

DICDL/DSIR/AMC/14/2024-25

Special Terms & Conditions

for

Annual Maintenance Contract for Administrative
Cum Business Centre (ABCD Building), Dholera

Dholera Industrial City Development Limited (DICDL)

6th Floor, Block No. 1 and 2, Udhog Bhavan,

Sector-11, Gandhinagar – 382017

Gujarat, India

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1 Definition

1.1 In the contract (as hereinafter defined) the following words and expression will have the meanings hereby assigned, to them:

- a) **“Approved/ Approval”** means approved in writing.
- b) **“Plant”** means all equipment, appliance or things of whatsoever nature required for the execution, completion or maintenance of the works or temporary works but do not include materials or other things intended to form or forming part of the permanent work.
- c) **“Contract”** means the contract Agreement or Service Level Agreement or Agreement entered between the Employer and Service Provider. The instruction and information, general rules and direction for tenderers, terms and conditions of contract, specification, drawings, the schedules of quantities and tender prices, the formal agreement and all addenda (including corrigendum if any) and attachments related to the above, referred in the contract agreement shall constitute the contract.
- d) **“Day”** means a day from midnight to midnight.
- e) **“Drawings”** means the drawings referred to in the specifications or Scope of Works, any modification of such drawings approved in writing and such other drawings as may from time to time be furnished or approved in writing by the Employer.
- f) **“Employer/ Owner/Buyer”** mean Dholera Industrial City Development Ltd and include its legal successor.
- g) **“Employer’s Representative”** means Person/Agency appointed by the Employer to supervise its requirements under this Contracts.
- h) **“IS”** means Indian Standards, prescribed by the Bureau of Indian Standards
- i) **“Month”** means period from the beginning of a given date of a calendar month to the end of the preceding date of the next calendar month.
- j) **“Service Provider/Agency/Contractor”** means the particular person, firm or Company or Group of firms or Companies or his designated representative with whom the contract has been executed the works/Services and includes his legal successors.
- k) **“Site”** means the lands/Buildings and other places on, under, in or through which, the works/service are to be executed or carried out and any other lands or places or Buildings provided by the owner for the purposes of the contract together with such other places as may be specifically designated in the contract or subsequently approved as forming part of site.
- l) **“Temporary Works/Services”** means all temporary works/Services of every kind required for the performance of the contract.
- m) **“Contract Amount”** means the total contract amount indicated in the Letter of Award for the tendered work or any subsequent amendment thereto.
- n) The expression **“Work(s)/Service(s)”** where used in these conditions shall, unless there be something in the subject or context repugnant or such services be construed to mean the work, or the works contracted to be executed under or in virtue of contract, whether temporary or permanent, and whether original, altered, substituted or additional.
- o) **“Week”** means seven consecutive days.

2 Interpretations

- 2.1 Words imparting the singular only, also include the plural, he include she and vice a versa unless this is repugnant to the context. Wherever the term “Specification” is used apart from a specified standard specification, it shall mean the specification or plan prepared for a particular item as per the instruction to the Service Provider in executing that item of Services/works.

3 Language of Contract

All written matter and correspondence in connection with the Contract shall be in English.

4 Contract Document and Matters to be treated as Confidential

- 4.1 All documents, correspondence, decision and order concerning the contract shall be considered as confidential and/or restricted in nature by the Service Provider and he shall not divulge or allow access to them by any unauthorized person.

5 Performance Security

- 5.1 The Service Provider shall, for the performance of its obligations hereunder during the service Period, provide to the Employer, within 15 (Fifteen) days of the date of issue of letter accepting the tender (Letter of Award), an irrevocable and unconditional guarantee from a Bank in the form available on GeM portal (the “Performance Security”) for an amount equal to **5% (Five Percent)** of the Contract Price.
- 5.2 In addition to the above, the Employer shall deduct security deposit from the intermediate bills i.e. the running account bills an amount at the rate of 5% (five percent) of the total amount of each bills, as a remaining Security Deposit subject to the condition that the total amount of such deductions shall not exceed 5% (Five percent) of the Tendered amount put to Tender as mentioned in the letter of acceptance of the tender.
- 5.3 The Bank Guarantee (Performance Security) must remain valid for at **least three months** after the Completion of the Service Period.
- 5.4 Security Deposit less any amount due shall be returned to the contractor after three months from completion of the Works and subject to the Employer certifying that no liability is attached to the contractor

6 Actions When Performance Security is forfeited

- 6.1 In any case, in which under any clause or clauses of this contract, the Service Provider shall have rendered himself liable to pay compensation amounting to the whole of his Performance Security (Whether paid in one sum or deducted by instalments) or in the case of abandonment of the Service/work owing to serious illness or death of the Service Provider or any other cause, the Employer shall have powers:
- a) To withdraw the contract (of which rescission notice in writing to the Service Provider under the hand of Employer/Employer’s Representative shall be conclusive evidence) and in that case the Performance Security of the Service Provider shall stand forfeited and be absolutely at the disposal of the Employer.

