



General Conditions of Contract

**STYRENIX PERFORMANCE MATERIALS
LIMITED**

GENERAL CONDITIONS OF CONTRACT

General Conditions of Contract

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1 DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

The following capitalized terms used in the CONTRACT DOCUMENTS have the following meanings assigned to such terms, namely:

- 1.1.1 “AFFILIATE” means, with respect to any PERSON, any other PERSON directly or indirectly controlling, controlled by or under direct, indirect or common control with, such PERSON. For the purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such PERSON, whether through the ownership of voting securities, by agreement with respect to the voting of securities, by other agreement conferring control over management or policy decisions, by virtue of the power to control the composition of the board of directors or managers, or otherwise. The terms “controlling” and “controlled” shall have correlative meanings.
- 1.1.2 “ANNEXURES” mean any additional documents that are labelled as an annexure, enclosure, appendix, schedule, or by any other name, and attached to this CONTRACT.
- 1.1.3 “APPLICABLE LAW” means, with respect to any domestic or foreign national, federal, regional, state, provincial, town, city, municipal or other jurisdiction, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, notification, decree, judgment, decision, certificate, injunction, or conditions of any registration, license, permit, authorization, guideline, governmental approval, consent or requirement of any GOVERNMENTAL AUTHORITY of such jurisdiction, as construed from time to time by any GOVERNMENTAL AUTHORITY of such jurisdiction, in each case that is applicable to the WORK, this CONTRACT or CONTRACTOR’S obligations under the CONTRACT DOCUMENTS.
- 1.1.4 “APPLICABLE PERMIT” means any license, authorization, certification, filing, recording, permit or other approval with or of any GOVERNMENTAL AUTHORITY, including, without limitation, each and every environmental, construction or operating permit and any agreement, consent or approval from or with any other PERSON that is required by any APPLICABLE LAW or that is otherwise necessary for the performance of WORK.
- 1.1.5 “APPROVED SUPPLIERS” mean sources, suppliers, and manufacturers of CONSUMABLES and MATERIALS that are approved in writing by the COMPANY.
- 1.1.6 “ARBITRATION ACT” is defined in Section 32.1.
- 1.1.7 “ARBITRATION NOTICE” is defined in Section 32.1.
- 1.1.8 “ARBITRATION TRIBUNAL” is defined in Section 32.2.
- 1.1.9 “AUTHORIZED REPRESENTATIVES” mean the representatives of the COMPANY or CONTRACTOR, as the case may be, who are duly empowered and authorized by the applicable PARTY to act for and on behalf of it. Each PARTY may change its AUTHORIZED REPRESENTATIVES from time to time by written notice to the other PARTY.

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- 1.1.10 "AWARD" is defined in Section 32.3.
- 1.1.11 "WORK ORDER" Order issued by COMPANY to CONTRACTOR
- 1.1.12 "BUSINESS DAY" shall mean a day other than a Sunday on which banks in Vadodara, India are open for business.
- 1.1.13 "CHANGE" is defined in Section 21.1.
- 1.1.14 "CHANGE ORDER" is defined in Section 21.1.
- 1.1.15 "CLAIM" means a written demand or assertion by a PARTY (i) seeking an adjustment of one or more of the CONTRACT PRICE, SCHEDULED DATES or COMPLETION DATE; or (ii) seeking to recover any LOSSES with respect to this CONTRACT; or (iii) seeking to draw amounts under any PERFORMANCE SECURITY.
- 1.1.16 "COMPANY" is defined in the WORK ORDER.
- 1.1.17 "COMPANY INDEMNIFIED PARTIES" means the COMPANY, its AFFILIATES, and their respective directors, officers, agents, representatives and employees.
- 1.1.18 "COMPANY MATERIAL" means any MATERIALS or CONSUMABLES made available by the COMPANY to CONTRACTOR for incorporation into the WORK, affixing into the FACILITY or to be used by CONTRACTOR in a manner specified by the COMPANY to fulfill the CONTRACTOR'S obligations under this CONTRACT.
- 1.1.19 "COMPANY PERSONNEL" means the COMPANY'S employees and other personnel deployed by the COMPANY with respect to the WORK but excluding any MANPOWER arranged by the COMPANY.
- 1.1.20 "COMPANY'S REPRESENTATIVE" is defined in Section 9.3.
- 1.1.21 "COMPANY'S SAFETY STANDARDS" mean the COMPANY'S health, safety, and environmental management system policies, practices.
- 1.1.22 "COMPLETION DATE" means the date specified in the PROGRESS SCHEDULE for the completion of all WORK.
- 1.1.23 "CONFIDENTIAL INFORMATION" means, with respect to a PARTY, the confidential and proprietary information of such PARTY, including inventions, ideas, processes, methods, copyrights, patents, techniques, formulas, computer programs, hardware, specifications, prototypes, designs, know-how, drawings, marketing plans, financial data, customer lists, referral and vendor sources, policies and other procedures, past, present and future research, development, business activities, products, services and technical knowledge and other information in written, oral, physical or sample form.
- 1.1.24 "CONFIDENTIALITY AGREEMENT" means any agreement with respect to confidentiality or non-disclosure of TECHNICAL INFORMATION entered into between (i) the COMPANY and CONTRACTOR or any SUBCONTRACTOR; (ii) a licensor of the TECHNICAL INFORMATION

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and CONTRACTOR or any SUBCONTRACTOR; or (iii) any combination of the foregoing PERSONS.

- 1.1.25 “CONSTRUCTION EQUIPMENT” means all of the tools, implements, apparatus, equipment, machinery, vehicles, structures, scaffolding, materials, systems, articles and things that are necessary for or used in the performance and testing of WORK or remedy of DEFECTS by CONTRACTOR or SUBCONTRACTOR but excluding CONSUMABLES and MATERIALS that are intended to be incorporated into the WORK.
- 1.1.26 “CONSUMABLES” mean all material consumed or intended to be consumed in the execution of the WORK.
- 1.1.27 “CONTRACT” means the totality of the agreement between the COMPANY and CONTRACTOR as expressed in the CONTRACT DOCUMENTS.
- 1.1.28 “CONTRACT AWARD” means the date on which the COMPANY awards the CONTRACT to CONTRACTOR.
- 1.1.29 “CONTRACT DOCUMENTS” means the following:
- (a) WORK ORDER, including any amendments thereto;
 - (b) SCOPE OF WORK;
 - (c) COMMERCIAL CONDITIONS;
 - (d) GENERAL CONDITIONS OF CONTRACT;
 - (e) DEVIATIONS;
 - (f) PLANS AND DRAWINGS;
 - (g) SPECIFICATIONS;
 - (h) ATTACHMENTS;
 - (i) EXHIBITS;
 - (j) any other document referred to in any of the documents referred to in clauses (a) through (i) above and incorporated herein by specific reference in such document; and
 - (k) any other document agreed by the PARTIES to constitute a part of the CONTRACT DOCUMENTS.
- 1.1.30 “CONTRACT PRICE” means the total consideration payable by the COMPANY with respect to the WORK and this CONTRACT.
- 1.1.31 “CONTRACT SITE INSTRUCTION” as defined by EIC.
- 1.1.32 “CONTRACTOR” is defined in the WORK ORDER.
- 1.1.33 “CONTRACTOR EVENT OF DEFAULT” is defined in Section 24.1.
- 1.1.34 “CONTRACTOR GROUP” means: (a) CONTRACTOR, (b) all SUBCONTRACTORS of any tier, (c) CONTRACTOR’S AFFILIATES, (d) successors and permitted assigns of the PERSONS described in the foregoing (a) and (b), and (c), and (e) the respective directors, officers,

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employees, agents and representatives of the PERSONS described in the foregoing (a), (b), (c) and (d).

- 1.1.35 "CONTRACTOR PERSONNEL" mean all personnel of CONTRACTOR, all personnel of SUBCONTRACTORS and all MANPOWER.
- 1.1.36 "CONTRACTOR'S REPRESENTATIVE" is defined in Section 9.2(a).
- 1.1.37 "CORPORATE GUARANTEE" as defined in Work Order.
- 1.1.38 "DEFECT" or "DEFECTIVE" means any defect, deficiency, error, failure, flaw, omission, damage, NON-CONFORMANCE, fault, inadequacy or discrepancy in the WORK or part or component thereof.
- 1.1.39 "DEFECT LIABILITY PERIOD" means the period mentioned in the WORK ORDER.
- 1.1.40 "DELIVERABLES" means any and all documents or materials prepared, delivered or provided by CONTRACTOR in any form, including in electronic or printed form, as part of the SCOPE OF WORK under this CONTRACT.
- 1.1.41 "DISPUTE" is defined in Section 31.1.
- 1.1.42 "ENCUMBRANCE" means any interest or equity of any PERSON (including any right to acquire, option or right of pre-emption) and any security, mortgage, charge, pledge, lien, assignment, hypothecation or other priority or security interest, deferred purchase, conditional sale, trust, lease and any other agreement or arrangement whatsoever having the same effect as security.
- 1.1.43 "ENVIRONMENTAL LAWS" mean all APPLICABLE LAWS relating to pollution, hazardous substances, hazardous wastes, petroleum or otherwise relating to protection of the environment, natural resources or human health, including The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, The Environment (Protection) Act, 1986, Environment (Protection) Rules, 1986, Hazardous Wastes (Management and Handling) Rules, 1989, and all other ordinances, rules, regulations, notification and orders.
- 1.1.44 "FACILITY" except as otherwise expressly provided elsewhere in this CONTRACT, the WORK shall be performed by CONTRACTOR with respect to _____ (the "FACILITY").
- 1.1.45 "FINAL BILL" is bill submitted at the end of completion of Job.
- 1.1.46 "FINAL COMPLETION CERTIFICATE" means the certificate issued by the COMPANY upon CONTRACT COMPLETION.
- 1.1.47 "FORCE MAJEURE" means each of the following events or occurrences:
- a. Acts of God, epidemic, earthquake, fire, explosion, or extraordinary weather conditions more severe than those normally and typically experienced in the affected geographic area;
 - b. Acts of a public enemy, war (declared or undeclared), terrorism, blockade, insurrection, riot or civil disturbance, or any exercise of police power by or on behalf of any public entity;

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- c. With respect to the COMPANY, the suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any APPLICABLE PERMIT required by the CONTRACT; or (ii) with respect to both the PARTIES a change in APPLICABLE LAW that materially prevents a PARTY'S performance of its responsibilities under the CONTRACT; provided that no such order, judgment, act, event or change is the result of the action or inaction of, or breach of the CONTRACT by, the PARTY relying thereon; or
- d. Strikes, boycotts or lockouts by a whole national category of workers except for any such strike, boycott or lockout limited to the employees of a SUBCONTRACTOR;

Provided, that any such event (i) has a material adverse impact on a PARTY'S ability to perform its responsibilities under the CONTRACT, and (ii) is beyond the reasonable control of the affected PARTY.

- 1.1.48 "GCC" means this GENERAL CONDITIONS OF CONTRACT.
- 1.1.49 "GOOD INDUSTRY PRACTICE" means the exercise of that degree of skill, diligence and prudence which is expected from a skilled, experienced and internationally recognized and reputable contractor engaged in the same type of undertaking under similar circumstances and acting in accordance with the prevailing laws, rules, regulations, codes and industry standards.
- 1.1.50 "GOVERNMENTAL AUTHORITY" means any national, federal, regional, state, province, town, city, municipal or other government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing.
- 1.1.51 "GUARANTEES AND WARRANTIES" means all of the guarantees, warranties and covenants of CONTRACTOR set forth this CONTRACT.
- 1.1.52 "HAZARDOUS MATERIAL" means all chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof, which are now or become in the future listed, defined or regulated in any manner by any APPLICABLE LAW, including ENVIRONMENTAL LAWS and the COMPANY'S SAFETY STANDARDS.
- 1.1.53 "ID CARD" is defined in Section 14.4.
- 1.1.54 "INR" means Indian Rupees.
- 1.1.55 "INFRINGEMENT CLAIM" is defined in Section 17.3.
- 1.1.56 "INSTRUCTION" means any written order or instruction given or issued by the COMPANY'S AUTHORIZED REPRESENTATIVE or the COMPANY'S REPRESENTATIVE with respect to this CONTRACT.
- 1.1.57 "INTELLECTUAL PROPERTY RIGHT" means trademarks, service marks, trade names, trade dress, logos, copyrights, rights of authorship, inventions, mask work rights, moral rights, patents, rights of inventorship, all applications, registrations and renewals in connection with any of the above, database rights, know-how, trade secrets, rights of publicity, privacy and/or defamation, rights under unfair competition and unfair trade practice laws, and all other intellectual and industrial property rights related thereto anywhere in the world.

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- 1.1.58 "LABOUR LAWS" means all APPLICABLE LAWS relating to employment and service conditions of labour, including The Workmen's Compensation Act, 1923, The Employees Provident Fund Act, 1952, The Employees State Insurance Act, 1948, The Contract Labour (Regulation and Abolition) Act 1970, and The Factories Act, 1948, The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979, The Employees' Provident Funds & Miscellaneous Provisions Act, 1952, The Minimum Wages Act, 1948, The Equal Remuneration Act, 1976, The Payment of Wages Act, 1936, The Payment of Bonus Act, 1965, The Payment of Gratuity Act, 1972 and all applicable rules, regulations, notifications, or orders thereunder.
- 1.1.59 "LOSSES" mean all losses, claims, damages, liabilities, amounts paid in settlement or otherwise and any cost or expense, including reasonable attorneys' fees (including any cost and expense reimbursable to attorneys'), whether or not a lawsuit or other proceeding is filed, and any levies, penalties, or any payments imposed by any GOVERNMENT AUTHORITY by reason of any non-compliance with or violation of APPLICABLE LAWS or APPLICABLE PERMITS.
- 1.1.60 "MAKE GOOD" or "MAKING GOOD" means to repair, correct, re-perform, replace, re-install or re-erect, with or without demolition, as appropriate, any part, section, or operation of the WORK or the FACILITY, including all testing and re-testing related thereto, such that the WORK and the FACILITY fully comply and conform with the CONTRACT DOCUMENTS.
- 1.1.61 "MANPOWER" means all personnel, including engineers, licensed personnel, general labour and/or contract labour (including skilled, semi skilled, unskilled), utilized in connection with the performance of the WORK, other than CONTRACTOR PERSONNEL and SUBCONTRACTOR personnel.
- 1.1.62 "MATERIALS" mean all of the materials, equipment, machinery, structures, supplies and all other goods required by the terms of this CONTRACT to be incorporated into the WORK or the FACILITY or to be used for the execution of the WORK, but shall not include any CONSUMABLES. For the avoidance of doubt, MATERIALS does not include any CONSTRUCTION EQUIPMENT.
- 1.1.63 "NON-CONFORMING" or "NON-CONFORMANCE" means the failure to comply and conform to the requirements set forth in the CONTRACT DOCUMENTS.
- 1.1.64 "NOTICE OF TERMINATION" means a notice terminating the CONTRACT provided by COMPANY to CONTRACTOR.
- 1.1.65 "ON-ACCOUNT PAYMENT" means advance payments made by the COMPANY to CONTRACTOR.
- 1.1.66 "OTHER CONTRACTORS" mean one or more PERSONS other than the CONTRACTOR, appointed by the COMPANY to render work or services in connection with the execution of the PROJECT.
- 1.1.67 "PARTY" means either the COMPANY or the CONTRACTOR, as the context requires, and "PARTIES" mean both the COMPANY and the CONTRACTOR.
- 1.1.68 "PERFORMANCE SECURITY" is defined in WORK ORDER.
- 1.1.69 "PERMANENT WORK" means all and every kind of structures of a permanent nature to be

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designed, specified, procured, constructed, manufactured, assembled, installed, tested, completed, commissioned by CONTRACTOR in accordance with this CONTRACT, and includes all related and ancillary work or services identified in or to be reasonably inferred as being within the SCOPE OF WORK.

