Law, Income Tax or withholding tax or other deductions (as the case may be), from any payments made to the Contractor, and the amount so deducted shall be deemed to be a payment made to the Contractor. GARC shall provide a certificate certifying the deduction so made.

28.3 Exemptions and Concessions

28.3.1 The benefit of any Tax exemption or concessional rate available when the Contractor purchases Equipment will be passed on to GARC through a reduction in the Contract Sum.

28.3.2 Where GARC and its contractors (including the Contractor) are entitled to an exemption or concession concerning any Tax to be levied in India in respect of the Equipment and/or goods supplied under the Contract, GARC must use reasonable endeavours to enable the Contractor to claim such concession or exemption.

28.4 General

28.4.1 The Contractor must provide sufficient information regarding the nature and cost of the Works to enable all the relevant statutory obligations of GARC that are dependent upon that information to be satisfied.

28.4.2 The Contractor shall fully indemnify, save harmless and defend GARC including its officers, servants, agents and subsidiaries as well as the GARC Representative from and against any and all loss and damages arising out of or with respect to failure of the Contractor (a) to comply with Applicable Laws and Applicable Clearances and/or (b) to make payments of Taxes relating to the Contractor's Subcontractors and representatives income or other Taxes required to be paid by the Contractor without reimbursement hereunder and/or (c) to pay amounts due as a result of materials or services furnished to the Contractor or any of its Subcontractors which are payable by the Contractor or any of its Subcontractors or any other person employed or engaged by the Contractor in connection with the Works.

29. OPERATIONS AND MAINTENANCE MANUALS AND TRAINING

29.1 Operation & Maintenance Manual

29.1.1 The Contractor must obtain for GARC all relevant instruction manuals in respect of the design, installation, erection, supply, extension, repair, operation and maintenance of the Works, any parts thereof and any special directions or recommendations from the relevant manufacturers of any Equipment and must itself provide written instructions where such are not available from such manufacturers.

29.1.2 The Operation & Maintenance Manual must be prepared:

- (i) based on all relevant instruction manuals and special directions or recommendations from the relevant manufacturers of any Equipment or parts thereof obtained in accordance with **Clause 29.1.1**.
 - (ii) so as to provide GARC with such detail and information as may be necessary for use by GARC in order to operate, maintain, dismantle, reassemble, adjust, upkeep and uphold all parts of the Works and the Works as a whole;
 - (iii) based on a maintenance plan for each part of the Works that is consistent with and intended to ensure that, each part achieves any design life specified in respect thereof in the Contract;
 - (iv) based on Good Industry Practice;
 - (v) in full consideration of the experience, level and technical background of GARC personnel and the Contractor's training-related obligations under the Contract.
- 29.1.3 During the period of the Acceptance Tests, the Contractor must update and revise the Operation & Maintenance Manual as necessary and as may be required by GARC Representative, to reflect the completion of all of the Contractor's obligations under the Contract including all defects and warranty obligations.
- 29.1.4 The Contractor warrants that adherence to the Operation & Maintenance Manual will facilitate and ensure the operation and maintenance of the Project Facility at the levels of capacity, safety, efficiency, reliability and maintainability required by the Contract.
- 29.1.5 Within 1 (one) month prior to the Warranty Period, the Contractor shall update and revise the Operation & Maintenance Manual as necessary and as may be required by GARC Representative.

29.2 Training

- 29.2.1 The Contractor shall provide comprehensive training in the operation and maintenance of the Works to Project Facility operation trainers and Project Facility operations personnel in accordance with the Training Plan mutually formalised or to be formalised between the Contractor and the GARC Representative ("Training Plan") in order to procure GARC objective of the timely, efficient, economic and safe operation and maintenance of the Works and the Project Facility.
- 29.2.2 Without limiting its obligations under the Contract, the Contractor shall adhere to the principles and procedures contained in the approved Training Plan, and any approved amendments or supplements thereto. The Contractor shall revise the Training Plan from time to time as directed by GARC Representative and as and when further Project Facility operation trainers and Project Facility operations personnel are required by GARC to be trained, which training shall be undertaken by the Contractor without the right to any additional payment or an extension of time.
- 29.2.3 During such period as they may be being so trained or retrained by, or otherwise under the control of the Contractor pursuant to the provisions of the Contract, the Project Facility

operation trainers and Project Facility operation personnel shall for the purposes of control and responsibility (but for the avoidance of doubt without any obligation to provide remuneration to such personnel or any responsibility in respect of Taxation and insurance of such personnel) to the extent permitted by the Applicable Laws, be deemed to be the servants of the Contractor.