- b) To employ labour paid by Employer and to supply materials to carry out work , or any part of the Service/work, debiting the Service Provider with the cost of the labour and the price of the materials (as to the correctness of which cost and price, the certificate of the Employer/Employer's Representative shall be final and conclusive against the Service Provider) and crediting him with the value of the Service/work done in all respects in the same manner and at the same rate as if it had been carried out by the Service Provider under the terms of this contract and in that case the certificate of the Employer/Employer's Representative to the value of the Service/work done shall be final and conclusive against Service Provider.
 - c) To order that the service/work of the Service Provider be measured up and to take such part thereof as shall be unexecuted out of hands, and to give it to another Service Provider to complete, in which case any expenses which may be incurred in excess of the sum which would have been paid to the original Service Provider if the whole work had been executed by him (as to the amount to which excess expenses the certificate in writing of the Employer/Employer's Representative shall be final and conclusive) shall be borne and paid by the original Service Provider and shall be deductible from any money due to him by the Employer under this contract from his performance security or the proceeds of sale thereof or a sufficient part thereof.
- 6.2 In the event of any of the course being adopted as per clause 6.1 above by the Employer/Employer's Representative, the Service Provider shall not claim to compensate for any loss sustained by him by reason of his having purchased or procured any materials, or made any advances on this account or with a view to the execution of the service/work or the performance of the contract and in case the contract shall be withdrew under the provision aforesaid, the Service Provider shall not be entitled to recover or be paid any sum for any service/work thereof actually performed by him under this contract unless and until the Employer/Employer's Representative shall have certified in writing the performance of such service/work and the amount payable in respect thereof and shall only be entitled to be paid amount so certified.
- 6.3 If the Service Provider is an individual or a sole proprietorship and the individual or proprietor dies, the Employer has the right to cancel the uncompleted part of the contract if they believe the legal heirs or representatives are not capable of completing the work. In this case, the performance security will be forfeited under clause 6.1(a), and the Employer will not be liable to pay any compensation to the heirs for canceling the contract. The decision of the Employer regarding the capability of the legal representatives to complete the contract will be final and binding. If the contract is canceled, the heirs of the deceased Service Provider will not be held liable for damages related to the incomplete work. If the Employer or their Representative has the right to act under clause 6.1 but chooses not to, this does not waive any of the contract conditions.
- 6.4 If the Employer or the Employer's Representative acts under clauses 6.1 and 6.3, they may choose to take possession of any tools, equipment, machinery, materials, or supplies on the worksite that belong to the Service Provider or were procured for the project. The Employer will pay for these items at the contract rate, or if no contract rate applies, at a reasonable market rate, as certified by the Employer or their Representative. Alternatively, the Employer or their Representative may issue a written notice to the Service Provider or their authorized agent, requiring them to remove these items from the site within a specified time. If the Service Provider fails to do so, the Employer may remove the items at the Service Provider's expense or sell them through auction or private sale. The Employer's or their Representative's decision on the costs of removal and the amount of proceeds from any sale will be final.

7 Annual Maintenance Schedule

- 7.1 Maintenance as per schedule shall be prepared by agency for the activities to be performed periodically to ensure desired standards set by the Employer. Reports in this regard shall be submitted along with monthly invoice.
- 7.2 Deployment of staff at ABCD Building to be arranged by agency.
- 7.3 Agency has to make necessary transportation arrangement for staff, material, machinery, etc. to ABCD Building, Dholera.

8 Commencement of Service, Period for Service and Extension of Time

- 8.1 The Service Provider shall commence the Service from the award of contract of GeM and proceed in accordance with the schedule furnished pursuant to Clause 7.1.
- 8.2 The Period for the Service shall be for the period of **One Year** from the award of contract on GeM. On Satisfactory completion, it can be mutually agreed and extended for **One Year plus One Year duration (1+1)**.
- 8.3 Any escalation due to revision in the minimum wages notified by the Gujarat Government order/ circulars etc. from time to time, after date of submission of tender shall be compensated by the Employer with prior intimation and approval from the employer.
- 8.4 Modification: Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

9 Action where no specifications

- 9.1 In the case of any type of service/work for which there is no specifications/methodology, such work shall be carried out in accordance with the Employers specifications/methodology and in the event of there being no Employers specifications/methodology, then, in such case the service/work shall be carried out in all respects in accordance with the instructions, and requirements of the Employer.

10 Space/store required by the Service Provider

- 10.1 The Service Provider shall have to make his own arrangement for land required by him/her for his camp, workshops, labour camps, stock-piling of materials and machineries etc.

11 Entering Upon or Commencement of Work

- 11.1 The Service Provider shall not work upon or commence any portion of service/work except with the written authority and instruction of the Employer/Employer's Representative of the service/work, failing which the Service Provider shall have no claim to ask for measurement or payment for work.