- 1.1.70 "PERSON" means any individual, firm, corporation, limited liability company, voluntary association, partnership, joint venture, trust, limited organization, society, unincorporated organization, GOVERNMENTAL AUTHORITY or other legal entity or organization.
- 1.1.71 "PLANS AND DRAWINGS" mean maps, plans, tracings and prints and any detailed or working drawings that relate to the WORK (including any alteration, amendment or modification thereof, approved in writing by the COMPANY), either provided by the COMPANY or provided by CONTRACTOR as a part of the SCOPE OF WORK.
- 1.1.72 "PROGRESS SCHEDULE" means the schedule approved by the COMPANY for completion of the WORK and each item, section or part of the WORK.
- 1.1.73 "PROJECT" means the specific project, enterprise, endeavor or other development activities undertaken by or on behalf of the COMPANY to which the provision of WORK by CONTRACTOR relates..
- 1.1.74 "QA System" is defined in Section 10.1.
- 1.1.75 "QC System" is defined in Section 10.1.
- 1.1.76 "RUNNING ACCOUNT BILL" means a bill that sets forth amounts due to CONTRACTOR under this CONTRACT for the period specified therein.
- 1.1.77 "SCHEDULED DATE" means, with respect to an item, section or part of WORK, the date of completion for such item, section or part of WORK set forth in the PROGRESS SCHEDULE.
- 1.1.78 "SCHEDULE OF RATES" means the schedules mentioned in the WORK ORDER, which in respect of any part or item of WORK show the related rate of remuneration payable to the CONTRACTOR for the performance of such WORK.
- 1.1.79 "SCOPE OF WORK" means the totality of the CONTRACTOR'S obligations as mentioned in the WORK ORDER.
- 1.1.80 "SITE" means the location at which the FACILITY is to be located and includes the WORK SITE and SITE FACILITIES.
- 1.1.81 "SITE FACILITIES" means CONTRACTOR'S field or site offices, storage facilities, workshops, quarry rights for raw material and borrow areas and staff quarters or labour camps for CONTRACTOR PERSONNEL.
- 1.1.82 "SPECIFICATIONS" mean the various specifications included in WORK ORDER and includes other specifications as referred to or contained in this CONTRACT and any INSTRUCTIONS. If for any WORK no specifications have been referred to or are derivable from the CONTRACT DOCUMENTS, then the latest national and international standards referred to in this CONTRACT with respect to such WORK shall be considered to be its SPECIFICATIONS.

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- 1.1.83 "SUBCONTRACTOR" means any PERSON engaged by the CONTRACTOR in compliance with the terms of this CONTRACT for execution of any part of the WORK.
- 1.1.84 "SUSPENSION NOTICE" is defined in Section 22.1.
- 1.1.85 "TAXES" mean all taxes, levies, cess, duties, fees, charges and other assessments imposed or assessed in relation to this CONTRACT or its performance under any APPLICABLE LAW.
- 1.1.86 "TECHNICAL INFORMATION" means all technical and other information received, directly or indirectly, by the COMPANY, CONTRACTOR or any SUBCONTRACTOR from a licensor of the COMPANY with respect to the FACILITY or the PROJECT.
- 1.1.87 "TEMPORARY WORK" means every kind of work, construction work or structures of a temporary nature built on the WORK SITE in connection with the performance of the WORK, including access roads and rights of way to the WORK SITE, but not forming part of or intended to be permanently incorporated in the FACILITY.
- 1.1.88 "WORK" means, subject only to any express stipulation in this CONTRACT to the contrary, all work and services to be performed or provided by and the responsibilities and obligations of CONTRACTOR and any SUBCONTRACTORS described in this CONTRACT and any other activity, work or service that is necessary or required in order for CONTRACTOR to fulfill all of CONTRACTOR'S obligations and responsibilities under this CONTRACT in accordance with the CONTRACT DOCUMENTS.
- 1.1.89 "WORK ORDER" means the document entitled "Work Order" to which the documents referenced in Clause 1.1.29 (b) through (k) are attached.
- 1.1.90 "WORK SITE" means any location designated by the COMPANY at which WORK is to be performed by CONTRACTOR.

1.2 INTERPRETATION

In this CONTRACT:

- 1.2.1 Any reference to any provision of an Act of Parliament or of State Legislation shall be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to all instruments, orders or regulations then in force, and references to the laws of India include the laws of any State forming part of the Republic of India.
- 1.2.2 The singular shall include plural and vice versa, and words denoting natural persons shall also apply to partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations and other entities.
- 1.2.3 The headings are inserted for convenience and are to be ignored for the purpose of construction. All references to Sections, Sub-sections, clauses, paragraphs and ANNEXURES are to Sections, Sub-sections, clauses, paragraphs and ANNEXURES in or to this CONTRACT unless otherwise specified. The term "day" shall mean a calendar day, unless otherwise specified. If any monetary obligation falls due on a Saturday, Sunday or a public holiday, such obligation shall be deemed due on the next BUSINESS DAY thereafter.

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- 1.2.4 Unless otherwise required by the context in which any term appears, capitalized terms used in this CONTRACT shall have the meanings specified in this GCC or as defined elsewhere in this CONTRACT. For the purposes of this CONTRACT, the words and abbreviations that have well-known technical or trade meanings used but not defined in this CONTRACT, shall be construed in accordance with such recognized technical or trade meanings.
- 1.2.5 The words "include" and "including" are to be construed without limitation. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The term "or" is not exclusive. The word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends, and such phrase shall not mean simply "if." The words "herein," "hereof" and "hereunder" and words of similar import when used shall refer to this CONTRACT as a whole and not to any particular section or subsection of this CONTRACT.
- 1.2.6 The provisions of all parts of this CONTRACT shall be construed as a whole.

2 WORK LOCATIONS AND EXAMINING DOCUMENTS

- 2.1 CONTRACTOR represents and warrants that it has examined all CONTRACT DOCUMENTS and fully acquainted itself with the WORK SITE, the SITE and their surroundings and all other conditions relevant to the WORK. CONTRACTOR has ascertained and evaluated the nature and location of the SITE and WORK SITE, the general character of existing or adjacent work or structures, the process and the availability and quality of CONSUMABLES, MATERIALS, MANPOWER and CONSTRUCTION EQUIPMENT and local conditions and APPLICABLE LAWS (including ENVIRONMENTAL LAWS and LABOUR LAWS) which might affect its performance of WORK and the cost thereof and has satisfied itself that the GUARANTEES AND WARRANTIES can be met and all WORK can be completed as herein contemplated in full compliance with this CONTRACT. Any information on the WORK SITE, the SITE and local conditions at the WORK SITE and the SITE furnished by the COMPANY or contained in the SCOPE OF WORK, the SPECIFICATIONS or the PLANS AND DRAWINGS are provided on an as-is basis without any warranty by the COMPANY and are furnished only for the convenience of the CONTRACTOR.
- 2.2 If CONTRACTOR knows or should have known that any ambiguity, error, omission, conflict, defect or error exists or has occurred in, or any clarification is needed with respect to any provision of this CONTRACT, including any PLANS AND DRAWINGS, SPECIFICATIONS, WORK ORDER, INSTRUCTIONS, CONTRACT DOCUMENTS or WORK SITE conditions, then CONTRACTOR shall prior to commencing WORK, request in writing that the COMPANY issue related INSTRUCTIONS. If CONTRACTOR proceeds with any WORK contrary or prior to such INSTRUCTIONS, then such WORK shall be deemed to be NON-CONFORMING and CONTRACTOR shall be liable to MAKE GOOD such WORK at its cost and expense.
- 2.3 If CONTRACTOR knows or should have known that, any DEFECT exists or has occurred in work done or services performed by others, CONTRACTOR shall notify the COMPANY in writing, and the COMPANY will issue necessary INSTRUCTIONS to be followed. If CONTRACTOR proceeds with any WORK contrary or prior to such INSTRUCTIONS, then such WORK shall be deemed to be NON-CONFORMING and CONTRACTOR shall be liable to MAKE GOOD such WORK at its cost and expense.
- 2.4 Any services, goods or other work, shown, indicated or included in any CONTRACT

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DOCUMENT shall be deemed to form part of the WORK. WORK ORDER may not be complete in every detail and is intended to provide general overall guidance to enable CONTRACTOR to understand and perform all of the WORK required under this CONTRACT in addition to the specific details thereof as may be set forth in such WORK ORDER. Any activity, work or service that is necessary or required in order for CONTRACTOR to fulfill all of CONTRACTOR'S obligations and responsibilities under this CONTRACT shall nevertheless form a part of and be included in the PART I - WORK ORDER even if not specifically described in the CONTRACT DOCUMENTS.

3 INTENT OF SPECIFICATIONS AND PLANS AND DRAWINGS

- 3.1 CONTRACTOR shall fully comply with and adhere to the CONTRACT DOCUMENTS except to the extent CONTRACTOR knew or should have known of any defects or errors and notifies the COMPANY as required under Section 2.2. Detailed working PLANS AND DRAWINGS (if any) required to be furnished by the COMPANY for the actual execution of the WORK shall be furnished from time to time as and when required during the progress of the WORK.
- 3.2 CONTRACTOR shall be responsible to obtain from the COMPANY detailed PLANS AND DRAWINGS required for the proper execution of WORK sufficiently in advance before the stage of commencement of the relevant part of WORK. Failure to obtain such documentation shall not affect any of CONTRACTOR'S obligations under CONTRACT nor affect any SCHEDULED DATES.
- 3.3 Where CONTRACTOR is required to prepare or furnish any PLANS AND DRAWINGS in respect of WORK or part thereof, CONTRACTOR shall, at least seven (7) days before the proposed date of commencement of the relevant WORK, submit such PLANS AND DRAWINGS to the COMPANY for approval. The COMPANY shall be entitled at any time to approve or suggest one or more amendments or modifications to such PLANS AND DRAWINGS furnished by CONTRACTOR. The CONTRACTOR shall, after consultation with the COMPANY, implement and cause such PLANS AND DRAWINGS to be accordingly amended or modified, provided, however, that, no such amendment or modification to PLANS AND DRAWINGS suggested by the COMPANY shall relieve CONTRACTOR of any of its obligations, responsibilities or liabilities under this CONTRACT. CONTRACTOR shall be solely responsible with respect to the utility and suitability of PLANS AND DRAWINGS, and conformance of PLANS AND DRAWINGS with the WORK ORDER. Any such approval or suggestion by the COMPANY shall be only an assistance to CONTRACTOR without any attendant liability upon the COMPANY.
- 3.4 CONTRACTOR shall not deviate from the WORK ORDER without the prior written approval of the COMPANY. CONTRACTOR shall not substitute MATERIALS for those specified, nor shall CONTRACTOR furnish or utilize "or equal" items without the prior written approval of the COMPANY.

4 PLANS AND DRAWINGS AND SPECIFICATIONS: ISSUED FOR CONSTRUCTION

- 4.1 WORK shall be performed using only the SPECIFICATIONS and PLANS AND DRAWINGS marked with "Issued for Construction" or equivalent words by the COMPANY. Such indication shall not relieve CONTRACTOR of any obligations under this CONTRACT nor constitute assumption of responsibility by the COMPANY for the accuracy or adequacy of any information or WORK performed relating to such SPECIFICATIONS or PLANS AND DRAWINGS.

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- 4.2 CONTRACTOR shall perform all WORK as specified in the "Issued for Construction" SPECIFICATIONS or PLANS AND DRAWINGS except for any WORK marked "HOLD" on such documents. Upon CONTRACTOR'S receipt of revised "Issued for Construction" SPECIFICATIONS or PLANS AND DRAWINGS with the "HOLD" markings deleted, CONTRACTOR shall diligently perform such WORK previously marked with "HOLD" instructions.
- 4.3 If any SCHEDULED DATES or the COMPLETION DATE will be delayed by CONTRACTOR'S compliance with "HOLD" markings on the SPECIFICATIONS and PLANS AND DRAWINGS, CONTRACTOR shall report such delay to the COMPANY in writing not less than five (5) BUSINESS DAYS prior to the start of the delay.
- 4.4 CONTRACTOR shall maintain at the WORK SITE a complete and current set of "Issued for Construction" SPECIFICATIONS and PLANS AND DRAWINGS and the COMPANY shall be entitled to inspect such SPECIFICATIONS and PLANS AND DRAWINGS at any time during the execution of the WORK.
- 4.5 All SPECIFICATIONS and PLANS AND DRAWINGS shall be and remains the property of the COMPANY and shall be returned or delivered to the COMPANY on the completion of all of the WORK or early termination of this CONTRACT for any reason, whichever is earlier.

5 ALTERATIONS IN SPECIFICATION, PLANS AND DRAWINGS, WORK ORDER

- 5.1 Notwithstanding anything contained to the contrary in this CONTRACT, the COMPANY shall, by written notice to CONTRACTOR, be entitled at any time before the commencement of WORK or during the execution of WORK to:
- (a) alter, amend or modify any PLANS AND DRAWINGS;
 - (b) change any SPECIFICATIONS; and
 - (c) Increase or reduce the SCOPE OF WORK.