29.2.4 For the purposes of providing the training pursuant to this **Clause 29.2** and so as to enable the Project Facility operation trainers and Project Facility operations personnel to familiarise themselves with the Works, the Contractor shall allow and procure access as necessary to the Project Site, places off the Project Site where Equipment is being manufactured and tested and the Works.

29.2.5 The Contractor represents and warrants that:

- (i) the numbers, qualifications and levels of experience specified by the Contractor in its Training Plan shall be such as is required to provide GARC with Project Facility operation trainers and Project Facility operations personnel in sufficient numbers and of sufficient qualifications and experience properly to operate and maintain the Project Facility in accordance with the Contract and the Operation & Maintenance Manual; and
- (ii) the training of adequate numbers of suitably qualified Project Facility operation trainers and Project Facility operations personnel has been or will be fully and properly undertaken under the provisions and in accordance with the terms and conditions of the Contract in order to secure the availability of a sufficient number of skilled and experienced personnel properly to undertake at all times during the Project Facility operations period in a timely, efficient, economic and safe manner, under the supervision of GARC or otherwise, the day to day operations of the Project Facility and the performance of routine and preventative maintenance thereof.
- (iii) The cost and expense of complying with its obligations under this **Clause 29.2** shall be deemed to have been included in the Contract Sum by the Contractor provided that the accommodation and travel costs of the Project Facility operation trainers and Project Facility operations personnel incurred in training pursuant to this **Clause 29.2** shall be borne by GARC.

29.3 Manufacturer's Warranties

29.3.1 Without prejudice to the Contractor's warranties in the Contract, the Contractor shall obtain for GARC, the Required Manufacturers Warranties for the Equipment in accordance with Technical Conditions of Contract and must obligate the respective manufacturers at their sole expense to rebuild, remove and replace Equipment which has defects and deficiencies in substantially the same manner and on terms and conditions to those contained in the Contract and, where required by GARC, must travel to and from and perform such activities at the Project Site.

29.3.2 At the request of GARC Representative, the Contractor must seek to obtain from the manufacturers of the Equipment referred to in **Clause 29.3.1** extended warranty coverage.

29.3.4 The warranty period for any Equipment or any part must be extended for a period equal to the period that such item cannot be operated as a result of a defect and deficiency or as a result of any deficiency or damage caused by another item of Equipment, and in respect of extended warranties, the Contractor must use its best endeavours when requested by GARC to assist in enforcing such warranties and guarantees.

29.3.5 The installation of any and all Equipment in the Works must be in strict accordance with the manufacturers' requirements and the Contract, and without prejudice to the Contractor's warranties contained in the Contract, in the event that GARC seeks to enforce a claim based upon a manufacturer's warranty, and if such manufacturer fails to honour its warranty based in whole or in part, on a claim of defective installation, GARC is entitled to enforce the manufacturer's warranty against the Contractor in accordance with the terms of the warranty, or, at GARC option, the Contractor must defend and indemnify GARC from and against any liability in respect of such defect and deficiency, provided however, that a claim of defective installation is not a defence to any warranty claim by GARC.

30. GARC

30.1 GARC obligations

Notwithstanding anything contained in the Contract and in addition to and not in derogation or substitution of any of its other obligations under the Contract, GARC shall:

- (i) use reasonable endeavours to assist the Contractor to obtain from Statutory Authorities all Applicable Clearances other than those which are GARC responsibility.
- (ii) use reasonable endeavours to assist the Contractor in the procurement of the peaceful use of the Project Site by the Contractor under and in accordance with the provisions of the Contract and without any let or hindrance from any Relevant Authority or persons claiming through or under it/them; and
- (iii) upon written request from the Contractor, use reasonable endeavours to assist the Contractor with procuring assistance in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Contractor than those generally available to commercial customers receiving substantially equivalent facilities/utilities.