12 Accesses to Premises/ Site and Work

12.1 The Employer or their Representative may, at any time, enter any premises or land under the possession of the Service Provider under this contract to carry out services or work not included in this contract. They may execute such work using other agents or Service Providers. The Service Provider must provide all necessary facilities, including access to land and structures, for these activities. If the Service Provider fails to do so, they will be liable for any resulting delays or expenses incurred by the Employer. If the exercise of these powers causes any damage, the Service Provider may submit a claim for damages to the Employer or their Representative within fifteen days of the damage occurring. The Employer or their Representative will assess the value of the damage and compensate the Service Provider for any justified amounts.

13 Works to be executed under direction of Employer/Employer's Representative

13.1 All services or works to be performed under the Contract must be carried out under the direction of the Employer or the Employer's Representative and are subject to their approval in all aspects. The Employer has the authority to specify where and how the work should begin and how it should proceed over time.

14 Checking of Materials

14.1 All materials intended for use in the services/works must be inspected/ tested by the Employer or the Employer's Representative, if deemed necessary. The nature of testing and the periodical intervals at which it should be conducted will be based on the latest editions of relevant IS Codes and will be determined by the Employer or their Representative. Materials will be tested at locations specified by the Employer or their Representative.

15 List of tools and tackles to be brought and used by the Service Provider

15.1 The Service Provider shall furnish list of tools and tackles immediately available with him/her for use on the service/work and which they propose to procure for the work. These are to be maintained / replaced by the Service Provider in good condition during entire work period.

16 Services at existing utilities

- 16.1 Where the service/work to be performed under these specifications crosses or otherwise interferes with water, sewer, gas or oil pipelines, buried cable or other public or private utilities, the Service Provider shall preserve and protect such utilities and shall perform such services during the progress of the service/work so that no damage will result to either public or private interests till alternative arrangement for relocating such facilities are made. The term “Watercourses” included ditches, terraces, furrows, or other features of surface irrigation systems.
- 16.2 It shall be the responsibility of the Service Provider to determine the actual locations of and make provision for all watercourses and utilities.
- 16.3 Before any watercourse or utility is taken out of service, permission shall be obtained from the Employer/Employer’s Representative by the Service Provider. The Service Provider shall be liable for all damages that may result from failure to preserve and protect watercourses or utilities during the progress of the service/work and the Service Provider shall indemnify and hold harmless the Employer from claims of whatsoever nature or kind arising out of or connected with damage to water courses or utilities encountered during services, damages resulting from disruption of service and injury to persons or damage to property resulting from the negligent, accidental or intentional breaching of watercourses or utilities.
- 16.4 If the Service Provider does not maintain the existing watercourse and utilities in such condition that no damage will result to either public or private interests, the Employer will make the necessary repairs to be made and recover charges from the Service Provider for such service/work.
- 16.5 Except as otherwise stated, the cost of all service/work described in this document, shall be included in the price bid in the schedule for relevant other items of service/work.
- 16.6 In case of watercourses and utilities in addition to those for which details are available with the Employer, all additional service/work required to be performed by the Service Provider as a result of encountering the watercourse or utilities shall be performed in accordance with clause 24. (Variation)
- 16.7 In case of forest, nursery, plantation, or landscaping for which details are available with the Employer, all care shall be taken by the Service Provider to preserve the plantation during its services. If the Service Provider does not take care to preserve, the Employer may recover the loss, from the Service Provider.

17 Work during Night or on Sundays and Holidays

- 17.1 The service/work shall not be carried out during night or on Sunday and authorized holidays without the prior written consent of Employer/Employer’s Representative. However, it will be allowed to be carried out the work during night, Sundays, or authorized holidays subject to:
- a. The provisions of relevant labour laws being adhered to.
 - b. Adequate lighting, supervision and safety measures established to the satisfaction of the Employer/Employer’s Representative.
 - c. The maintenance services programme given by the Service Provider and agreed upon by the Employer/Employer’s Representative envisages such working.

- d. If it is necessary or required to ensure the safety of work, protection of life, or to prevent loss or damage to property.
- e. Payment for the overtime work may be paid in accordance with applicable law and orders.

18 Water and Electric Power

18.1 The water and electric power supply at ABCD Premises shall be given by the Employer at common points. The Service Provider shall not raise any claim against the Employer for failure or stoppage of power supply for any reasons whatsoever. Service Provider shall judiciously utilize water and electricity.

19 Other Service Providers

19.1 When two or more Service Providers are engaged on Service/work in the same vicinity, they shall work together in a spirit of co-operation and accommodation. The Service Provider shall not take or cause to be taken any steps or actions that may cause disruptions, discontent or disturbance to the services/works, labour and arrangements of other Service Provider in the neighbouring project localities. In case of any difficulties amongst the Service Providers, the Employer/Employer's Representative shall direct the manner in which each Service Provider shall conduct his service/works so far as it does not affects the others.

19.2 It is possible that service/work at, or in the vicinity of the site of service/work will be performed by the Employer or by other Service Providers engaged in service/work for the Employer during the Contract period. The Service Provider shall without charge permit the Employer and such other Service Provider's and other workmen to use the access facilities including roads, lighting installation and any other facilities constructed or acquired by the Service Provider for use in the performance of the service/works till they are required to be maintained for the purpose of this service/work.