Such actions by the COMPANY may constitute a CHANGE subject to Section 21 hereof.

- 5.2 CONTRACTOR shall, following its receipt of amended PLANS AND DRAWINGS or SPECIFICATIONS or SCOPE OF WORK, perform WORK in accordance with such amended SPECIFICATIONS, PLANS AND DRAWINGS and WORK ORDER subject to the approval of any applicable CHANGE. If CONTRACTOR performs any WORK without regard to any CHANGE ORDER applicable thereto, notwithstanding any payment made to CONTRACTOR, such WORK may be deemed by the COMPANY to be NON-CONFORMING and CONTRACTOR shall be liable to MAKE GOOD such NON-CONFORMING WORK at its cost and expense without affecting any SCHEDULED DATES or COMPLETION DATE, and, if it affects any SCHEDULED DATES or COMPLETION DATE, without being entitled to any extension of time.

6 WORK QUALITY STANDARDS

- 6.1 CONTRACTOR guarantees that:
- (a) all of the WORK shall comply strictly with this CONTRACT, including all PLANS AND

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DRAWINGS, SPECIFICATIONS, WORK ORDER and standards referred to in this CONTRACT or furnished by the COMPANY, and that all of the WORK shall be free from all DEFECTS.

- (b) All CONSUMABLES and MATERIALS furnished by CONTRACTOR for WORK shall be new, free from all DEFECTS, merchantable, of the most suitable grade and fit for their intended purposes and shall fully conform to the SPECIFICATIONS, PLANS AND DRAWINGS.
 - (c) All WORK will be free and clear of any and all claims, ENCUMBRANCES and rights of any PERSON other than the COMPANY, including APPROVED SUPPLIERS, CONTRACTOR PERSONNEL, SUBCONTRACTORS, and SUBCONTRACTOR personnel.
 - (d) All WORK shall (i) comply with all APPLICABLE LAWS; (ii) not infringe any INTELLECTUAL PROPERTY RIGHTS of any PERSON; (iii) be performed by qualified and experienced personnel in accordance with GOOD INDUSTRY PRACTICE; and (iv) satisfy all GUARANTEES AND WARRANTIES.
- 6.2 CONTRACTOR'S guarantees set forth in Section 6.1 shall extend through the end of DEFECT LIABILITY PERIOD. Any period wherein the WORK is not available for use due to DEFECTS shall extend the guarantee period by a period of time equal to such period of non-availability. In addition, all WORK performed by CONTRACTOR pursuant to MAKE GOOD obligations shall be subject to all obligations set forth in this Section 6.2 for a period of six (6) months from the date that the WORK is MADE GOOD or for the remainder of DEFECT LIABILITY PERIOD (as extended), whichever is longer.
- 6.3 If CONTRACTOR has been notified of any DEFECTS in WORK and fails to promptly MAKE GOOD, then the COMPANY shall have the right to MAKE GOOD by itself or through any other PERSON for the account of CONTRACTOR, and the CONTRACT PRICE shall be adjusted accordingly in the same manner as set out in greater detail in BACKCHARGES in WORK ORDER.
- 6.4 CONTRACTOR shall include, at a minimum, the foregoing guarantee requirements in any subcontract that it places.

7 CONSUMABLES, MATERIALS, MANPOWER AND CONSTRUCTION EQUIPMENT

7.1 Unless otherwise agreed in the WORK ORDER or elsewhere in this CONTRACT, CONTRACTOR shall, at its cost, be solely responsible for the deployment of all required CONTRACTOR PERSONNEL, furnishing all CONSUMABLES, MATERIALS and arranging all CONSTRUCTION EQUIPMENT for the execution, performance, accomplishment and completion of all WORK in accordance with this CONTRACT. Nothing in this CONTRACT shall imply that the COMPANY has an obligation to or has promised, either by conduct or otherwise, or is under any duty to supply any CONSUMABLES, MATERIALS, MANPOWER, CONTRACTOR PERSONNEL or CONSTRUCTION EQUIPMENT.

7.2 COMPANY MATERIAL

- (a) The COMPANY may make COMPANY MATERIAL available to CONTRACTOR. All

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COMPANY MATERIAL shall be and continue to remain the property of the COMPANY.

- (b) CONTRACTOR shall furnish to the COMPANY REPRESENTATIVE sufficiently in advance of requirement, a statement setting out the (i) quantity of each item of COMPANY MATERIAL required by CONTRACTOR; and (ii) the time when such supplies will be required.
- (c) CONTRACTOR shall use the COMPANY MATERIAL strictly in accordance with the SPECIFICATIONS and INSTRUCTIONS of the COMPANY. CONTRACTOR shall, and shall cause its SUBCONTRACTOR and CONTRACTOR PERSONNEL, to use the COMPANY MATERIAL judiciously without any wastage whatsoever and exclusively for performance of its obligation hereunder.
- (d) CONTRACTOR shall not remove the COMPANY MATERIAL from the SITE on any account whatsoever and the COMPANY REPRESENTATIVE may at any time inspect the place where such COMPANY MATERIALS are stored.
- (e) CONTRACTOR acknowledges that the COMPANY will issue the COMPANY MATERIAL to it in the available length and size and CONTRACTOR shall not be entitled to make any claims whatsoever on the COMPANY (including for additional payment) on account of issue of COMPANY MATERIAL in non-standard length or size.
- (f) COMPANY MATERIAL shall not be utilized by CONTRACTOR for any purpose other than the purpose specified by the COMPANY. It shall be the responsibility of CONTRACTOR to:
 - (i) take custody of such COMPANY MATERIAL and transport the same to the WORK SITE or workshop or storage facility at the SITE at its own cost and expense and with utmost care;
 - (ii) to check all COMPANY MATERIAL and verify that the quality and quantities provided are correct;
 - (iii) prepare and submit to the COMPANY on a monthly basis an updated inventory and statement of consumption of COMPANY MATERIAL;
 - (iv) undertake monthly or other reconciliations as requested by the COMPANY, and submit such reconciliations along with the RUNNING ACCOUNT BILL and the FINAL BILL in the form prescribed by the COMPANY;
 - (v) ensure that the consumption/ wastage of COMPANY MATERIAL does not exceed consumption/ wastage norms as defined by COMPANY or as otherwise prescribed and notified to CONTRACTOR by the COMPANY; and
 - (vi) Safeguard all COMPANY MATERIAL while in the custody or control of CONTRACTOR.
- (g) CONTRACTOR shall submit an account of all COMPANY MATERIAL used by it and return any surplus COMPANY MATERIAL to the COMPANY'S stores within fifteen (15)

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days of completion of WORK. Any COMPANY MATERIAL damaged, lost or destroyed as a result of CONTRACTOR'S negligence shall be replaced at CONTRACTOR'S expense.

- (h) The COMPANY hereby disclaims all guarantees and warranties, including any implied guarantees and warranties under this CONTRACT or law, in respect of any COMPANY MATERIAL furnished by the COMPANY to CONTRACTOR.

7.3 CONSUMABLES AND MATERIALS

- (a) Unless otherwise specified by the COMPANY in writing, all CONSUMABLES and MATERIALS supplied by CONTRACTOR shall be obtained from APPROVED SUPPLIERS. Notwithstanding the foregoing, CONTRACTOR shall be solely responsible to independently satisfy itself of the accessibility, suitability and sufficiency of one or more APPROVED SUPPLIERS and the quality and suitability of CONSUMABLES and MATERIALS available from such APPROVED SUPPLIERS. CONTRACTOR'S use of any APPROVED SUPPLIERS to supply CONSUMABLES and MATERIALS shall not relieve CONTRACTOR of any of its responsibilities and liabilities under this CONTRACT.
- (b) CONTRACTOR shall furnish to the COMPANY for written approval adequate samples of all MATERIALS intended to be used and incorporated in the WORK. Such samples shall be submitted before the applicable WORK is commenced permitting sufficient time for tests, inspection or examination thereof to the COMPANY. No CONSUMABLES or MATERIALS shall be used by CONTRACTOR unless such CONSUMABLES and MATERIALS are first approved in writing by the COMPANY. All MATERIALS incorporated in WORK shall conform to the samples approved by the COMPANY. CONTRACTOR shall be responsible to MAKE GOOD all DEFECTS in CONSUMABLES AND MATERIALS.
- (c) CONTRACTOR shall be solely responsible for all necessary expediting of its orders for CONSUMABLES and MATERIALS as required to avoid delays in the WORK.
- (d) CONTRACTOR shall, at its cost and risk, take delivery of the CONSUMABLES and MATERIALS from any of the delivery locations as notified by the COMPANY and also arrange for its loading and transportation to and unloading at the WORK SITE or other place of storage.
- (e) Good and clear title to all CONSUMABLES and MATERIALS furnished by CONTRACTOR under this CONTRACT for the WORK shall, except as expressly provided otherwise elsewhere in this CONTRACT, pass to the COMPANY upon the earlier of (i) payment for such CONSUMABLES and MATERIALS by the COMPANY, or (ii) Incorporation into the PERMANENT WORK or into the FACILITY.

7.4 CONTRACTOR PERSONNEL

- (a) Unless otherwise agreed by the COMPANY in writing, CONTRACTOR shall, at its cost, be solely responsible to deploy sufficient CONTRACTOR PERSONNEL of required categories and skills and competency, including specialized CONTRACTOR PERSONNEL for testing of the WORK and for the timely execution and performance of the WORK.

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- (b) The COMPANY does not and shall not be deemed to have any relationship, direct or indirect, with the CONTRACTOR PERSONNEL and CONTRACTOR shall be solely responsible for the CONTRACTOR PERSONNEL, including (i) their performance of the WORK and (ii) in relation to all service conditions of the CONTRACTOR PERSONNEL, including payment of all wages and salaries by CONTRACTOR and SUBCONTRACTOR for their respective personnel and MANPOWER. CONTRACTOR shall ensure that SUBCONTRACTOR shall, at all times, comply with all APPLICABLE LAWS (including LABOUR LAWS) in relation to the employment of CONTRACTOR PERSONNEL.
- (c) CONTRACTOR shall ensure that all CONTRACTOR PERSONNEL shall work in harmony and coordination with all other labor, including that of OTHER CONTRACTORS being used on the WORK SITE.

7.5 CONSTRUCTION EQUIPMENT

- (a) Unless otherwise specified by the COMPANY in writing, CONTRACTOR shall, at its cost, be responsible for arranging all CONSTRUCTION EQUIPMENT required for execution, performance, accomplishment and completion of all WORK in accordance with this CONTRACT. CONTRACTOR shall be responsible for full care and maintenance of all CONSTRUCTION EQUIPMENT. The CONSTRUCTION EQUIPMENT shall be deemed to be exclusively intended for the execution of WORK when brought on to the WORK SITE. CONTRACTOR shall not remove any major items of CONSTRUCTION EQUIPMENT from the WORK SITE without written the consent of the COMPANY. However, such consent shall not be required for vehicles transporting MATERIALS, CONSUMABLES or CONTRACTOR PERSONNEL.
- (b) If the COMPANY provides CONSTRUCTION EQUIPMENT, the charges for CONSTRUCTION EQUIPMENT provided by the COMPANY at the prevailing rates, terms and conditions prescribed by the COMPANY shall be adjusted from the CONTRACT PRICE accordingly.
- (c) CONTRACTOR shall:
 - (i) be responsible for the custody, safe-keeping and regular maintenance of all CONSTRUCTION EQUIPMENT;
 - (ii) Use and operate all CONSTRUCTION EQUIPMENT within their design limits and only with competent and trained personnel;
 - (iii) maintain and operate all CONSTRUCTION EQUIPMENT in accordance with the operations and maintenance manuals provided by manufacturer and GOOD INDUSTRY PRACTICE;
 - (iv) comply with INSTRUCTIONS with respect to the use and operation of the CONSTRUCTION EQUIPMENT;
 - (v) notify the COMPANY immediately on any repair work being required in respect of any CONSTRUCTION EQUIPMENT and shall not operate such equipment until such time it has been duly repaired. CONTRACTOR shall comply with all

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directions issued by COMPANY in respect of repair of such CONSTRUCTION EQUIPMENT;

- (vi) Maintain proper and accurate records of all CONSTRUCTION EQUIPMENT furnished to it by COMPANY for performance of the WORK, including (without limitation) maintaining equipment log books. The COMPANY may at any time by providing reasonable notice to CONTRACTOR, inspect such records;
 - (vii) not dispose off or otherwise part with the possession of any CONSTRUCTION EQUIPMENT, or create any encumbrances and/or third party rights or interests therein. CONTRACTOR shall not remove any CONSTRUCTION EQUIPMENT, or any part thereof, from the SITE nor shall CONTRACTOR do or purport to do anything whereby any CONSTRUCTION EQUIPMENT, or part thereof, may be seized or taken in execution or attached, destroyed or damaged or whereby the rights of the COMPANY thereto may be affected, destroyed or prejudiced in any manner whatsoever; and
 - (viii) not tamper with any COMPANY CONSTRUCTION EQUIPMENT or remove any nameplates or other signs therefrom.
- (d) CONTRACTOR shall ensure the return and delivery of the COMPANY'S CONSTRUCTION EQUIPMENT upon the completion of WORK, or early termination of CONTRACT, whichever is earlier, or as and when required by the COMPANY, in the same condition in which the COMPANY'S CONSTRUCTION EQUIPMENT was at the time of being made available by the COMPANY (normal wear and tear excepted).
- (e) The COMPANY and the COMPANY REPRESENTATIVE may at any time freely and without any let or hindrance by CONTRACTOR inspect, test and repair any CONSTRUCTION EQUIPMENT furnished to CONTRACTOR, and / or affix nameplates of the COMPANY thereto.

8 UTILITIES AND SITE FACILITIES

- 8.1 All utilities necessary for performance of WORK and the operation and use of SITE FACILITIES shall be as set forth in the WORK ORDER.
- 8.2 CONTRACTOR acknowledges that it does not have any, nor shall it acquire any right, title or interest in such land and the COMPANY may at any time require CONTRACTOR to cease to use such land. CONTRACTOR shall immediately on request by the COMPANY cease to use such land and remove all its equipment, materials, resources and all ancillary equipment and machinery, whether of permanent or temporary nature, from such land.