31. CONTRACTOR'S COVENANTS

31.1 Urgent repairs

If, by reason of any accident or failure or an emergency or other event occurring to, in or in connection with the Works or any part thereof during the period of the Contract, any repair shall, in the opinion of GARC Representative, be urgently necessary and the Contractor is unable or unwilling or not available at once to do such repair, GARC may by its own or other workmen do such repair as GARC Representative may consider necessary. If the repair so done by GARC is work which, in the opinion of the GARC Representative, the Contractor was liable to do at its own expense under the Contract, all costs and charges

properly incurred by GARC in so doing shall within [14 (fourteen)] days from the date of receipt of the claim be paid by the Contractor to GARC or may without prejudice to any other method of recovery, be deducted by GARC from any monies due or which may become due to the Contractor or may be recovered as a debt.

31.2 Improper Equipment

The GARC Representative, without prejudice to the generality of its powers, shall have the authority to issue instructions (which shall be effected by the Contractor with all reasonable speed and at its sole expense without any right to an extension of time) from time to time for:

- 31.2.1 the removal from the Project Site, within such time or times as may be specified in the instruction, of any Equipment or any other part of the Works which, in the opinion of the GARC Representative, are not in accordance with the Contract;
- 31.2.2 the substitution of proper and suitable Equipment or any other part of the Works;
- 31.2.3 the removal and proper re-Execution, notwithstanding any previous test thereof or interim payment therefor, of any work which, in respect of any workmanship by the Contractor is not, in the reasonable opinion of the GARC Representative, in accordance with the Contract; and
- 31.2.4 such testing, as it may consider necessary or desirable following any instruction issued pursuant to this Clause.

31.3 Illegal gratification

- 31.3.1 Bribe, commission, gift or advantage: Any bribe, commission, gift or advantage given or offered by the Contractor directly or through its partner, agent, officer or employee of GARC, or to any person / institution connected with GARC, in relation to obtaining or the execution of this or any other Contract with the GARC Representative or GARC, shall in addition to any criminal liability which the Contractor may incur, subject the Contractor to termination of the Contract and all other Contracts with GARC, and liability for payment of any loss or damage to GARC, resulting from such termination. GARC shall be entitled to deduct the amounts so payable from any money / moneys due to the Contractor alone, or jointly under the Contract or any other contract with GARC. The Contractor shall not be due, nor shall be paid any compensation whatsoever for any loss, alleged or actual, suffered by the Contractor when the Contract is so terminated.
- 31.3.2 Monetary dealing of Contractor with employee of GARC or GARC Representative: The Contractor shall not lend or borrow money from, or enter into any monetary dealings or transactions directly or indirectly, with any employee of GARC Representative or GARC, and if the Contractor does so, GARC shall be entitled forth-with to terminate the Contract and all other Contracts with GARC. The Contractor shall be liable to pay compensation for any loss or damage to GARC resulting from such termination and GARC shall be entitled to deduct the amounts so payable from the money(s) due to the Contractor.
- 31.3.3 Settlement of dispute as to commission of such offence: If any question or dispute as to the commission of any such offence arises under Sub-clauses (bribe, commission, gift or advantage) and (monetary dealer of Contractor with employee of GARC or GARC

Representative), the same shall be settled by GARC Representative, in such manner as the GARC Representative shall consider fit and proper, and such decision shall be final and binding.

31.4 Avoidance of Damage to Roads and Bridges

31.4.1 Contractor to prevent damage to roads and bridges

31.4.1.1 The Contractor shall use every reasonable means to prevent any of the highways, railway or bridges communicating with or on the routes to the Project Site (including access and link roads) from being damaged or injured by any traffic of the Contractor or any of its Subcontractors. In particular the Contractor shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of plant and materials to and from the Project Site shall be limited as far as reasonably possible and so that no unnecessary damage or injury may be occasioned to such highways, railways and bridges. In case of any damage or injury to the same, the Contractor warrants indemnifying and holding harmless GARC from and against claims, proceedings, damages, costs, charges or expenses in respect of the said damage.