20 Ecological Balance

20.1 The Service Provider shall maintain ecological balance by preventing deforestation, water pollution and defacing of natural landscape. The Service Provider shall so conduct his services as to prevent any unnecessary destruction, scarring or defacing of the natural surroundings in the vicinity of the work. In respect of ecological balance, Service Provider shall observe the following instructions.

- a. Where unnecessary destruction, scarring, damage or defacing may occur as a result of the operations the same shall be repaired, replanted or otherwise corrected at the Service Provider's expense.
- b. All trees and shrubbery which are not specifically required to be cleared or removed for service purposes shall be preserved and shall be protected from any damage that may be caused by the Service Provider's operations and equipment. The removal of trees or shrubs will be permitted only after prior approval of the Employer/Employer's Representative. Special care shall be exercised where trees or shrubs are exposed to injuries by equipment, dumping, chemical damage or other operation and the Service Provider shall adequately protect such trees by use of protective barriers or other methods approved by the Employer/Employer's Representative. Trees shall not be used for anchorages. The Service Provider shall be responsible for injuries to trees and shrubbery caused by his operations. The terms 'injury' shall include, without limitation, brushing scarring, tearing and breaking of roots trunks or branches. All injured trees and shrubs shall be restored as nearly as practicable without delay to their original condition at the Service Provider's expenses.

- c. The Service Provider's activities shall be performed by methods that will prevent entrance or accidental spillage of solid matter contaminants, debris and other objectionable pollutants and wastes into Project Site. Such pollutants and wastes include earth and earth products, garbage, cement concrete, sewage effluent, industrial wastes, radio-active substances, mercury, oil and other petroleum products, aggregate processing, tailings much products, minerals, salts and thermal pollution. Pollutants and wastes shall be disposed-off in a manner and at sites approved by the Employer/Employer's Representative.
- d. In the conduct of activities and operation of equipment's, the Service Provider shall utilize such practicable methods and devices as are reasonably available to control, prevent and otherwise minimize air pollution.
- e. Excessive emission of dust into the atmosphere will not be permitted during the services and the Service Provider shall use such methods equipment as are necessary for collection and disposal or prevention of dust during these operations. Equipment and vehicles that give objectionable emission of exhaust gases shall not be operated. Burning of materials resulting from clearing of trees, brush, combustible materials and rubbish may be permitted only when atmospheric conditions for burning are considered favourable.

20.2 Separate payment will not be made for complying with provisions of this Clause and all costs shall be deemed to have been included in costs of items included in Bill of Quantities (BOQ).

21 Liability of Service Provider for Damage in or Out Side Service/Work Area

21.1 Compensation for all damage done intentionally or unintentionally by Service Provider's labours whether in or beyond limit of the Employer's property including any damage caused by the spreading of fire shall be estimated by the Employer/Employer's Representative, or such other officer as he may appoint and the estimates of the Employer/Employer's Representative, subject to the decision of the Employer, on appeal, shall be final and the Service Provider shall be bound to pay the amount of the assessed compensation on demand, failing which the same will be recovered from the Service Provider as damages in the manner as decided by the Employer/Employer's Representative and deducted from any sums that may be due or become due from the Employer to the Service Provider or under this contract or otherwise.

21.2 The Service Provider shall bear the expenses of defending any action or other legal proceeding that may be brought by any person for injury sustained by him owing to neglect of precautions to prevent the spread of the fire and he shall also pay the damages and cost that may be awarded by the Court in Consequence.

22 Liability of Service Provider for Accidents to Persons

22.1 In addition to responsibilities and liabilities of the Service Provider under workmen's Compensation Act given in clause 32 following shall also apply:

- a. On the occurrence of an accident, which results in death of workmen employed by the Service Provider or which is as serious as is likely to result in death of any such workmen, the Service Provider shall within 24 hours of happening of such accident(s), intimate in writing to the Employer/Employer's Representative, the fact of such accident(s). The Service Provider shall indemnify the Employer against all loss or damage sustained by the Employer resulting directly or indirectly from his failure to give intimation in the manner aforesaid including the penalties or fines, if any, payable by the Employer as a consequence of Employer's failure to give notice

under the Workmen's Compensation Act or otherwise to conform to the provisions of the said Act regard to such accident(s).

- b. In the case of an accident, in respect of which compensation may become payable under workmen's Compensation Act, whether by the Service Provider or by the Employer, it shall be lawful for the Employer/Employer's Representative to retain out of money due and payable to the Service Provider such sum or sums of money as may, in the opinion of the Employer/Employer's Representative be sufficient to meet such a liability. The opinion of the Employer/Employer's Representative shall be final in regard to all matters arising under this Clause.