9 PERFORMANCE OF WORK

9.1 GENERAL

CONTRACTOR shall perform and execute all WORK in strict conformity with all CONTRACT DOCUMENTS and INSTRUCTIONS and in accordance with the PROGRESS SCHEDULE. The COMPANY may at any time, issue INSTRUCTIONS to CONTRACTOR regarding execution,

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prosecution, performance or completion of any WORK by CONTRACTOR or revise or revoke any INSTRUCTIONS previously issued. If CONTRACTOR requires any clarification with respect to any INSTRUCTIONS, CONTRACTOR shall immediately notify the COMPANY in writing, and shall not proceed further with WORK impacted by such INSTRUCTIONS until the COMPANY clarifies the applicable INSTRUCTIONS.

9.2 CONTRACTOR'S REPRESENTATIVE

- (a) CONTRACTOR shall within five (5) days of entering into this CONTRACT, appoint a primary contact person with respect to the WORK ("CONTRACTOR'S REPRESENTATIVE") and such CONTRACTOR'S REPRESENTATIVE shall have all authority necessary to act on CONTRACTOR'S behalf under this CONTRACT. CONTRACTOR'S REPRESENTATIVE shall direct CONTRACTOR'S performance of this CONTRACT and shall not be employed in any other capacity by CONTRACTOR or any other PERSON during the term of this CONTRACT. CONTRACTOR'S REPRESENTATIVE shall, on behalf of CONTRACTOR, receive all INSTRUCTIONS from the COMPANY. CONTRACTOR'S REPRESENTATIVE shall be responsible for and shall oversee all WORK at the WORK SITE and all actions and transactions and dealings on behalf of CONTRACTOR with the COMPANY in terms of this CONTRACT, including with respect to approval of PLANS AND DRAWINGS, COMPANY MATERIAL, CONSUMABLES, MATERIALS, CONSTRUCTION EQUIPMENT, CONTRACTOR PERSONNEL and receiving all notices under this CONTRACT.

CONTRACTOR shall ensure that the CONTRACTOR'S REPRESENTATIVE is present at the SITE at all times during normal working hours and at any other time notified by the COMPANY to receive INSTRUCTIONS.

- (b) Unless CONTRACTOR'S REPRESENTATIVE is named in this CONTRACT, CONTRACTOR shall, prior to the commencement of any WORK, submit to the COMPANY the name and particulars of the person CONTRACTOR proposes to appoint as CONTRACTOR'S REPRESENTATIVE. CONTRACTOR shall not, without the prior written consent of the COMPANY, revoke the appointment of CONTRACTOR'S REPRESENTATIVE or appoint a replacement. The COMPANY may request CONTRACTOR to replace CONTRACTOR'S REPRESENTATIVE if in the COMPANY'S sole discretion CONTRACTOR'S REPRESENTATIVE is not meeting the COMPANY'S requirements.
- (c) If the COMPANY requests CONTRACTOR'S REPRESENTATIVE be replaced, or if the appointed person fails to act as CONTRACTOR'S REPRESENTATIVE, or if CONTRACTOR'S REPRESENTATIVE is to be temporarily absent from the WORK SITE during the execution of any WORK, CONTRACTOR shall similarly submit the name and particulars of another suitable person for such appointment or replacement.
- (d) CONTRACTOR'S REPRESENTATIVE may delegate any of its powers, functions and authority to one or more of the CONTRACTOR PERSONNEL specifying each such CONTRACTOR PERSONNEL'S powers, functions and authority, and may at any time revoke such delegation. Any delegation or revocation shall not take effect until the COMPANY has received prior written notice signed by CONTRACTOR'S REPRESENTATIVE, naming such CONTRACTOR PERSONNEL and specifying the powers, functions and authority being delegated or revoked.

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9.3 The COMPANY'S REPRESENTATIVE

The COMPANY may appoint a representative to act for and on behalf of the COMPANY under this CONTRACT with respect to the execution of the WORK (such person being the "COMPANY REPRESENTATIVE"). Such appointment shall be in writing and executed by the COMPANY'S AUTHORIZED REPRESENTATIVE. The COMPANY may designate such additional personnel as may be required for the administration of the CONTRACT or otherwise required in relation to the CONTRACT.

9.4 CO-OPERATION WITH OTHER CONTRACTORS

CONTRACTOR shall co-operate with the COMPANY and OTHER CONTRACTORS. CONTRACTOR shall afford OTHER CONTRACTORS access to the WORK SITE and to all utilities and SITE FACILITIES as necessary or required for the OTHER CONTRACTORS to perform or deliver their respective services. CONTRACTOR acknowledges that CONTRACTOR and OTHER CONTRACTORS may be co-occupant of the SITE, and that the CONTRACTOR shall have no right to make any claim for any delay arising out or with respect to the sharing or use of the SITE with such OTHER CONTRACTORS.

9.5 WORK SITE

CONTRACTOR shall be fully responsible for and shall implement and maintain adequate protection for all WORK, MATERIALS, CONSUMABLES, CONSTRUCTION EQUIPMENT and other property of CONTRACTOR, COMPANY and OTHER CONTRACTORS within the care, custody and control of the CONTRACTOR, from any loss, damage, destruction, injury or theft, including providing security and watchpersons when necessary. CONTRACTOR shall provide, fix and maintain all stakes, templates, level marks, profiles and the like and shall take all precautions necessary to prevent their removal or disturbance. CONTRACTOR shall solely be responsible for the consequence of such removal or disturbance and for the efficient and timely reinstatement of the foregoing. CONTRACTOR shall maintain all survey marks, boundary marks, distance marks, and centre line marks, whether existing or supplied or fixed by CONTRACTOR. CONTRACTOR shall organize and conduct WORK so as to minimize inconvenience to property owners and residents near the WORK SITE or the SITE by controlling noise, vibration, dust, mud and any other nuisance.

9.6 STOP WORK ORDERS

Upon any failure of CONTRACTOR or any SUBCONTRACTORS to comply with any of the requirements of this CONTRACT, COMPANY shall, without prejudice to any other rights and remedies of the COMPANY under this CONTRACT or law, have the authority to stop any operations of CONTRACTOR or any SUBCONTRACTORS affected by such failure until such failure is remedied. No part of the time lost due to any such stop work orders shall be of the basis of a CHANGE or a claim for extension of time or for increased costs or LOSSES by CONTRACTOR.

9.7 PROGRESS SCHEDULE AND COMPLETION OF WORK

- (a) Within seven (7) days from the date of execution of this CONTRACT, CONTRACTOR shall submit to the COMPANY for approval a detailed schedule of all WORK that is consistent with the SCHEDULE DATES, COMPLETION DATE and other time limits

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under the CONTRACT DOCUMENTS. Such schedule shall be submitted in graphical or other suitable form giving the start and completion dates of all WORK and any item, section or part of WORK and provide a sufficient margin to cover for contingencies. The COMPANY and CONTRACTOR shall work in good faith to finalize the schedule within seven (7) days of the COMPANY'S receipt of CONTRACTOR'S schedule. Such schedule as approved by the COMPANY shall be the PROGRESS SCHEDULE and shall be incorporated in and form part of this CONTRACT.

- (b) If CONTRACTOR fails to submit to the COMPANY a schedule as required, or if the COMPANY and CONTRACTOR fail to agree upon the schedule, then the COMPANY shall prepare a schedule and issue such schedule to CONTRACTOR, which shall become the approved PROGRESS SCHEDULE.
- (c) CONTRACTOR shall submit to the COMPANY, at the end of each calendar month during the period of the WORK or at such earlier intervals as the COMPANY may require an updated PROGRESS SCHEDULE showing the actual progress of WORK performed and the occurrence of all events which have affected the progress of performance of WORK already performed or which will affect the progress of performance of WORK yet to be performed. CONTRACTOR shall notify the COMPANY of any actual or anticipated changes to SCHEDULED DATES or COMPLETION DATE within three (3) days from the time such changes are known to CONTRACTOR. All changes to the PROGRESS SCHEDULE shall require the COMPANY'S approval in writing.
- (d) CONTRACTOR may, from time to time, upon achievement of any milestones set out in WORK ORDER, including interim turnover, mechanical completion or commissioning, issue notices relating to completion of such milestones, to the COMPANY. The COMPANY may certify such notices of achievement of milestones by CONTRACTOR.

Notwithstanding anything to the contrary in any of the CONTRACT DOCUMENTS, acceptance, verification or certification of such notices, including notices of partial completion, mechanical completion, start-up, commissioning or other such milestone by the COMPANY shall not be construed as an acceptance of the WORK or any portion thereof by the COMPANY and shall not relieve CONTRACTOR of any of its obligations or liabilities under law, this CONTRACT or otherwise, including those relating to MAKE GOOD obligations.

When CONTRACTOR deems the WORK fully completed, including satisfactory completion of such inspections, tests and documentation as are specified in this CONTRACT, CONTRACTOR shall within ten (10) working days thereafter, give a written notice to the COMPANY stating that the WORK has been completed and the date it was completed. Within thirty (30) calendar days after receipt of said notice, the COMPANY may inspect the WORK and shall either reject the notice of completion and specify DEFECTIVE or uncompleted portions of the WORK, or shall issue the FINAL COMPLETION CERTIFICATE to the CONTRACTOR.

- (e) In the event COMPANY rejects the notice of completion and specifies defective or uncompleted portions of the WORK, CONTRACTOR shall, within five (5) working days, provide for the COMPANY'S review and approval, a schedule detailing when all

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DEFECTS will be corrected and/or the WORK will be completed and shall proceed to remedy such DEFECTIVE and uncompleted portions of the WORK. Thereafter, CONTRACTOR shall again give the COMPANY a written notice stating that the WORK has been completed, specifying the date of completion of the WORK based upon the date such DEFECTIVE or uncompleted portions of the WORK were corrected. The foregoing procedure shall apply until the COMPANY issues the FINAL COMPLETION CERTIFICATE.

- (f) Any failure by the COMPANY to inspect or to reject the WORK as set forth above shall not be deemed to be acceptance of the WORK for any purpose by the COMPANY.

9.8 EXECUTION OF THE WORK

- (a) If, in the opinion of the COMPANY, the progress of WORK is delayed or likely to be delayed for any reason, then in order to ensure completion of WORK in accordance with PROGRESS SCHEDULE, the COMPANY may at any time by written notice require the CONTRACTOR to prepare and submit to the COMPANY a proposal to eliminate or rectify the causes and effects of such actual or anticipated delays for the COMPANY'S review and approval. CONTRACTOR shall, at no cost to the COMPANY (unless the delay is solely caused by the COMPANY), take all necessary steps to expedite the rate of progress of WORK, including undertaking re-scheduling activities, additional shifts, overtime working and deploying additional MANPOWER, CONTRACTOR PERSONNEL, CONSTRUCTION EQUIPMENT and any other resources as may be required to complete the WORK in accordance with the PROGRESS SCHEDULE. If the delay is solely caused by the COMPANY, then any additional costs that may arise out of the expediting of the WORK shall be first subject to the COMPANY'S approval as a CHANGE. Notwithstanding the exercise of foregoing right by the COMPANY, CONTRACTOR shall nonetheless take all necessary steps to expedite the rate of progress of WORK, including undertaking re-scheduling activities, additional shifts, overtime working and deploying additional MANPOWER, CONTRACTOR PERSONNEL, CONSTRUCTION EQUIPMENT and any other resources as may be required to complete the WORK in accordance with the PROGRESS SCHEDULE.
- (b) Any action taken by the COMPANY under this Section shall be without prejudice to the right of the COMPANY to make any CLAIM against CONTRACTOR or to exercise any rights and remedies of the COMPANY against the CONTRACTOR under this CONTRACT or under law.

9.9 EXTENSION OF TIME

- (a) Except as provided in this Section, CONTRACTOR shall not be entitled to any extension of time to complete the WORK.
- (b) CONTRACTOR shall notify the COMPANY in writing of the occurrence of any act, event or omission which, in the opinion of CONTRACTOR, is likely to lead to a delay in the commencement or completion of WORK. The COMPANY may, at the COMPANY'S sole option, at any time prior to completion of the WORK, extend the applicable time in the PROGRESS SCHEDULE by a period as it considers necessary to complete the WORK.
- (c) CONTRACTOR shall be entitled to an extension of any SCHEDULED DATES or

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COMPLETION DATE affected by a FORCE MAJEURE event. The extension shall be equal to the number of days that CONTRACTOR'S performance of WORK is prevented by the FORCE MAJEURE event. For the avoidance of doubt, CONTRACTOR shall not be entitled to any shut-down or idle-time charges for any delay in the commencement, progress or completion of WORK due to any FORCE MAJEURE event.

- (d) Upon an approved extension of any SCHEDULED DATES or COMPLETION DATE as set forth in this Section, the PROGRESS SCHEDULE shall be deemed to be amended to incorporate the changed timeline resulting from such extension.

9.10 MISCONDUCT

If, in the judgment of the COMPANY, any CONTRACTOR PERSONNEL are not performing competently, fail to adhere to rules or regulations of the COMPANY or commit any acts of misconduct, then CONTRACTOR shall upon receiving INSTRUCTIONS from the COMPANY immediately withdraw such personnel from WORK SITE and not redeploy such personnel for any job under this CONTRACT. CONTRACTOR shall immediately thereafter deploy other suitable personnel in the place of the personnel so removed from the WORK SITE.

- 9.11 Any assistance rendered by the COMPANY to CONTRACTOR in relation to WORK or in accordance with the terms hereof shall not in any way affect CONTRACTOR'S obligations, and CONTRACTOR shall have the sole responsibilities to perform WORK in compliance with all the terms of the CONTRACT DOCUMENTS.

10 INSPECTION AND TESTING

- 10.1 CONTRACTOR shall, prior to commencement of WORK, submit to the COMPANY for its approval:
 - (a) a detailed quality assurance system ("QA System") and quality control system ("QC System") in respect of its performance of the WORK. CONTRACTOR shall perform the WORK in accordance with the QA System and QC System approved by the COMPANY.
 - (b) an inspection and test plan for the WORK including (without limitation) details of the stages at which such inspection and testing is to be carried out by CONTRACTOR or by the COMPANY and formats of all documents to be prepared by CONTRACTOR in relation thereto.
- 10.2 The COMPANY shall be entitled to inspect and/or test or have inspected and/or tested and/or to direct CONTRACTOR to inspect and/or test any and all WORK. The COMPANY may issue one or more inspection or test certificates to CONTRACTOR pursuant to such testing. Any testing or issuance of test certificate by COMPANY shall not relieve CONTRACTOR of any of its obligations or liabilities under this CONTRACT, at law or otherwise in performance of the WORK, including without limitation, MAKE GOOD obligations.