31.4.1.2 Should it be found necessary for the Contractor to move one or more loads of Contractor's Equipment, machinery or pre-constructed units or part of units of works over part of a highway railway or bridge, the moving whereof is likely to damage any highway, railway or bridge unless special protection or strengthening is carried out, then the Contractor shall before moving the load on to such highway, railway or bridge give notice to the appropriate authority of the load to be moved and obtain the required approval of the said authorities for its proposals for protecting or strengthening the said highway, railway or bridge. The Contractor shall be responsible for the cost and expenses of any necessary work for the protection or strengthening the said highway, railway or bridge.

31.4.2 Access routes

The Contractor shall be deemed to have been satisfied as to the safety, suitability and availability of access routes up to the Project Site. Without prejudice to the generality of the foregoing:

31.4.2.1 GARC shall not be responsible for any claims which may arise from the use or otherwise of any access route to, from and over the Project Site;

31.4.2.2 GARC does not guarantee the suitability or availability of particular access routes and all costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall (as between the Parties) be borne by the Contractor;

31.4.2.3 the Contractor shall provide such signs or directions along access routes to, from and over the Project Site as required by the Contract and shall obtain any

permission which may be required for the provision of such signs and directions.

31.4.3 Contractor not to interfere

All operations necessary for the Execution of the Works or any part thereof shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with any or with the convenience of the public, or the access to, use and occupation of public or private roads or footpaths or any properties (adjoining the Project Site or otherwise) whether in the possession of GARC or of any other person.

31.4.4 Waterborne traffic

Where the nature of the Works is such as to require the use by the Contractor of waterborne transport the forgoing provisions of this Clause 31.4 shall be construed as though "road" included a lock, dock, sea wall or other structure related to a waterway and "vehicle" included craft, and shall have effect accordingly.

31.5 Care of the Works, Liability for Accidents and Damage

31.5.1 Contractor to take full responsibility for care of the Works

31.5.1.1 The Contractor shall bear full risk in and take full responsibility for the care of the Works and Equipment (and, without limitation for the care of any works carried out on the Project Site by other contractors) from the Commencement Date until [14 (fourteen)] days after the date of issue of the Completion Certificate, when such responsibility for the care of the Works and Equipment shall pass to GARC as instructed to the Contractor by the GARC Representative.

Provided that the Contractor shall take full responsibility for (i) the care of any outstanding Works and Equipment for incorporation therein which it undertakes to finish during the Warranty Period until such outstanding Works have been completed pursuant to the Contract and for (ii) the care of the Works or any part thereof which may require repair or remedy during the Warranty Period and for any part of the Works affected thereby, for the period that such Works are under repair or remedy by the Contractor.

31.5.2 Responsibility to rectify loss or damage

31.5.2.1 If any loss or damage happens or occurs to the Works or any part thereof, or to any Equipment during the period for which the Contractor is responsible for their care the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works and Equipment conform in every respect with the provisions of the Contract and are to the satisfaction of the GARC Representative.

31.5.3 Damage to persons and property

The Contractor indemnifies and keeps indemnified GARC against all losses and claims for death, injuries or damage to any person or any property whatsoever which may arise out of or in consequence of the Execution of the Works and the remedying of any defects therein and against all claims demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

31.6 Clearance of the Project Site

On Completion of the Works, the Contractor shall clear away and remove from the Project Site all equipments, surplus materials, rubbish and temporary works of every kind and leave the whole of the Project Site and the Works clean and in a workmanship condition, tidy and in an aesthetically pleasing appearance to the satisfaction of GARC and the GARC Representative. The Contractor shall, unless otherwise instructed in writing by GARC Representative, remove all signs of temporary construction facilities such as haul roads, work areas, structures, foundations of temporary works, stockpiles of excess or waste materials and other vestiges of construction prior to the issue of the Completion Certificate.