23 Indemnities

- 23.1 The Service Provider shall indemnify the Employer against all actions, suits, claims and demands, through or made against the Employer in respect of work of this service contract and against any loss or damage to Employer in consequence of any action or suit being brought against the Service Provider for anything done or omitted to be done in execution of the work of this contract.

24 Variation

- 24.1 During the Service Period, the Employer reserves the right to increase or decrease the number of the manpower / service area in the schedule of requirements without any change in unit price.

25 Submission of Bills

- 25.1 The Service Provider shall submit the monthly bill before 10th of every subsequent month along with the following supporting documents. After submission of valid documents only, payment will be processed by the Employer.
 - a. Attendance Sheet Records (Site-wise and Shift-wise as applicable)
 - b. Wages Register (as per norms of Contract Labour Act)
 - c. PF/ESI and Professional Tax Challans duly paid by the Service Provider along with Bank Transition Slip
 - d. PF/ECR File and ESI Contribution Statement
 - e. Valid procurement proof for Consumables
 - f. Daily Report Summary signed by Employer's Representative
 - g. Copy of valid Contract Labour License, if applicable

25.2 The Service Provider shall submit all the bills on the printed forms to be had on application at the office of the Employer’s Representative. The charges to be made in the bills shall always be entered at the rates specified in the agreement or at the part / reduced rates subject to the approval by the Employer/Employer’s Representative in the case of items not completed/executed as per agreements.

25.3 Payment to the Service Provider shall be made within 45 days of receipt of the invoice and certification of the work done by the Employer/Employer’s Representative in the approved format.

25.4 Amount due for recovery on other facilities as well as also for other services, and for other expenditure, if any, incurred by the Employer on Service Provider’s behalf on labours and materials which may become due from the Service Provider as per the Contract as well as under any other laws prevailing which may become due, will be recovered from the payments to the Service Provider, as and when due.

26 Penalties

26.1 For employees:

The Agency shall be responsible for deploying the required staff, employees etc. for the due performance of the scope of services and in case any of the employees are absent on a particular day/shift, the Successful Bidder shall immediately deploy equally qualified or trained or better trained employee/staff and if the Agency fails to comply with this clause Client shall have the right to impose penalty as mentioned below:

Standards	Measures	Penalty Points
Workforce Quantity	Short deployment from the agreed number of workforces for deployment >95%	5 points per man-day
	Short deployment from the agreed number of workforces for deployment <95%	10 point per man-day
	Short deployment from the agreed number of workforces for deployment <90%	15 point per man-day
	Short deployment from the agreed number of workforces for deployment <80%	20 point per man-day
	Short deployment from the agreed number of workforces for deployment Continuously <50%	150 point per man-day

26.2 Penalties for non-compliance:

If the contractor fails to repair or rectify any or all defects and deficiencies in the defined timeline as following penalty schedule shall be applicable:

Repair or Rectification or Arranging the manpower of any or all defects and deficiencies	Penalty
Within the timeline	No penalty
After 72 hours of timeline up to 07 days	0.25% of the remunerations for the particular month
After 07 days of timeline up to 10 days	0.5% of the remunerations for the particular month
After 10 days of the timeline till resolution	1.0% of the remunerations for the particular month
These Penalties will be non-refundable upon completion of work.	

27 Changes in cost due to legislation:

- a. If the law of any local or duly constituted authority, or the introduction of any such state statute, Ordinance, decree, law regulations or bye-law which causes additional or reduced cost to the Service Provider other than under the first two sub- clauses of the clause in the execution of the works, such additional or reduced cost shall be certified by the Employer/Employer's Representative after examining the records provided by the claimant and shall be paid by or credited to the Employer.
- b. Notwithstanding the foregoing such additional or reduced cost shall not be separately paid or credited if:
 - I. The same shall have been reflected in the indexing of any of the inputs to the price adjustment in accordance with the provision of this clause 24.
 - II. The same shall have been taken into account by any other clauses of the contract.

28 Income Tax

28.1 Deduction will be made at source from the Service Provider's bill towards income Tax by the Employers as per prevailing rules of the Income Tax Authority.

29 Taxes

29.1 The rate quoted by the Service Provider shall be deemed to be inclusive of all Taxes including GST prevailing as on 30 days prior to submission of bid where applicable on materials/Services that have to be purchased for performance of the contract including completed items of work.

29.2 All the Taxes leviable for the service/ work (including material component) under the Contract shall be borne by the Service Provider and it shall not be reimbursed by the Employer.

29.3 Difference of payment due to any upward revision of GST Taxes (Except on those components whose price rise is fully compensated as per Clause no. 24, (Variation) during the period of contract shall be borne by the Employer. Such tax shall be paid by the Service Provider and it will be reimbursed by the Employer upon production and verification of proof of payment. Similarly, in the event of reduction GST on any or all materials purchased by the Service Provider for completion of the service/work under contract, the Service Provider shall pass on this benefit to the Employer. For above purpose, the Service Provider shall produce a certificate from their auditor/ Chartered Accountants/ Tax consultants giving year wise details of purchases, along with the proof. The Employer will reimburse or deduct as the case may be such amount, after scrutiny of the claim at the time of final payment of the bill.