11 MEASUREMENT AND PAYMENTS

- 11.1 Unless otherwise provided in WORK ORDER or other CONTRACT DOCUMENTS, all measurements shall be recorded in

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accordance with the provisions set forth in this section 11.

- 11.2 If the mode of measurement is not provided for in WORK ORDER or other CONTRACT DOCUMENTS, in respect of any item of WORK, then such item of WORK shall be measured in accordance with the Indian Standard Specification No. 1200 (Latest edition). However, if such item of WORK is not covered by the aforementioned Indian Standard Specification, then such item of WORK shall be measured in accordance with the method of measurement determined by the COMPANY.
- 11.3 All measurements shall be as per quantities derived from installed "Issued for Construction" PLANS AND DRAWINGS or, where the quantities cannot be determined from the PLANS AND DRAWINGS or when required by the COMPANY, measurements shall be taken jointly by the COMPANY and CONTRACTOR, and CONTRACTOR shall ensure that a representative of CONTRACTOR shall remain present throughout the joint measurements exercise.
- 11.4 If a representative of the CONTRACTOR is not present on any date appointed for joint measurements, the measurements shall be taken by the COMPANY in the absence of a representative of the CONTRACTOR, and such measurements shall be final and binding.

12 REMEDY OF DEFECTS

- 12.1 CONTRACTOR shall MAKE GOOD all DEFECTS notified by the COMPANY on or before the expiration of DEFECT LIABILITY PERIOD. Issuance of a FINAL COMPLETION CERTIFICATE by the COMPANY shall not be construed as a waiver or release by the COMPANY of any of CONTRACTOR'S obligations under the CONTRACT (including MAKE GOOD obligations), at law or otherwise.

All such MAKE GOOD obligations shall be executed at the sole risk and cost of CONTRACTOR, to the extent that any DEFECT is attributable to: (a) any planning, design or engineering for which CONTRACTOR is responsible; (b) any MATERIALS, CONSUMABLES or workmanship not being in accordance with this CONTRACT; (c) any failure of the WORK to comply with the WORK ORDER; (d) any PLANS AND DRAWINGS prepared by CONTRACTOR; or (e) any failure by CONTRACTOR to comply with any other obligation under this CONTRACT.

- 12.2 If CONTRACTOR fails to MAKE GOOD within a reasonable time, then a final date may be fixed by the COMPANY on or by which CONTRACTOR shall be required to MAKE GOOD. CONTRACTOR shall be given reasonable notice of such final date. If CONTRACTOR fails to MAKE GOOD by such final date, the COMPANY may: (a) carry out the work itself or by others, in a reasonable manner and at the sole cost of CONTRACTOR; (b) adjust the CONTRACT PRICE accordingly; or (c) if the DEFECT deprives the COMPANY of material benefit of the FACILITY or any material part of the FACILITY, terminate this CONTRACT as a whole, or in respect of such material part which cannot be put to the intended use. Without prejudice to any other rights and remedies of the COMPANY under this CONTRACT or otherwise, the COMPANY shall be entitled to recover all sums paid for WORK or for the FACILITY or for such material part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the WORK SITE and returning MATERIALS to CONTRACTOR.
- 12.3 If the DEFECT cannot be remedied expeditiously on the SITE and the COMPANY gives its written consent, CONTRACTOR may remove from the SITE for the purposes of repair such items as are DEFECTIVE. The COMPANY'S consent may be conditioned upon CONTRACTOR

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increasing the amount of the PERFORMANCE SECURITY by the full replacement cost of these items, or to provide other appropriate security.

- 12.4 If MAKE GOOD with respect to any DEFECT may affect the performance of WORK, the COMPANY may require the repetition of any of the tests described in this CONTRACT. Any re-testing requirement shall be made by notice within twenty-eight (28) days after the DEFECT is MADE GOOD. These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of CONTRACTOR.

13 PERFORMANCE SECURITY

- 13.1 CONTRACTOR shall secure for proper performance of WORK and discharge of all of CONTRACTOR'S obligations under this CONTRACT by obtaining at its sole cost one or more security instruments as set forth in WORK ORDER

–issued by a reputable bank or financial institution acceptable to the COMPANY and in the form of a standby letter of credit or other security as required by the COMPANY in its sole discretion (“PERFORMANCE SECURITY”). CONTRACTOR shall deliver the PERFORMANCE SECURITY to the COMPANY within fifteen (15) days of intimation given by the Company to the CONTRACTOR of the amount as per Work Order after the CONTRACT AWARD date.

- 13.2 The COMPANY shall be entitled to make a CLAIM and be permitted to draw the amount of such CLAIM under the PERFORMANCE SECURITY in the event of:

- (a) any failure by CONTRACTOR to execute and perform WORK or remedy any DEFECT in accordance with the terms and conditions of this CONTRACT;
- (b) any failure by CONTRACTOR to extend the validity or increase the value of the PERFORMANCE SECURITY in accordance with this CONTRACT;
- (c) any failure by CONTRACTOR to immediately pay to the COMPANY any amount due to the COMPANY under this CONTRACT;
- (d) any failure by CONTRACTOR to cure any CONTRACTOR EVENT of DEFAULT as required under this CONTRACT; or
- (e) upon the COMPANY'S issuance of any NOTICE OF TERMINATION.

14 OTHER OBLIGATIONS OF CONTRACTOR

14.1 COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR shall comply with and cause and ensure that all CONTRACTOR PERSONNEL comply with all APPLICABLE LAWS. CONTRACTOR shall not, under any circumstances, apply to or enter into negotiations with any GOVERNMENTAL AUTHORITY or agency for acceptance of variations from or revisions to ENVIRONMENTAL LAWS and other APPLICABLE LAWS relating to this CONTRACT, or to the performance thereof, without the COMPANY'S prior written approval. Further, CONTRACTOR shall and shall require its SUBCONTRACTORS to obtain from the relevant GOVERNMENT AUTHORITY all APPLICABLE PERMITS that are necessary for or relate to the due performance and execution of WORK or any part thereof or for the storage or supply of any CONSUMABLES and MATERIALS and CONTRACTOR shall, and shall

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cause and ensure its SUBCONTRACTORS shall, at all times observe and ensure strict compliance with all the terms and conditions of such APPLICABLE PERMITS.

14.2 REPORTS AND RECORDS

CONTRACTOR shall maintain at each WORK SITE (in addition to any record or registers required to be maintained by CONTRACTOR under any APPLICABLE LAW) such records and registers as the COMPANY may require CONTRACTOR to maintain, including, a work order book in which all INSTRUCTIONS shall be entered and acknowledged by CONTRACTOR'S REPRESENTATIVE. CONTRACTOR shall, and shall cause and ensure that all SUBCONTRACTORS, prepare and maintain up-to-date, all statutory records as required to be maintained under all APPLICABLE LAWS and to make such records available at its office for inspection by any GOVERNMENTAL AUTHORITY or by the COMPANY.

14.3 TAXES

CONTRACTOR shall be exclusively liable for the payment of all TAXES, including all TAXES currently and hereafter imposed, increased or modified in respect of CONTRACTOR'S obligations under this CONTRACT, WORK performed, and MATERIALS and CONSUMABLES supplied, and for the payment of all contributions and TAXES for unemployment compensation, insurance and old-age pension and annuity currently or hereinafter imposed by any GOVERNMENTAL AUTHORITY with respect to or covered by wages, salaries or other compensation paid to MANPOWER and other CONTRACTOR PERSONNEL.

14.4 CONTRACTOR'S ENTRY PERMIT

The COMPANY shall issue to each CONTRACTOR PERSONNEL and SUBCONTRACTOR personnel an entry permit and identity card with a photograph valid for a specified period ("ID CARD"). CONTRACTOR shall cause each such CONTRACTOR PERSONNEL, and SUBCONTRACTOR personnel to keep the ID CARD on its person and possession at all times.

14.5 PATENT AND ROYALTIES

If any MATERIALS, CONSUMABLES or CONSTRUCTION EQUIPMENT used or to be used or methods or processes practiced or to be practiced or employed in the performance of this CONTRACT are covered by any INTELLECTUAL PROPERTY RIGHTS not licensed to CONTRACTOR or sublicensed to the COMPANY, CONTRACTOR shall, before supplying or using MATERIALS and CONSUMABLES, CONSTRUCTION EQUIPMENT methods or process as the case may be, obtain licenses as well as sublicenses to the COMPANY, as applicable, and pay such royalties and license fees as may be necessary in connection with the use or practice of such INTELLECTUAL PROPERTY RIGHTS. .

14.6 ARTICLES OF VALUE FOUND

All gold, silver and other metals, minerals or ore of any kind or description and all precious and semi-precious stones and bearing earth, rock or strata, coins, treasures, treasure trove, antiques and other items and things whatsoever which are found under or upon the SITE shall, as between CONTRACTOR and the COMPANY, be the exclusive property of the COMPANY. CONTRACTOR shall upon discovery, forthwith notify the COMPANY of such discovery with the

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details of the items or things discovered and until any INSTRUCTION by the COMPANY, shall hold and preserve the same as trustee for the COMPANY.

14.7 MATERIALS OBTAINED FROM DISMANTLING

Any material obtained by CONTRACTOR consequent upon dismantling of any building, structure or construction whatsoever at the WORK SITE shall be the exclusive property of the COMPANY until the same is replaced with material complying with this CONTRACT. Such replacement material shall be the exclusive property of the COMPANY.

14.8 LIENS AND LIABILITIES

If at any time there is any ENCUMBRANCE or claim related to CONTRACTOR'S performance of the WORK or its obligations under this CONTRACT for which the COMPANY might be or become liable or otherwise is chargeable to or payable by CONTRACTOR, the COMPANY shall have the right to retain out of any amount then due or thereafter becoming due to CONTRACTOR an amount sufficient to completely indemnify the COMPANY against such ENCUMBRANCE or claim.

14.9 DOCUMENTATION AND RIGHT OF AUDIT

- (a) Where CONTRACTOR'S invoice includes compensation for WORK performed at a unit price, CONTRACTOR shall submit its determination of units of WORK performed, determined in accordance with the provisions of this CONTRACT, and substantiated by documents satisfactory in form and content to the COMPANY. Upon verification by the COMPANY of all such documents, the COMPANY will advise CONTRACTOR in writing of either acceptance of CONTRACTOR'S determination of units or of the COMPANY'S determination of such units.
- (b) Where CONTRACTOR'S invoice includes compensation for WORK performed on a reimbursable basis, all costs, expenses and other amounts so invoiced shall be substantiated and supported by equipment time slips, paid invoices, time sheets, receipts and other documents satisfactory to and verified by the COMPANY.
- (c) CONTRACTOR shall maintain for a period of Eight (8) years after final payment under this CONTRACT, all records and accounts pertaining to WORK performed by CONTRACTOR under this CONTRACT for a unit price, a reimbursable price, or otherwise authorized in writing by the COMPANY for performance on a reimbursable basis. The COMPANY and its representatives shall have the right to audit, copy and inspect said records and accounts at all reasonable times during the course of such WORK and for the Eight (8) years period referred above for the purpose of verifying units furnished and/or costs incurred, as applicable.
- (d) CONTRACTOR shall, and shall cause all SUBCONTRACTORS to, preserve all books, payrolls, accounts and other records relating to this CONTRACT during the term of this CONTRACT and for a period of Eight (8) years thereafter, provided, however, that if any books, payrolls, accounts or other records are or may be required to resolve any CLAIM or DISPUTE pursuant to this CONTRACT, the period of retention, access and examination described in this Section shall continue until final disposition of such CLAIM or DISPUTE. CONTRACTOR shall ensure that the foregoing inspection and audit rights

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of the COMPANY are included in each contract or agreement with each SUBCONTRACTOR.

15 SAFETY REGULATIONS, ACCIDENT AND DAMAGE

- 15.1 CONTRACTOR shall be responsible to observe and comply with and to cause and ensure observance and compliance by all SUBCONTRACTORS with COMPANY'S SAFETY STANDARDS and all APPLICABLE LAWS relating to fire, safety and security. CONTRACTOR shall undertake all precautions and measures that are necessary to protect all WORK, MATERIALS, CONSUMABLES, CONSTRUCTION EQUIPMENT, SITE FACILITIES, WORK SITE, SITE and FACILITY from any damage, loss or hazard (including to fire and explosion). CONTRACTOR shall, during construction, maintenance and operations, minimize the disturbance and inconvenience to the COMPANY, OTHER CONTRACTORS, the public and the adjoining land and not cause any LOSSES to the COMPANY'S property and crops, trees and vegetation.
- 15.2 The COMPANY may furnish emergency medical treatment or related services to CONTRACTOR PERSONNEL, MANPOWER and SUBCONTRACTOR personnel in the case of job connected illness or injury occurring at the WORK SITE. If the COMPANY has first-aid and other facilities at the WORK SITE, the COMPANY may, at its option, make available such facilities for the treatment of CONTRACTOR PERSONNEL, MANPOWER and SUBCONTRACTOR personnel, who may be injured or become ill while engaged in the performance of this CONTRACT. If such facilities are made available to CONTRACTOR PERSONNEL, MANPOWER and SUBCONTRACTOR personnel, then in consideration for the use of such facilities, CONTRACTOR hereby agrees to defend, indemnify and hold harmless the COMPANY and all providers of medical services or facilities from all LOSSES arising out of or relating to the use of such medical services or facilities by CONTRACTOR PERSONNEL, MANPOWER and SUBCONTRACTOR personnel. If CONTRACTOR PERSONNEL, MANPOWER and SUBCONTRACTOR personnel require additional medical services, including transportation thereto, then CONTRACTOR shall promptly pay for such services directly to the providers of such additional medical or transportation services. Nothing herein contained shall be construed as imposing any duty upon the COMPANY to provide facilities necessary to furnish emergency medical treatment or related services to CONTRACTOR PERSONNEL, MANPOWER and SUBCONTRACTOR personnel or to make such facilities and/or services available to CONTRACTOR PERSONNEL, MANPOWER and SUBCONTRACTOR personnel.