31A. SUSPENSION OF WORKS

GARC reserves the right to suspend and re-instate the Execution of the whole or any part of the Works or the delivery of any Equipment, without invalidating the provisions of the Contract. The order for suspension or re-instatement shall be issued by the GARC Representative to the Contractor in writing vide a suspension order and the same shall be binding on the Contractor. The Contractor shall during any suspension, properly protect and secure the Works and the goods and Equipments and shall not remove any goods or Equipments from the Project Site without the prior consent of the GARC Representative and the Contractor shall take all reasonable measures to minimise the costs and losses of the suspension to GARC. The Contractor shall undertake any necessary action instructed by the GARC Representative to remedy the circumstances that led to the suspension and the Contractor shall notify the GARC Representative immediately upon completing such action. Upon resumption of the Works, the Contractor shall immediately undertake an examination of the affected parts of the Works and shall make good any deterioration or defect in or loss of the Works, the Equipment or any part thereof that may have occurred during the suspension. The Time for Completion of the Works shall not be extended if the issue such a suspension order was due in any way to the act, default, omission or breach by the Contractor.

32. FORCE MAJEURE

32.1 Force Majeure - Obligations of the Parties

32.1.1 "Force Majeure" shall mean any event beyond the control of GARC or of the Contractor, as the case may be, and which is unavoidable notwithstanding the reasonable care of the party affected, and which could not have been prevented by exercise of reasonable skill and care and good industry practices and shall include, without limitation, the following:

- (i) War, hostilities, invasion, act of foreign enemy and civil war;
- (ii) Rebellion, revolution, insurrection, mutiny, conspiracy, riot, civil commotion and terrorist acts;

- (iii) Strike, sabotage, unlawful lockout, epidemics, quarantine and plague;
- (iv) Earthquake, fire, flood or cyclone, or other natural disaster.

As soon as reasonably practicable but no more than 48 (forty-eight) hours following the date of commencement of any event of Force Majeure, an Affected Party shall notify the other Party of the event of Force Majeure setting out the date, nature, extent, proof and the damage cause by the Force Majeure event.

32.2 Meetings with GARC Representative

As soon as reasonably practicable and in any case within [5 (five)] days of notification by the Affected Party in accordance with the preceding **Clause 32.1**, the Parties shall along with GARC Representative and others, meet and hold discussions and where necessary conduct physical inspection and/or survey of the Works to assess the impact and formulate mitigation measures for the Force Majeure Event.

32.3 Performance obligations

32.3.1 If the Affected Party is rendered wholly or partially unable to perform any of its obligations under the Contract because of an event of Force Majeure, it shall be excused from performance of such obligations to the extent it is unable to perform provided that in case the Affected Party is the Contractor, the Contractor shall be entitled to an extension of time.

32.3.2 When the Affected Party is able to resume performance of its obligations under the Contract, it shall give to the other Party written notice to that effect forthwith and shall promptly resume performance of its obligations hereunder.

32.3.3 The Affected Party shall continue to perform such of its obligations which are not affected by the event of Force Majeure and which are capable of being performed in accordance with the Contract.

32.4 Liability for other losses, damages etc.

Save and except as expressly provided in this **Clause 32** neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any event of Force Majeure.

32.5 Exceptions to Force Majeure

None of the following events shall be construed to relieve any Party of its obligations hereunder by reason of **Clause 32**:

- (i) any changes in market conditions including without limitation changes that affect the supply prices of the Goods;
- (ii) commercial impracticability or hardship;
- (iii) a Party's lack of funds.

33. DISPUTE RESOLUTION PROCEDURE

33.1 Amicable Resolution and Mediation

33.1.1 Save where expressly stated to the contrary in the Contract, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to the Contract including disputes, if any, with regard to any acts, decision or opinion of GARC Representative and so notified in writing by either Party to the other (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set out in **Clause 33.1.2** below.

33.1.2 Either Party may require such Dispute to be referred to a person nominated by each Party, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within [15 (fifteen)] days of such reference to discuss and attempt to amicably resolve the Dispute.