30 Errors, Omissions and Discrepancies

30.1 The several documents forming the contract are essential parts of the contract and a requirement occurring in one is as binding as through occurring in all they are intended to be mutually explanatory and complementary and to describe and provide for a complete work. In the event of any discrepancy in the several documents forming the contract or in any one document, the order mentioned under clause 1 of Service Level Agreement shall be applied.

30.2 In the case of defective description or ambiguity, the Employer/Employers representative is entitled to issue further instructions directing in what manner the work is to be carried out. The Service Provider shall point out any apparent error or omission in the tender documents while submitting the tender and particularly while signing the contract. The Service Provider cannot take any advantage of any apparent error or omission in the tender document and if the Service Provider fails to bring out the apparent error or omission to the notice of the Employer in writing, he shall have no right to claim which may arise due to such error or omission subsequently and the decision of the Employer in this regard shall be final and binding to the Service Provider.

30.3 Typographical error leading to absurdity shall be ignored and correct technical, financial and legal meaning of such errors shall be considered.

31 Old Curiosities

31.1 In the event of discovery by the Service Provider or his employees during the service/work, of any gold, silver, oil or other minerals of any description and precious stones, treasures, coins, antiques, relic, fossil or other articles or value of interest whether geological, archaeological or any other such treasure and other things shall be deemed to be the absolute property of the Employer and the Service Provider shall duly preserve the same to the satisfaction of the Employer/Employer's Representative, from time to time and deliver the same to such persons as the Employer/Employer's Representative may appoint.

31.2 The Service Provider shall take all reasonable precautions to prevent his workmen or any other person from removing or damaging any such articles or things, immediately after the discovery there of and before removal acquaint the Employer/Employer's Representative with such discovery and carry out his order for the disposal of the same.

32 Safety Provisions

32.1 The Service Provider in his operations shall arrange for the safety measure as required inclusive of the provisions in the latest safety manual published by the Central and State Government, In case the Service Provider fails to make such arrangements, the Employer/Employer's Representatives shall be entitled to cause them to be provided and to recover the costs there of from the Service Provider.

32.2 For failure to comply with the provisions of the Safety Manual the Service Provider shall, without prejudice to any other liabilities, pay to the Employer a sum not exceeding Rupees one thousand per day for each day default.

33 Labour Compensation under the Workman's Compensation Act

33.1 The Service Provider shall be responsible for and shall pay any compensation to his workmen payable under the workmen's compensation Act 1923 (VIII of 1923) (hereinafter called the said Act) for injuries causes to the workmen. If such compensation is paid by Employer as principle employer under sub-section (1) of section 12 of the said Act, on behalf of the Service Provider, it shall be recoverable by the Employer from the Service Provider under sub-section (2) of the said section. Such compensation shall be recovered in the manner as decided by the Employer/Employer's Representative.

33.2 The Service Provider shall be responsible for and shall pay the expenses of providing medical aid to any workmen who may suffer a body injury as a result of an accident. If such expenses are incurred by Employer, the same shall be recoverable from the Service Provider forthwith and be deducted without prejudice to any other remedy of Employer from any amount due or that may become due to the Service Provider.

33.3 The Service Provider shall provide all necessary personal safety equipment and first aid apparatus available for the use of the persons employed on the site and shall maintain the same in suitable condition for immediate use at any time and shall comply with the following regulations in connection therewith:

- I. The workers shall be required to use the equipment so provided by the Service Provider and the Service Provider shall take adequate steps to ensure proper use of the equipment by those concerned;
- II. When work is carried out in proximity of any place where there is risk of drowning, all necessary steps shall be taken for the prompt rescue of any person in danger;
- III. Adequate provision shall be made for prompt first aid treatment of all injuries likely to be sustained during the course of the work.

33.4 Employment of famine or other labour: The Service Provider shall employ any famine, convict or other labour of particular kind or class, if ordered in writing to do so by the Employer/Employer's Representative.

33.5 Details of labourers employed

- I. The Service Provider shall not employ in connection with the works any person who has not completed his Eighteen (18) years of age.
- II. The Service Provider shall furnish to the Employer/Employer's Representative information about various categories of labours employed by him in the form and at such interval as may be specified.
- III. The Service Provider shall in respect of labour employed by him comply with or cause to be complied with the provisions of the various labour laws and rules and regulations as applicable to them in regard to all matters provided therein and shall identify the Employer in respect of all claims that may be made against the Employer for non-compliance thereof by the Service Provider.

33.6 Notwithstanding, anything contained herein the Employer/Employer's Representative may take such action as may be necessary for compliance of the various labour laws and recover the costs thereof from the Service Provider.