16 REPRESENTATIONS AND WARRANTIES

- 16.1 CONTRACTOR represents and warrants that:
- (a) CONTRACTOR is a company / firm / proprietorship / HUF, duly organized, validly existing and in good standing under the laws of the country or state, possessing all applicable licenses and permissions, in which CONTRACTOR is organized or formed, and has all requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in all jurisdictions in which the transaction of its business in connection with the performance of its obligations in connection with this CONTRACT makes such qualification necessary. This CONTRACT has been duly authorized, executed and delivered by CONTRACTOR and constitutes the legal, valid and binding obligation of CONTRACTOR, enforceable against CONTRACTOR in accordance with its terms, except as enforceability may be limited by APPLICABLE LAWS relating to

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bankruptcy, receivership or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability.

- (b) The execution, delivery and performance of this CONTRACT by CONTRACTOR and the consummation of the transactions contemplated thereby do not and will not: (i) contravene CONTRACTOR'S certificate of incorporation, memorandum or articles of association or its constituent documents or by-laws; (ii) conflict with or result in a breach of or default under any license, indenture or agreement to which CONTRACTOR is a party that would adversely affect CONTRACTOR'S ability to perform its obligations under this CONTRACT; or (iii) breach any APPLICABLE LAWS, judgment, decree, order or ruling of any court, governmental authority, regulatory body to which CONTRACTOR is a party or by which any of its assets are bound;
- (c) All authorizations by, approvals or orders by, consents of, notices to, filings with or other acts by or in respect of any GOVERNMENTAL AUTHORITY or any other PERSON required in connection with the execution, delivery and performance of this CONTRACT by CONTRACTOR have been obtained and copies of such approvals have been delivered to the COMPANY or shall be obtained in due course and will be delivered to CONTRACTOR without prejudice to the COMPANY;
- (d) There are no legal or arbitration proceedings or any proceedings by or before any GOVERNMENTAL AUTHORITY, now pending or threatened against CONTRACTOR or any of its AFFILIATES or SUBCONTRACTORS which, if adversely determined, could reasonably be expected to have an adverse effect on the financial condition, options, prospects or business of CONTRACTOR or its ability to perform its obligations under this CONTRACT;
- (e) CONTRACTOR is the owner, valid licensee, or authorized user of CONTRACTOR'S internal use tools and any other tools or equipment which will be used incident to WORK;
- (f) CONTRACTOR shall not disclose to the COMPANY, nor make use in the performance of its obligations under or pursuant to this CONTRACT, any INTELLECTUAL PROPERTY RIGHTS of any PERSON, unless such INTELLECTUAL PROPERTY RIGHTS are validly, owned, obtained by or licensed to CONTRACTOR and can be validly used by CONTRACTOR without any of the PARTIES incurring any liability or obligation (past or future) to such PERSON;
- (g) CONTRACTOR has made itself aware of all of the contemplated WORK, including all conditions at the SITE and the WORK SITE and surrounding locations and has satisfied itself that it can perform all WORK in full compliance with the requirements of this CONTRACT;
- (g) CONTRACTOR has the requisite CONTRACTOR PERSONNEL, expertise, skill, knowledge, experience and adequate infrastructure (with capacity and ability to augment all of these as may be necessary), and the requisite financial capabilities to successfully perform all WORK under this CONTRACT;
- (h) Neither CONTRACTOR nor any of its AFFILIATES or SUBCONTRACTORS, and to the best of its knowledge, none of its or its AFFILIATES' or SUBCONTRACTORS' respective employees, officers, directors, representatives, or agents, has made, offered

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to make or agreed to make any loan, gift, donation, commission, kick-back, bribe or other payment or facility, directly or indirectly, whether in cash or in kind, to or for (i) any governmental official, employee, representative or agent, (ii) any employee, officer, director, representative or agent of the COMPANY or its AFFILIATES, or (iii) any other PERSON with respect to the negotiation, execution or performance of this CONTRACT;

- (i) CONTRACTOR will deliver to the COMPANY absolute title to all PLANS AND DRAWINGS and other deliverables prepared by CONTRACTOR and all WORK will be free and clear of any and all ENCUMBRANCES;
- (j) CONTRACTOR has examined all aspects of the CONTRACT and the WORK to be performed and has satisfied itself fully as to the sufficiency of the consideration for performance and completion of all of its obligations under, and in accordance with, the CONTRACT.

16.2 COMPANY represents, and warrants that:

- (a) It is a company duly organized, validly existing, and in good standing under the laws of India. This CONTRACT has been duly authorized, executed and delivered by the COMPANY and constitutes the legal, valid and binding obligation of the COMPANY, enforceable against the COMPANY in accordance with its terms, except as enforceability may be limited by APPLICABLE LAWS relating to bankruptcy, receivership or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability; and
- (b) Execution, delivery and performance of this CONTRACT by the COMPANY and the consummation of the transactions contemplated thereby do not and will not (i) contravene the COMPANY'S certificate of incorporation, its memorandum and articles or association or constituent documents or by-laws; (ii) conflict with or result in a breach of or default under any license, indenture or agreement to which the COMPANY is a party that would materially and adversely affect the COMPANY'S ability to perform its obligations under this CONTRACT; or (c) breach any APPLICABLE LAWS, judgment, decree, order or ruling of any court, GOVERNMENTAL AUTHORITY, regulatory body to which the COMPANY is a party or by which any of its assets are bound.

17 INFRINGEMENT

- 17.1 CONTRACTOR warrants that to the extent INTELLECTUAL PROPERTY RIGHTS of any PERSON are used or incorporated or proposed to be used or incorporated in any WORK or any DELIVERABLES, CONTRACTOR has obtained the necessary license, authorization or consent from such PERSON for the use of such INTELLECTUAL PROPERTY RIGHTS as necessary to perform CONTRACTOR'S obligations under CONTRACT and to grant the COMPANY the rights herein. CONTRACTOR hereby grants to the COMPANY the irrevocable, perpetual, fully paid-up right and license to use, copy, modify, and create derivative works of all such INTELLECTUAL PROPERTY RIGHTS included or incorporated in the WORK or DELIVERABLES.
- 17.2 CONTRACTOR shall, at its sole cost and expense, defend, indemnify and hold harmless the COMPANY INDEMNIFIED PARTIES from and against all LOSSES which arise from, arise in connection with or are in any way related to any claim by any third party that the WORK or any DELIVERABLES (or any part thereof) infringes or misappropriates any third party's

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- 17.3 The COMPANY shall give CONTRACTOR a written notice of any claim or proceeding initiated against one or more the COMPANY INDEMNIFIED PARTIES in respect of which the COMPANY believes it is entitled to be indemnified under this Section 17 or Section 26 (“INFRINGEMENT CLAIM”). CONTRACTOR shall have the right to assume control through its own counsel, and the obligation, at CONTRACTOR’S sole cost and expense, to defend such INFRINGEMENT CLAIM and CONTRACTOR shall not compromise or settle any such INFRINGEMENT CLAIM or admit any liability or wrongdoing by the COMPANY INDEMNIFIED PARTIES without the express prior written consent of the COMPANY.
- 17.4 If the WORK, or any DELIVERABLES or any part thereof, is held to constitute an infringement or misappropriation of any PERSON’S INTELLECTUAL PROPERTY RIGHTS, CONTRACTOR shall in addition to its indemnification obligations under this Section 17 and Section 26, at its sole cost and expense: (a) procure the right for the COMPANY to continue the use of the WORK, or the DELIVERABLES any part thereof without any interruption or payment of any amount by the COMPANY; (b) MAKE GOOD the WORK, the DELIVERABLES or any part thereof so that such WORK or DELIVERABLES or any part thereof ceases to infringe upon INTELLECTUAL PROPERTY RIGHTS of such PERSON; and (c) where the WORK or the DELIVERABLES or any part thereof is MADE GOOD, ensure that such WORK or DELIVERABLES or any part thereof fully complies with the CONTRACT DOCUMENTS.
- 17.5 If CONTRACTOR fails or refuses to fulfill its obligations set forth in this Section, the COMPANY shall not be required to pay any additional amounts in connection with the WORK, or DELIVERABLES or any part thereof, and CONTRACTOR shall:
- (a) promptly refund to the COMPANY all compensation paid to CONTRACTOR with respect to such infringing WORK or DELIVERABLES or any part thereof; and
 - (b) bear and pay any additional cost incurred by the COMPANY in procuring the right to continue using the infringing WORK or DELIVERABLES or any part thereof or re-performing WORK to make the WORK or DELIVERABLES non-infringing.
- 17.6 Notwithstanding any proprietary legends or copyright notices to the contrary, CONTRACTOR agrees that the COMPANY may copy, reproduce, modify and prepare derivative works of PLANS AND DRAWINGS, and any DELIVERABLES and any other information furnished by CONTRACTOR in connection with this CONTRACT or the negotiation thereof. The COMPANY may distribute such copies, reproductions, modifications and derivative works for use by the COMPANY and other PERSONS in connection with the COMPANY’S business operations.

18 CONFIDENTIALITY AND NON-DISCLOSURE

- 18.1 CONTRACTOR shall not disclose to any PERSON and shall keep strictly confidential all CONFIDENTIAL INFORMATION furnished by or received from the COMPANY in whatever form, in connection with this CONTRACT. Such CONFIDENTIAL INFORMATION shall include PLANS AND DRAWINGS and any notes, summaries, reports, analysis or other material derived by CONTRACTOR, in whole or in part, from such CONFIDENTIAL INFORMATION.
- 18.2 CONTRACTOR shall use at least the same standard of care in the protection of the CONFIDENTIAL INFORMATION of the COMPANY as it uses to protect its own confidential or

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proprietary information, but not less than reasonable care. CONTRACTOR undertakes that, in any event it shall protect all CONFIDENTIAL INFORMATION with all due care and diligence and in a manner acceptable to the COMPANY.

- 18.3 CONTRACTOR shall use the CONFIDENTIAL INFORMATION of the COMPANY only in connection with performing its obligations under this CONTRACT and shall make such CONFIDENTIAL INFORMATION available only to its employees on a "need to know" basis in order to perform their work or services for CONTRACTOR. CONTRACTOR shall inform all CONTRACTOR PERSONNEL who receive or have access to CONFIDENTIAL INFORMATION of the COMPANY of the confidential nature of such information. CONTRACTOR shall require each recipient of the COMPANY'S CONFIDENTIAL INFORMATION to abide by the confidentiality and non-disclosure obligations of this Section by obtaining written undertakings in form and substance satisfactory to the COMPANY prior to any disclosure of CONFIDENTIAL INFORMATION to such recipients. CONTRACTOR may only disclose CONFIDENTIAL INFORMATION to any SUBCONTRACTOR upon the prior written approval by the COMPANY and only after such SUBCONTRACTOR executes a non-disclosure and confidentiality agreement provided by the COMPANY. Thereafter, CONTRACTOR may disclose the COMPANY'S CONFIDENTIAL INFORMATION to such SUBCONTRACTOR only to the extent required for such SUBCONTRACTOR to perform its obligations. CONTRACTOR shall be liable for any breaches or violations with respect to CONFIDENTIAL INFORMATION caused by or attributable to such SUBCONTRACTORS and other PERSONS to whom CONTRACTOR has disclosed the COMPANY'S CONFIDENTIAL INFORMATION.
- 18.4 The confidentiality and non-disclosure obligations under this Section shall not apply to any CONFIDENTIAL INFORMATION which:
- (a) is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of CONTRACTOR;
 - (b) was known to CONTRACTOR prior to disclosure by the COMPANY as proven by the contemporaneous, ordinary and customary written records of CONTRACTOR;
 - (c) which disclosure without a binder of secrecy is expressly authorized in writing by the COMPANY; or
 - (d) is required by law, order of a court or a GOVERNMENTAL AUTHORITY to be disclosed (in which case CONTRACTOR will give the COMPANY as much notice thereof as reasonably practicable and which will be done subject to confidentiality protection to the extent reasonably available).
- 18.5 All the COMPANY CONFIDENTIAL INFORMATION shall be deemed to be the property of the COMPANY, and CONTRACTOR shall, upon receipt of a written request from the COMPANY, return all the CONFIDENTIAL INFORMATION received in tangible form to the COMPANY or destroy all such CONFIDENTIAL INFORMATION and all copies thereof or documents containing the CONFIDENTIAL INFORMATION (except that a single copy may be retained by CONTRACTOR'S legal counsel for record purposes, to be used only if a dispute arises concerning an alleged breach of the confidentiality and non-disclosure obligations of this Section) and provide the COMPANY with a certificate in writing evidencing such destruction.
- 18.6 The provisions of this Section shall bind CONTRACTOR with respect to each item of CONFIDENTIAL INFORMATION for so long as none of the exceptions in Section 18.4 (a), (b) or

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(c) apply.

- 18.7 CONTRACTOR shall not (or permit any AFFILIATE or SUBCONTRACTOR to) issue any press or other media release relating in any way to the PROJECT or this CONTRACT without the prior written consent of the COMPANY.
- 18.8 Notwithstanding anything otherwise provided in this Section 18, the rights and obligations with regard to all TECHNICAL INFORMATION disclosed to CONTRACTOR and SUBCONTRACTORS shall be governed by the applicable CONFIDENTIALITY AGREEMENT. In the event that any provision herein conflicts with the terms of such CONFIDENTIALITY AGREEMENT with respect to any obligations, rights, liabilities or otherwise regarding TECHNICAL INFORMATION, then the terms of the CONFIDENTIALITY AGREEMENT shall control.

19 ETHICAL CONDUCT

19.1 CONTRACTOR covenants to the COMPANY that:

- (a) CONTRACTOR will not, and it will cause its AFFILIATES and SUBCONTRACTORS, and its and their respective employees, officers, directors, representatives, or agents to not, make, offer to make or agree to make any loan, gift, donation, commission, kick-back, bribe or other payment or facility, directly or indirectly, whether in cash or in kind, to or for (i) any governmental official, employee, representative or agent, (ii) any employee, officer, director, representative or agent of the COMPANY or its AFFILIATES, or (iii) any other PERSON with respect to the negotiation, execution or performance of this CONTRACT.
- (b) If CONTRACTOR learns of or has reason to know of any such payment, offer or agreement described in Section 19.1 (a) to make any such loan, gift, donation, commission, kick-back, bribe or other payment or facility to any of the PERSONS described in Section 19.1 (a), it will immediately inform the COMPANY in writing communicating to the COMPANY all relevant information in respect of the above within the knowledge or possession of CONTRACTOR. Without prejudice to CONTRACTOR'S obligations as above, CONTRACTOR agrees not to, and to cause its AFFILIATES and SUBCONTRACTORS not to, offer or give, or agree to give, to any employee, officer, director, representative or agent of the COMPANY any consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this CONTRACT, or for showing or refraining from showing favor or disfavor to any PERSON in relation to this CONTRACT.