33.1.3 In the event that the Dispute in question is not resolved amicably within 15 (fifteen) days of such meeting between the Parties in accordance with **Clause 33.1.2** either Party may refer the Dispute to arbitration in accordance with **Clause 33.2**.

33.2 Arbitration Procedure

Save where expressly stated to the contrary in the Contract, any Dispute shall be finally settled by binding arbitration under the Arbitration and Conciliation Act 1996 Act and in accordance with the UNICTRAL rules (the "Arbitration Rules") by three arbitrators appointed in accordance with the Arbitration Rules.

33.3 Place of Arbitration

The place of arbitration shall be Chennai.

33.4 English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

33.5 Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration and Conciliation Act.

33.6 Performance during Arbitration

Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under the Contract without prejudice to a final adjustment in accordance with such award.

34. REPRESENTATIONS AND WARRANTIES, DISCLAIMER**34.1 Representations and Warranties of the Contractor**

The Contractor represents and warrants to GARC that:

- 34.1.1 it is duly organised, validly existing and in good standing under the laws of incorporation of companies in India or in the country of its incorporation;
- 34.1.2 it has full power and authority to execute, deliver and perform its obligations under the Contract and to carry out the transactions contemplated hereby;
- 34.1.3 it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the Execution, delivery and performance of the Contract;
- 34.1.4 it has the financial standing and capacity to Execute the Works;
- 34.1.5 the Contract constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- 34.1.6 it is subject to the Applicable Laws with respect to the Contract and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- 33.1.7 it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect upon the Works;
- 33.1.8 no representation or warranty by the Contractor contained herein or in any other document furnished by it to GARC in relation to Applicable Clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- 33.1.9 no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Contractor to any person to procure the Contract or any other benefit under the Contract to procure other Contracts in relation to which the Contractor may be a party in relation to the Project.
- 33.1.10 without prejudice to any express provision contained in the Contract, the Contractor acknowledges that prior to the execution of the Contract, the Contractor has after a complete and careful examination made an independent evaluation of the Project Site, the Technical Conditions of Contract and any information provided by or on behalf of GARC and has made an inspection of the Project Site and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Contractor in the course of performance of its obligations hereunder.

34. TERMINATION**34.1 Termination**

34.1.1 Subject to the other provisions of the Contract, GARC shall have the right to serve a notice of termination of the Contract on the Contractor and forthwith terminate the Contract without prejudice to any of its other rights and remedies against the Contractor and without being liable to pay any loss or compensation if:

- (i) if any distress or execution is levied upon any of the assets of the Contractor;
- (ii) at any time during the currency of the Contract there is a change in the effective control of the Contractor as at the date of the Contract;
- (iii) the Contractor fails to complete, test and commission the Contractor's Works/ Project Facility within the Time for Completion or commits any other violation/breach of the terms and conditions of the Contract which is not rectified within [14 (fourteen)] days of the date of receipt of notice from GARC in this regard.
- (iv) any of the following events occurs:
 - (a) the passing of a resolution by the shareholders of the Contractor for the winding up of the Contractor;
 - (b) the appointment of a liquidator in a proceeding for the winding up of the Contractor or the Contractor entering into a compromise with its creditors; or
 - (c) the making by the court of an order winding up the Contractor,
 - (d) The Contractor either:
 - (i) Appoints a subcontractor without the prior approval of GARC, or terminates any of the Subcontractor; or
 - (ii) having terminated any of the Subcontracts with the consent of GARC, appoints a replacement Sub-Contractor without the prior approval of GARC.
 - (e) the Contractor without the consent of GARC assigns or transfers all or any of its rights or obligations under the Contract;
 - (f) the Contractor repudiates the Contract or otherwise evidences an intention not to be bound by the Contract; or
 - (g) the expropriation, confiscation, compulsory acquisition of the Project Facility;