- I. In the event of the Service Provider committing a default or breach any of the provisions of the labour laws and rules and regulations applicable, the Service Provider shall, without prejudice to any other liability under the Act, pay to Employer a sum not exceeding Rupees one thousand per day for each of the defaults subject to a maximum of one percent of the tendered amount.
- II. The Service Provider should, as far as possible, obtain his requirement of labours, skilled and unskilled, from the nearest Employment Exchanges so as to utilize the local employment potential. If there are no local Employment Exchanges or such Exchanges are not able to provide the required labour locally, suitable available labours should be utilized to the

maximum extent possible. The Service Provider shall have to engage local labour and person seeking employment where available on normal rate.

33.7 Fair Wages

- I. If a Service Provider fails to pay within '7' (Seven) days to any the labour(s)/worker(s) the minimum wages prescribed by the Government under the minimum wages Act 1948 as in force from time to time, the Employer/Employer's Representative shall be at liberty to deduct the amount payable by the Service Provider to the labour/worker from his (Service Provider's) bills or deposit(s) after making due inquiries and establishing claims of the labour(s)/worker(s).
- II. The Service Provider shall not be entitled to any payment of compensation on account of any loss that the Service Provider may have to incur on account of the action as aforesaid. Before the action as aforesaid, is enforced, a notice in writing to the Service Provider shall be issued by the Employer/Employer's Representative to pay the wages as per Minimum wages Act in force at the relevant time. If Service Provider does not act as aforesaid within seven days then the action contemplated as above shall be taken against him.

33.8 Local labour on normal rates. The Service Provider shall have to engage local and person seeking employment where available on normal rates.

34 Labour Reports

34.1 The Service Provider shall submit the following reports to the Employer/Employer's Representative:

- I. A daily report in the form as may be prescribed of the strength of labour both skilled and unskilled employed by him on the work(s). The Service Provider shall increase or decrease the strength both skilled and unskilled, if directed by the Employer/Employer's Representative. The submission of such report shall not, however relieve the Service Provider of his responsibilities and duties regarding progress or any other obligations under the contract.
- II. A classified weekly return in the prescribed form of the number of person employed on the works during the preceding week.
- III. A weekly medical report in the prescribed form showing the health of the Service Provider's camp, the number of person ill or incapacitated and the nature of their illness.
- IV. A report of any accident, which may have occurred to be sent within 24 hours of the occurrence.

35 Employment of Scarcity Labor

35.1 If Government declares a state of scarcity or famine to exist in any village situated within 16 kilometres of the work, the Service Provider shall employ upon such parts of the works, as are suitable for unskilled labour, any person, certified to him by the Employer/Employer's Representative or by any persons to whom, the Employer/Employer's Representative may have delegated this duty in writing to be in need of relief and shall be bound to pay to such persons, wages not below the minimum which Government may have fixed in this behalf. Any dispute which may arise in connection with the implementation of the Clause shall be decided by the Employer/Employer's Representative whose decision shall be final and binding on the Service Provider.

36 Insurance

36.1 The Service Provider shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts as may be necessary to protect himself against all the usual hazards or risks or loss. The form and limits of such insurance and the company together with the under writing thereof in each case, shall be such as will be acceptable to the Employer but, regardless of such acceptance, it shall be the responsibility of the Service Provider to maintain adequate insurance at all-time at least to cover:

- I. Workmen's compensation in accordance with the law in force from time to time.
- II. Third Party liability insurance with a coverage for Rs.50,00,000/- (Rupees Fifty Lakhs Only) for the period of Services.
- III. Failure of the Service Provider to maintain adequate insurance coverage shall not relieve him of any contractual responsibility.

36.2 Attested copies of certificate or policies of insurance shall be filed with the Employer prior to starting any work on this contract. The certificates shall state that fifty days advance written notice will be given to the Employer before any policy covered thereby is changed, cancelled or expired.

37 Observance of Laws, Local Regulations

37.1 The Service Provider shall conform to all laws of the land and regulations and bye- laws of any local authority and of any water or electricity supply companies with whose system the structure is proposed to be constructed. He shall before making any variations from the drawings or specifications that may be necessitated for so conforming, give to the Employer/Employer's Representative a written notice, specifying the variations proposed to be made and the reasons for the Service Provider does not receive such instructions within seven days, he shall proceed with the work conforming to the provisions, regulations or bye laws in question and any variation in the drawing or specifications so necessitated shall be dealt with under the clause 1.35. The Service Provider shall give notices required by the said Acts, regulations or bye-laws and bear the required fees in connection therewith. He shall also ensure that no attachments are made against materials for works related to the Contracts. The Service Provider shall protect and indemnify the Employer against all claims or liabilities arising from or based on the violation of such laws, ordinances regulations, bye-laws, decrees or attachments by him or by his employees. The Service Provider shall also notify Employer in case any other unforeseen permit / NOC required to carry out the work.

38 Force Majeure

38.1 Neither party shall be liable to the other for any loss or damage occasioned / caused by or arising out of act of God and in particular "Unprecedented floods", volcanic eruption, earthquake or other convulsion of nature and other acts, such as but not restricted to invasion, the act of foreign countries, hostilities or war like operations before or after declaration of war rebellion military or usurped power (but excluding strikes and lockouts) which prevent performance of the contract and which could not have been foreseen or avoided by a prudent person.