19.2 Where CONTRACTOR or its employees, servants, SUBCONTRACTORS, suppliers or agents or anyone acting on CONTRACTOR'S behalf, engages in conduct prohibited by this Section in relation to WORK or any other work being performed for the COMPANY, the COMPANY has the right, without prejudice to any other rights or remedies available under APPLICABLE LAW, to:

(a) terminate this CONTRACT and recover from CONTRACTOR the amount of any LOSSES suffered by the COMPANY resulting from such termination; and (b) recover in full from CONTRACTOR all LOSSES sustained by the COMPANY as a result of such prohibited conduct, whether or not this CONTRACT has been terminated.

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20 FORCE MAJEURE

- 20.1 Either PARTY may make a claim for FORCE MAJEURE event. . The PARTY claiming the benefit of FORCE MAJEURE hereunder shall (a) promptly notify the other PARTY of the circumstances creating the FORCE MAJEURE event (b) provide sufficient documentation to establish to the reasonable satisfaction of the other PARTY, the impact of the event of FORCE MAJEURE on such PARTY and (c) use reasonable efforts to avoid or remove or mitigate such event of FORCE MAJEURE.
- 20.2 If an event of FORCE MAJEURE prevents CONTRACTOR from performing its obligations under the CONTRACT for a period exceeding sixty (60) continuous days, the COMPANY may, upon prior written notice to CONTRACTOR, suspend or terminate (without penalty of any kind) the CONTRACT. If the COMPANY suspends any WORK as a result of FORCE MAJEURE affecting the COMPANY and such suspension continues for a period of one hundred eighty (180) continuous days, then upon fifteen (15) days prior written notice to the COMPANY, CONTRACTOR may terminate (without penalty of any kind) the CONTRACT.
- 20.3 The PARTY not claiming the benefit of FORCE MAJEURE event shall likewise be excused from performance of its obligations hereunder on a day-for-day basis to the extent such PARTY'S obligations are affected due to the other PARTY'S delayed performance.

21 CHANGES

- 21.1 The WORK ORDER shall be subject to change by additions, deletions or revisions thereto by the COMPANY ("CHANGE"). CONTRACTOR will be notified by the COMPANY of such CHANGE by issue of additional and/or revised drawings, specifications, exhibits or other written notification ("CHANGE ORDER") or a CONTRACT SITE INSTRUCTION detailing the work to be performed as set forth in greater detail in WORK ORDER. The procedures relating to CONTRACT SITE INSTRUCTIONS and CHANGE ORDERS shall be as specified in WORK ORDER in form of Amendments.
- 21.2 If, upon receipt of any notification, CONTRACTOR considers that a CHANGE is involved that could affect its costs of performing the WORK or adversely affects the PROGRESS SCHEDULE, CONTRACTOR shall inform the COMPANY within five (5) BUSINESS DAYS of CONTRACTOR receiving the notification. Unless CONTRACTOR notifies the COMPANY in accordance with this Section, CONTRACTOR is obliged to perform the WORK in accordance with the CHANGE and will have no entitlement to any additional compensation or to any change to the PROGRESS SCHEDULE.
- 21.3 CONTRACTOR shall submit to the COMPANY within ten (10) BUSINESS DAYS after submission of the notification from CONTRACTOR required under Section 21.2 above a detailed takeoff with supporting calculations and pricing for the CHANGE, together with any requested adjustments in the PROGRESS SCHEDULE. The pricing shall be itemized as required by the COMPANY and shall be in sufficient detail to permit an analysis of all labor, material and equipment and shall cover all WORK involved in the CHANGE, whether such WORK was deleted, added or modified. Amounts related to subcontracts shall be supported in similar detail. Any adjustments to the PROGRESS SCHEDULE must be accompanied by a revised version of the detailed schedule, agreed in accordance with the terms of this CONTRACT demonstrating that any proposed CHANGES to the PROGRESS SCHEDULE have been caused by the CHANGE and have affected a critical path on such previous PROGRESS SCHEDULE.

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- 21.4 If CONTRACTOR does not provide the detailed take-off to the COMPANY within the time allowed by Section 21.3, CONTRACTOR will have waived any right to additional compensation or to a change to the PROGRESS SCHEDULE in respect of the CHANGE and will proceed with the work in accordance with the CHANGE ORDER issued pursuant to Section 21.1.
- 21.5 CONTRACTOR shall not perform CHANGES until the COMPANY has approved in writing the pricing for the CHANGE and any adjustment in the PROGRESS SCHEDULE for performance of the WORK, except as set forth in Sections 21.4 and 21.6. Upon receiving such written approval from the COMPANY, CONTRACTOR shall diligently perform the CHANGE in accordance with this CONTRACT.
- 21.6 Notwithstanding Section 21.5 the COMPANY may expressly authorize CONTRACTOR in writing to perform the CHANGE prior to such approval by the COMPANY. CONTRACTOR shall not suspend performance of this CONTRACT during the review and negotiation of any CHANGE.
- 21.7 If the COMPANY and CONTRACTOR cannot agree on any CHANGE that requires mutual agreement, the COMPANY shall have the right to issue INSTRUCTIONS to CONTRACTOR to implement such CHANGE and CONTRACTOR shall implement such CHANGE and keep auditable records of WORK undertaken.
- 21.8 CONTRACTOR shall not comply with oral changes in the WORK. If CONTRACTOR receives any such oral notice or instruction from the COMPANY, CONTRACTOR shall request that the notice or instruction be given in writing and CONTRACTOR shall comply with the provisions of Sections 21.2, 21.3, 21.5 and 21.6. Any costs incurred by CONTRACTOR to perform oral changes shall be for CONTRACTOR'S account, and CONTRACTOR waives any and all rights to claim from the COMPANY for such costs or additional time to perform the WORK as a result of compliance by CONTRACTOR with such oral changes.

22 SUSPENSION OF WORK

- 22.1 The COMPANY may at any time, and from time to time, by notice in writing to CONTRACTOR suspend further performance of all or any portion of the WORK by CONTRACTOR ("SUSPENSION NOTICE"). The SUSPENSION NOTICE shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any SUSPENSION NOTICE, CONTRACTOR shall promptly suspend further performance of WORK to the extent specified, and during the period of such suspension shall properly care for and protect all WORK in progress and CONSUMABLES, MATERIALS, COMPANY MATERIAL and CONSTRUCTION EQUIPMENT. Upon the request of the COMPANY, CONTRACTOR shall promptly deliver to the COMPANY, copies of outstanding subcontracts of CONTRACTOR and shall take such action relative to such subcontracts as may be directed by the COMPANY. CONTRACTOR shall use its best efforts to utilize CONTRACTOR PERSONNEL, CONSUMABLES, MATERIALS, MANPOWER and CONSTRUCTION EQUIPMENT in such a manner as to mitigate costs associated with suspension of WORK. The COMPANY may, at any time, withdraw the suspension of performance of the WORK as to all or part of the suspended WORK by written notice to CONTRACTOR specifying the effective date and scope of withdrawal, and CONTRACTOR shall resume diligent performance of WORK for which the suspension is withdrawn on the specified effective date of withdrawal.
- 22.2 If CONTRACTOR believes that any such suspension or withdrawal of suspension justifies modification of CONTRACT PRICE or any extension of time to complete the WORK,

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CONTRACTOR may request a CHANGE. CONTRACTOR'S request for a CHANGE shall include substantiation of CONTRACTOR'S increased costs for such suspension or withdrawal of suspension by providing documents and records of such costs satisfactory to the COMPANY. Upon the COMPANY'S verification and approval of such additional costs, CONTRACTOR and the COMPANY shall agree upon an adjustment in CONTRACT PRICE, based upon such verified and approved additional costs as full settlement to CONTRACTOR for the suspension or withdrawal of suspension. CONTRACTOR shall not be entitled to receive or recover any prospective profits or any damages because of such suspensions or withdrawals of suspension including on account of CONTRACTOR PERSONNEL or CONSTRUCTION EQUIPMENT rendered idle as a result of such suspension.

- 22.3 Such suspensions shall not exceed one hundred eighty (180) continuous days each nor, in aggregate, more than two hundred seventy (270) days. If a suspension affects all of the WORK for a period in excess of the foregoing periods, CONTRACTOR may request in writing to the COMPANY to terminate this CONTRACT, but such termination shall be at the COMPANY'S sole discretion.

23 TERMINATION FOR CONVENIENCE

- 23.1 The COMPANY may, with or without cause, terminate further performance of all or part of the WORK or the CONTRACT by written notice to CONTRACTOR specifying the date of termination. On the date of such termination stated in said notice, CONTRACTOR shall discontinue performance of the WORK and shall preserve and protect all COMPANY MATERIAL, CONSUMABLES, MATERIALS, CONSTRUCTION EQUIPMENT and SITE FACILITIES at the WORK SITE, all CONSUMABLES AND MATERIALS purchased for or committed to the WORK (whether delivered to the WORK SITE or on order) and all WORK in progress and completed WORK (whether at WORK SITE or other locations) pending the COMPANY'S instructions and, if requested by it, shall turn over the same to the COMPANY, including title to said materials and plant equipment, or dispose of same in accordance with the COMPANY'S instructions.
- 23.2 Upon receipt of said notice, CONTRACTOR shall advise the COMPANY of its outstanding subcontracts pertaining to performance of the terminated WORK and, upon request, furnish the COMPANY with complete copies. CONTRACTOR shall place no further subcontracts except as may be necessary for completion of such portion of the WORK as is not terminated. CONTRACTOR shall promptly make every reasonable effort to procure cancellation, upon terms satisfactory to the COMPANY, of all subcontracts to the extent they relate to the performance of WORK terminated or, as directed by the COMPANY, shall assign to the COMPANY, in form satisfactory to the COMPANY, such of its subcontracts as are designated by the COMPANY and shall take such other action relative to such subcontracts as may be directed by the COMPANY.

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- 23.3 If CONTRACTOR has fully and completely performed all obligations under this CONTRACT up to the date of termination, CONTRACTOR shall recover from the COMPANY as complete and full settlement for such termination for WORK to be performed under this CONTRACT, the actual costs of all such WORK satisfactorily executed to the date of termination, plus an allowance for reasonable overhead and profit on such costs incurred prior to termination (but not to exceed a pro rata portion of such CONTRACT PRICE for such WORK based on the percentage of WORK properly completed to the date of termination), together with reasonable costs occasioned by such termination and not previously paid for, less such sums as CONTRACTOR has already received on account of the WORK performed and less any deductions pursuant to Section 34.2. In no event shall total payments to CONTRACTOR exceed the CONTRACT PRICE.
- 23.4 All requests for compensation under any of the foregoing provisions of Section 23.3 shall be submitted to the COMPANY in accordance with the provisions of Section 21. In no event shall CONTRACTOR be entitled to receive or recover any prospective profits or LOSSES.

24 TERMINATION FOR CAUSE

- 24.1 The COMPANY may terminate this CONTRACT without any penalty to, or payment obligation of, the COMPANY (other than undisputed payment obligations outstanding as of the date of any such termination, with disputed payment obligations being subject to the dispute resolution provisions of Section 32) due to the occurrence of any of the following events (each, a "CONTRACTOR EVENT OF DEFAULT"):
- (a) CONTRACTOR (i) is insolvent, (ii) files a voluntary petition for winding up or has an involuntary petition for winding up filed against it that is not dismissed within thirty (30) days of such involuntary filing, (iii) admits the material allegations of any petition of winding-up filed against it, (iv) is adjudged insolvent, or (v) makes a general assignment for the benefit of its creditors, or a receiver is appointed for all or a substantial portion of its assets and is not discharged within thirty (30) days after its appointment;
 - (b) CONTRACTOR commences any proceeding for relief from its creditors in any court under APPLICABLE LAW;
 - (c) CONTRACTOR disregards or violates APPLICABLE LAWS or conditions of APPLICABLE PERMITS applicable to CONTRACTOR'S obligations under this CONTRACT;
 - (d) CONTRACTOR commits any fraud or willful misconduct or makes any willful Misrepresentation;
 - (e) CONTRACTOR fails to obtain or maintain the insurance required under this CONTRACT;
 - (f) CONTRACTOR fails for seven (7) consecutive days or an aggregate of fifteen (15) days in any consecutive thirty (30) day period (excluding Sundays and national holidays), to have an adequate number of CONTRACTOR PERSONNEL at the WORK SITE who are actively and productively engaged in the performance of WORK, unless such failure results from an event of FORCE MAJEURE;
 - (g) CONTRACTOR fails to procure all or a material portion of CONSUMABLES or

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MATERIALS and the COMPANY reasonably determines that such failure materially jeopardizes the ability to achieve the performance or completion of WORK in accordance with the times prescribed in the PROGRESS SCHEDULE.

- (h) CONTRACTOR abandons WORK or ceases, fails to commence or suspends performance of all or a material portion of WORK (except as a result of an event of FORCE MAJEURE or a suspension authorized by the COMPANY);
- (i) CONTRACTOR fails to prosecute or maintain progress of all or a material portion of WORK in accordance with the time prescribed in the PROGRESS SCHEDULE;
- (j) CONTRACTOR subcontracts or assigns any of its obligations under this CONTRACT other than in compliance with this CONTRACT;
- (k) A breach of any provision of Section 19 in relation to this CONTRACT;
- (l) CONTRACTOR neglects or fails to follow any INSTRUCTION of the COMPANY or fails to timely MAKE GOOD any DEFECTS in accordance with the terms of this CONTRACT;
or
- (m) CONTRACTOR materially breaches any representation, warranty or covenant of CONTRACTOR in this CONTRACT.

24.2 If any CONTRACTOR EVENT OF DEFAULT exists and is continuing, the COMPANY may, without prejudice to any other rights or remedies of the COMPANY in this CONTRACT or at law or in equity, terminate this CONTRACT by providing a NOTICE OF TERMINATION to CONTRACTOR provided, however, that the COMPANY shall have first provided to CONTRACTOR the following periods of notice and opportunity to cure:

- (a) in the case of a CONTRACTOR EVENT OF DEFAULT specified in Section 24.1 (e), (h), (j) or (l), the COMPANY shall have provided ten (10) days prior written notice to CONTRACTOR, and CONTRACTOR shall have failed to remedy such breach (or commenced to, in the COMPANY'S sole opinion, diligently cure such breach) entirely by the end of such ten (10) days period;
- (b) in the case of a CONTRACTOR EVENT OF DEFAULT specified in Sections 24.1 (c), (f), (f), (g), (i), or (m), the COMPANY shall have provided thirty (30) days prior written notice to CONTRACTOR, and CONTRACTOR shall have failed to remedy such breach (or commenced to diligently cure such breach) entirely by the end of such thirty (30) day period; and
- (c) in the case of a CONTRACTOR EVENT OF DEFAULT specified in Sections 24.1 (a), (b), (d) or (j) no notice or opportunity to cure shall be required.