- (h) as a result of Force Majeure, the Contractor is unable to proceed with the Works for a period of [90(ninety)] consecutive days or [180(One Hundred and Eighty)] days in a year (whichever is less);
- (i) if the Contractor or any of its servants or agents commit or suffer to be committed or omit or suffer to be omitted any act, deed, matter or thing which in the opinion of GARC Representative whose decision (without an obligation to give reasons therefor) in this regard will be final, is prejudicial to the interests or reputation of GARC.
- (j) the Contractor offers, gives or promises any payment directly or indirectly to any government, political party, or official thereof, or any candidate for political office, or to GARC in order to influence any substantive decision of, or induce any party or person to use its influence to offset any substantive decision of any Relevant Authority or Statutory Authority or GARC in regard to any aspect of the Contract;
- (j) the Contractor makes any warranty or representation in or in accordance with the Contract which was materially incorrect when made so as to materially affect GARC's interests; or
- (k) in the event that the Contractor's liability for Liquidated Damages reaches the cap on such damages as set out in Special Conditions of Contract and the Completion Certificate for the whole of the Works has not been issued; or
- (l) fails to provide, maintain or renew and/or comply with its obligations in relation to the Performance Security; or
- (v) the Contractor has, without valid reason and GARC's consent, failed to commence the Works promptly, or fails to progress the Works regularly and/or diligently or
- (vi) the Contractor has failed to adhere to the Technical Conditions of Contract and in the reasonable estimation of the GARC Representative, such failure is likely to mean that Completion of the Works is likely to be delayed beyond the relevant Time for Completion; or
- (vi) the Contractor's personnel is/are incompetent, have acted in a manner prejudicial to GARC's best interest or have failed to comply with GARC's health, safety, environment or other rules or regulations and procedures; or
- (viii) the Contractor has failed to achieve two Milestones consecutively.

34.2 Termination Procedure

- 34.2.1 A notice of termination given pursuant to this **Clause 34** (each a "Preliminary Termination Notice") shall specify in reasonable detail the circumstances giving rise to the Preliminary Termination Notice. If, within [21 (twenty one)] days following the service by GARC of a Preliminary Termination Notice, the Contractor pays all sums which are due and payable to GARC or remedies the breach to the satisfaction of GARC existing as at the date of the Preliminary Termination Notice then such Preliminary Termination Notice shall be revoked

and all existing rights of termination in favour of GARC under the Contract shall terminate and the Contractor shall continue to perform its obligations under the Contract in a diligent and proper manner.

34.2.2 Within the period of [21 (twenty one)] days following the receipt of the Preliminary Termination Notice by the Contractor and unless the Parties shall have otherwise agreed or the circumstances giving rise to the Preliminary Termination Notice shall have ceased to exist or shall have not been remedied, GARC may terminate the Contract by giving written notice (a "Termination Notice") to the Contractor and the Contract shall terminate on the date mentioned in the Termination Notice ("Termination Date").

34.2.3 The termination of the Contract by GARC for reasons other than breach can be made by a written notice to the Contractor and nothing herein will obligate GARC to terminate the Contract or be liable for any exercising its right of termination and GARC may pursue all remedies available in law instead of termination.

34.3 Upon Termination

34.3.1 Upon Termination for any reason whatsoever, the Contractor shall to the extent instructed by the GARC 's Representative:

- (i) cease all further work as instructed by the GARC 's Representative in the Termination Notice and the Contractor shall carry out works for the sole purpose of securing, preserving and protecting that part of the Works already Executed and any work required to leave the Project Site and the Works in a clean and safe condition;
- (ii) remove all the Contractor's Equipment and temporary works;
- (iii) repatriate the Contractor's and Subcontractor's personnel from any part of the Project Site and the Works;
- (iv) deliver to GARC the Works Executed by the Contractor as at the Termination Date;
- (v) ensure that it and those it is contractually or otherwise responsible for, vacate the Project Site;
- (vi) promptly and in an orderly manner deliver to GARC all documents relating to the Works which are for the time being under the control of the Contractor;

34.3.2 Without prejudice to **Clause** 34.3.1 upon Termination:

- (i) GARC may enter the Project Site and the Works thereof and expel the Contractor therefrom and GARC may complete the Works itself or by employing any third party;
- (ii) GARC may, to the exclusion of any right of the Contractor over the same, take over and have free use, without payment to the Contractor, of any Contractor's Equipment and temporary works of which have been delivered to the Project Site for such period as the GARC 's Representative considers necessary for the Execution of

the Works, without being responsible to the Contractor for fair wear and tear thereof and to the exclusion of any right of the Contractor over the same.