Note: "Unprecedented flood" means the flood crossing the highest observed flood level which is on the available record.

38.2 If any loss or damage occurs to the works, or any part thereof, including materials or plant intended for incorporation, during the period under the Service Provider's responsibility, regardless of the cause, the Service Provider shall, at their own expense, rectify such loss or damage. This will ensure that the permanent works fully comply with the contract provisions to the satisfaction of the Engineer.

39 Claims

39.1 The Service Provider shall not be entitled to any claims from the Employer, except where explicitly permitted by the conditions of this contract. In such instances, the Service Provider must submit a written claim to the Employer or the Employer's Representative within one month of the occurrence of the cause for such a claim.

40 Rescinding of Contract in Case of Subletting Contract or Service Provider Becomes Insolvent

40.1 The entire contract shall not be assigned or sublet. However, the Employer may permit subletting of up to 40% of the work, provided the sub-Service Provider meets the requirements of the work to be sublet. If the Service Provider assigns or sublets the contract, or attempts to do so, or becomes insolvent, or initiates proceedings for insolvency, or makes any compromise with creditors, the Employer's Representative may revoke the contract by written notice. Furthermore, if any bribe, gratuity, gift, loan, perquisite, reward, or advantage, whether pecuniary or otherwise, is directly or indirectly offered or given by the Service Provider or any of their employees or agents to any public officer or person employed by the Employer in relation to their duties, or if any such officer or person becomes directly or indirectly interested in the contract, the Employer's Representative may withdraw the contract by written notice. Upon rescission of the contract, the Service Provider's Performance Security shall be forfeited. Additionally, the Service Provider shall not be entitled to recover or be paid for any work performed under the contract.

41 Change in Constitution of Firm to be notified

41.1 In the case of a Tender by firm partnership or limited company, any change in its constitution shall be forthwith notified by the Service Provider to the Employer's Representative for his information.

42 Termination

42.1 By the Employer: The Client may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in this clause:

- I. if the Service Provider do not remedy a failure in the performance of their obligations under the Contract, within a period of thirty (30) days', after being notified or within such further period as the Client may have subsequently approved in writing;
- II. within thirty (30) days, if the Service Provider become insolvent or bankrupt;
- III. if, as the result of Force Majeure, the Service Provider are unable to perform a material portion of the Services for a period of not less than sixty (60) days;
- IV. within thirty (30) days, if the Service Provider fails to comply with any final decision reached as a result of arbitration proceedings pursuant to relevant clauses hereof;
- V. within thirty (30) days, if the Service Provider, in the judgment of the Client has engaged in Corrupt or Fraudulent Practices in competing for or in executing the Contract;
- VI. if the Employer, in its sole discretion and for any reason whatsoever, within a period of thirty (30) days' decides to terminate this Contract.

42.2 By the Service Provider: The Service Provider may terminate this Contract, by not less than thirty (30) day's' written notice to the Employer, such notice to be given after the occurrence of the events specified in this clause:

- I. if the Employer fails to pay any money due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to relevant clauses hereof within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- II. if, as the result of Force Majeure, the Service Provider are unable to perform a material portion of the work for a period of not less than sixty (60) days.

42.3 Cessation of Rights and Obligations: Upon termination of this Contract pursuant to actual Termination, or upon expiration of this Contract pursuant to relevant clause hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in relevant clause hereof, (iii) the Service Provider's obligation to permit inspection, copying and auditing of their accounts and records (iv) the rights of indemnity of the Client v) any right which a Party may have under the Applicable Law.

42.4 Cessation of Services: Upon termination of this Contract by notice of either Party to the other pursuant to relevant clauses hereof, the Service Provider shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to the work done by the Service Provider and equipment and materials furnished by the Client, the Service Provider shall handover all project documents under procedure described in this contract.

42.5 Payment upon termination: Upon termination of this Contract, the Employer will make the following payments to the Service Provider:

- I. Payment pursuant to satisfactorily performed work prior to the effective date of termination.

42.6 Disputes about Events of Termination: If either Party disputes Termination of the contract under relevant clauses hereof, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration under relevant clauses hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

43 Arbitration

43.1 If any dispute or difference of any kind whatsoever arises between the parties in connection with or arising out of or relating to or under this Contract, the parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of thirty (30) days from the date on which the above-mentioned dispute or difference arose, such dispute or difference shall be finally settled by arbitration. The arbitral tribunal shall consist of a sole arbitrator appointed by mutual agreement of the parties. In case of failure of the parties to mutually agree on the name of a sole arbitrator, the arbitral tribunal shall consist of three arbitrators. Each party shall appoint one arbitrator and the two arbitrators so appointed shall jointly appoint the third arbitrator. The seat of arbitration shall be Gandhinagar, Gujarat and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996 shall govern the arbitral proceedings. The award rendered by the arbitral tribunal shall be final and binding on the parties.