- (iii) GARC may at any time sell any of the said Contractor's Equipment, temporary works and any unused materials and apply the proceeds of sale in or towards for satisfaction of any sums due or which may become due to it from the Contractor under the Contract; and
- (iv) GARC shall have the power and authority to prohibit the Contractor and any person claiming through or under the Contractor from entering the Project Site.

35. MISCELLANEOUS

35.1 Assignment and Charges

35.1.1 Subject to **Clauses** 35.1, neither Party shall assign the Contract or the rights, benefits and obligations hereunder save and except with prior consent of the other Party.

35.1.2 The Contractor shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under the Contract except with prior consent in writing of GARC, which consent shall not be unreasonably withheld.

35.2 Interest

Any sum which becomes payable under any of the provisions of the Contract by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry the Default Interest Rate from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same.

35.3 Governing Law and Jurisdiction

The Contract shall be governed by the laws of India. In respect of all matters arising out of or relating to the Contract, the Courts at Chennai, India shall have the jurisdiction to decide the matter.

35.4 Waiver

35.4.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under the Contract:

- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under the Contract;
- (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
- (iii) shall not affect the validity or enforceability of the Contract in any manner.

35.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Contract or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of the Contract.

35.5 Survival

Termination or expiry of the Contract (i) shall not relieve GARC or the Contractor of any obligations already incurred hereunder which expressly or by implication survives termination hereof, and (ii) except as otherwise provided in any provision of the Contract expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

35.6 Amendments

The Contract constitutes a complete and exclusive understanding of the terms of the Contract between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

35.7 Severability

If for any reason whatsoever any provision of the Contract is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Contract or otherwise.

35.8 No Partnership

Nothing contained in the Contract shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever. The Contract shall be construed to have been entered on a principal to principal basis.

35.9 Entire Agreement

The Contract constitutes the entire agreement between the Parties and supersedes all prior negotiations, commitments, representations, communications and agreements relating to the Contract either oral or in writing except to the extent they are expressly incorporated herein. The Contractor confirms that it has not relied upon any representation inducing it to enter into the Contract (whether or not such representation has been incorporated as a term of the Contract) and agrees to waive any right which it might otherwise have to bring any action in respect of such representation. The Contractor further confirms that there is not in existence

at the date of the Contract any collateral contract or warranty of which the Contractor is the beneficiary which might impose upon GARC obligations which are in addition to or vary the obligations expressly contained in the Contract and which relate in any way to the subject matter of the Contract. The Contractor's only rights arising out of, or in connection with, any act, matter or thing said, written or done, or omitted to be said, written or done, by or on behalf of GARC (or any agent, employee or subcontractor of GARC) in negotiations leading up to the Contract or in the performance or purported performance of the Contract or otherwise in relation to the Contract are the rights to enforce the express obligations of GARC contained in the Contract and to bring an action for breach thereof. Nothing in this **Clause 35.9** is intended to exclude liability of the Contractor for fraud or fraudulent misrepresentation.

35.10 Liability and Indemnity

- 35.10.1 The Contractor shall indemnify, defend and hold GARC harmless against any and all proceedings, actions and third party claims arising out of a breach or omission or non-performance by the Contractor of any of its obligations under the Contract except to the extent that any such claim has arisen due to breach by GARC of any of its obligations under the Contract.
- 35.10.2 In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under the Contract (the "Indemnified Party") it shall notify the other Party ("Indemnifying Party") within [7 (seven)] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, provided that, such approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction.
- 35.10.3 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this **Clause 35.10**, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or other proceedings, liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure, the loss to be indemnified hereunder to the extent so compromised or settled.