24.3 The NOTICE OF TERMINATION shall set forth the time and place for conducting a survey and measurement of WORK performed under the CONTRACT up to the date of termination for the purpose of determining the final amounts due to CONTRACTOR.

The measurements shall be conducted in accordance with the provisions of Section 11. For the purposes of such measurements:

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- (a) only completed items of WORK shall be taken into account and the determination as to whether or not any WORK has been completed for the purpose of measurement shall be made by the COMPANY; and
 - (b) All incomplete items of WORK shall be measured only on the basis of MATERIALS supplied and the determination as to quantities of MATERIALS relative to any incomplete item of WORK shall be made by the COMPANY.
- 24.4 For the purpose of determining the amount due to CONTRACTOR in respect of any or all WORK, the provisions of Section 11 shall apply and the measurements taken shall, for the purpose of such accounting, be deemed to be final measurements and the bill prepared by CONTRACTOR on the basis thereof shall be deemed to be FINAL BILL and no other amounts shall be due to CONTRACTOR in respect thereof.
- 24.5 If the COMPANY terminates this CONTRACT for cause and it is subsequently determined pursuant to Section 31 or 32, that such termination was without cause, then in such event, the termination shall be deemed to be termination for convenience as set forth in Section 23 and shall be treated accordingly.

25 EFFECT OF TERMINATION FOR CAUSE

- 25.1 If the COMPANY elects to terminate this CONTRACT pursuant to Section 24.2, the COMPANY shall have the following rights, without prejudice to any other rights or remedies of the COMPANY in this CONTRACT or at law or in equity:
- (a) take possession of all MATERIALS, CONSUMABLES and all WORK performed by CONTRACTOR in connection with the performance of its obligations under this CONTRACT, whether any of the same is in a partial state of completion or completed condition;
 - (b) retain one or more contractors or utilize internal resources of the COMPANY to complete the WORK and the CONTRACT PRICE shall be adjusted accordingly along with any damages;
 - (c) within fifteen (15) days of completion of the measurements in accordance with Section 24.3, CONTRACTOR shall (i) clear the WORK SITE of all surplus CONSUMABLES, MATERIALS, CONTRACTOR PERSONNEL and CONSTRUCTION EQUIPMENT; (ii) demolish, dismantle and remove all TEMPORARY WORK; (iii) remove all rubbish from, and shall clear, level and dress the SITE to the satisfaction of the COMPANY; and (iv) handover to the COMPANY handover peaceful and vacant possession of the SITE. Notwithstanding the foregoing, CONTRACTOR shall promptly after closure or termination of this CONTRACT for any reason or on completion of the WORK, (A) clear the WORK SITE of all surplus CONSUMABLES, MATERIALS, CONTRACTOR PERSONNEL and CONSTRUCTION EQUIPMENT; (B) demolish, dismantle and remove all TEMPORARY WORK; (C) remove all rubbish from, and shall clear, level and dress the SITE to the satisfaction of the COMPANY; and (D) handover to the COMPANY peaceful and vacant possession of the SITE; and
 - (d) should CONTRACTOR fail to comply with provisions of Section 25.1(c) in the manner and within the time specified therein, the COMPANY shall have the right at the risk, cost

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and expense of CONTRACTOR, to require CONTRACTOR to forthwith withdraw CONTRACTOR PERSONNEL and sell and dispose of CONTRACTOR'S surplus CONSUMABLES, MATERIALS, CONSTRUCTION EQUIPMENT and clear the WORK SITE as aforesaid and take possession of the SITE. CONTRACTOR shall pay on demand by the COMPANY, all costs and expenses incurred by the COMPANY in connection with the foregoing, together with an additional amount equal to fifteen percent (15%) of such costs and expenses.

- 25.2 Notwithstanding anything to the contrary herein provided, nothing herein stated shall constitute the COMPANY as a trustee or bailee of any of any CONSUMABLES, MATERIALS, CONSTRUCTION EQUIPMENT or other items or things removed, cleared, demolished, dismantled or abandoned as aforesaid, nor shall the COMPANY be bound in law, contract or otherwise by any duty of care in respect thereof, with the intent that all actions, dealings and disposals within the provisions of this Section shall be exclusively at the risk and liability of CONTRACTOR and the COMPANY shall not be responsible, accountable or liable for any LOSSES of the CONTRACTOR in respect thereof.
- 25.3 If for any reason the COMPANY is unable to fully take over possession of all of the WORK within fifteen (15) days from the date of completion of the measurements as described in Section 24, the COMPANY shall, in addition to all amounts, compensation and/or damages recoverable from CONTRACTOR under this CONTRACT or otherwise, be entitled to recover from CONTRACTOR additional damages in the amount equivalent to one percent (1%) of the CONTRACT PRICE for each week or part thereof that the said taking over of possession at any WORK SITE is delayed beyond the fifteen (15) day period specified above.
- 25.4 Notwithstanding anything else to the contrary in this CONTRACT, the COMPANY shall have the right at any time and without any consent or approval by CONTRACTOR to take possession of all MATERIALS and CONSUMABLES at the WORK SITE as the COMPANY shall deem fit and CONTRACTOR shall be entitled to compensation for such MATERIALS and CONSUMABLES in the same manner as for surplus COMPANY MATERIAL pursuant to the provisions of Section 7.2.
- 25.5 Upon termination of this CONTRACT, the COMPANY may, at the COMPANY'S sole option and at the risk, cost and expense of CONTRACTOR; by itself or through any other contractor complete all of the WORK as contemplated in the CONTRACT DOCUMENTS which as of such date of termination was not completed by CONTRACTOR. The COMPANY shall be entitled to recover from CONTRACTOR all amounts, compensations and LOSSES that the COMPANY may claim under the terms of this CONTRACT or otherwise be entitled to at law, including the difference between the amounts as would have been payable to CONTRACTOR in respect of the WORK (calculated as provided for in Section 11.4 hereof read with the associated provisions thereunder) and the amount actually expended by the COMPANY for completion of the all of the WORK as aforesaid together with fifteen percent (15%) thereof to cover the COMPANY'S supervision charges. In the event that the latter amount exceeds the former amount, the COMPANY shall be entitled (without prejudice to any other mode of recovery available to the COMPANY) to recover any such excess from any amount due or become due to CONTRACTOR from the COMPANY. The recovery of this payment is not imposed by way of penalty but is a genuine pre-estimate of LOSSES that will be suffered by the COMPANY in such an event.

26. INDEMNITY

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- 26.1 CONTRACTOR agrees to defend, indemnify and hold harmless the COMPANY INDEMNIFIED PARTIES from and against any LOSSES, as determined by the Company, arising out of or related to:
- (a) CONTRACTOR'S actual or asserted failure to comply with any APPLICABLE LAW or with this CONTRACT, including fines or penalties by GOVERNMENT AUTHORITIES and claims arising from CONTRACTOR'S actual or asserted failure to pay any TAXES;
 - (b) actual or asserted violation or infringement of the INTELLECTUAL PROPERTY RIGHTS of any PERSON with respect to CONTRACTOR'S or SUBCONTRACTOR'S performance of the WORK or any DELIVERABLE or failure by the CONTRACTOR to maintain and ensure that its SUBCONTRACTORS maintain all licenses and sublicenses and pay any royalties and license fees as required in Section 14.5 above;
 - (c) injury to or death of any persons (including all the COMPANY INDEMNIFIED PARTIES, CONTRACTOR PERSONNEL, MANPOWER and SUBCONTRACTOR personnel) or from damage to or loss of any property of any PERSON (including the property of the COMPANY INDEMNIFIED PARTIES) arising directly or indirectly out of any acts or omissions of CONTRACTOR or any SUBCONTRACTORS, including, claims and damages arising from non-delegable duties of the COMPANY or arising from use by CONTRACTOR or any SUBCONTRACTOR of CONSTRUCTION EQUIPMENT, COMPANY MATERIAL, tools, scaffolding or facilities furnished to CONTRACTOR by the COMPANY; and
 - (d) actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of any acts or omissions of CONTRACTOR, SUBCONTRACTORS or suppliers.
- 26.2 CONTRACTOR'S indemnity obligations shall apply regardless of whether the PERSON to be indemnified was concurrently negligent, whether actively or passively, excepting only where the injury, loss or damage was caused solely by the gross negligence or willful misconduct of the PERSON to be indemnified. CONTRACTOR'S defense and indemnity obligations shall include the duty to reimburse any attorneys' fees and expenses incurred by the indemnified PERSON for legal action to enforce CONTRACTOR'S indemnity obligations.
- 26.3 In the event that the indemnity provisions in this CONTRACT are contrary to the law governing this CONTRACT, then the indemnity obligations applicable hereunder shall be construed to be to the fullest extent allowed by APPLICABLE LAW.
- 26.4 With respect to claims by CONTRACTOR PERSONNEL, MANPOWER or SUBCONTRACTOR personnel, the indemnity obligations created under this Section 26 shall not be limited by the amount, or type of benefits or compensation payable by or for CONTRACTOR PERSONNEL, MANPOWER or SUBCONTRACTOR personnel under any workers' compensation, disability benefits, or other employee benefits acts or regulations, and CONTRACTOR waives any limitation of liability or immunity arising from workers' compensation or such other acts or regulations.
- 26.5 The COMPANY shall be entitled to retain from amounts otherwise due or to become due to the CONTRACTOR such amounts as shall reasonably be considered necessary to satisfy any claims, suits, demands or ENCUMBRANCES for LOSSES, until such claims, suits, demands or ENCUMBRANCES have been settled and satisfactory evidence to that effect has been furnished to the COMPANY.

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- 26.6 If the COMPANY pays any amounts in respect of any claims, suits, ENCUMBRANCES or demands which are the responsibility of CONTRACTOR, then the COMPANY shall be entitled to recover or receive such amounts from CONTRACTOR.
- 26.7 Notwithstanding anything contained in this CONTRACT, CONTRACTOR is and shall remain solely and exclusively liable and responsible for:
- (a) supervision of the WORK, quality of material used, method and process of working, conduct, behavior and safety of CONTRACTOR PERSONNEL, MANPOWER AND SUBCONTRACTOR personnel;
 - (b) any liability, claim for damages or compensation, or any other action arising out of any act or omission of CONTRACTOR PERSONNEL, MANPOWER AND SUBCONTRACTOR personnel; and
 - (c) compliance with health, safety and environment procedures and norms prescribed under APPLICABLE LAWS, by GOVERNMENTAL AUTHORITY or by the COMPANY.
- 26.8 If the COMPANY pays compensation to any CONTRACTOR PERSONNEL, then the COMPANY shall be entitled to receive or recover from CONTRACTOR all such compensation. The COMPANY shall not be required to contest any claim made against it under any APPLICABLE LAW, except on written request by CONTRACTOR and upon provision of full security by CONTRACTOR for all costs which the COMPANY may become liable to pay as a consequence of contesting such claim.
- 27. INDEPENDENT CONTRACTOR**
- 27.1 Nothing contained in this CONTRACT shall be construed as constituting a joint venture or partnership or other similar relationship between CONTRACTOR and the COMPANY. CONTRACTOR is and shall be regarded as an independent contractor and not an agent of the COMPANY. In no event shall the COMPANY be deemed to owe any fiduciary or other duties to CONTRACTOR other than as expressly set forth in this CONTRACT. CONTRACTOR shall have no right or authority to, and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability or assume any obligation (express or implied) of any kind on behalf of the COMPANY or bind the COMPANY in any manner whatsoever. CONTRACTOR agrees and represents that CONTRACTOR PERSONNEL are not the COMPANY'S agents or employees for the purposes of any employment, tax or any other APPLICABLE LAWS, and as such CONTRACTOR PERSONNEL are not entitled to any benefits that are available to employees of the COMPANY. CONTRACTOR shall maintain complete control of CONTRACTOR PERSONNEL, MANPOWER and SUBCONTRACTOR personnel required for performance of its obligations under this CONTRACT and shall assume sole and full responsibility for their acts or omissions. Anything in this CONTRACT which may appear to give the COMPANY the right to direct CONTRACTOR as to the details of the performance of the WORK or to exercise a measure of control over CONTRACTOR shall mean that CONTRACTOR shall follow the desires of the COMPANY only as to the intended results of the WORK.
- 27.2 CONTRACTOR acknowledges that CONTRACTOR and SUBCONTRACTORS have no authority to make commitments or enter into contracts on behalf of, bind, or otherwise obligate the COMPANY in any manner whatsoever.

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28. SUBCONTRACTING

- 28.1 CONTRACTOR shall not subcontract performance of all or any portion of the WORK without first notifying the COMPANY of the intended subcontracting and obtaining the COMPANY'S written approval for subcontracting and of the identity of the SUBCONTRACTOR. CONTRACTOR shall furnish the COMPANY a copy of the proposed subcontract (with price deleted if the subcontracted WORK is part of fixed price WORK of CONTRACTOR under this CONTRACT) for the COMPANY'S review of the terms and conditions thereof and CONTRACTOR shall not execute such subcontract until the COMPANY has accepted such terms.
- 28.2 CONTRACTOR guarantees that all SUBCONTRACTORS will comply fully with the terms of this CONTRACT applicable to the portion of WORK performed by them. If any portion of WORK that has been subcontracted by CONTRACTOR is not prosecuted or performed in accordance with this CONTRACT then CONTRACTOR, upon the request of the COMPANY, shall replace such SUBCONTRACTOR at no cost to the COMPANY and such SUBCONTRACTOR shall not be employed again on WORK.
- 28.3 CONTRACTOR acknowledges and agrees that CONTRACTOR alone is responsible to the COMPANY for all of the WORK under CONTRACT and that any permission granted by the COMPANY to subcontract any WORK or any approval of any SUBCONTRACTOR by the COMPANY will not in any way (i) make the COMPANY responsible to any SUBCONTRACTOR or make the COMPANY responsible for the acts or omissions of any SUBCONTRACTOR or (ii) relieve CONTRACTOR of its responsibility for WORK by virtue of any subcontracts regardless of the COMPANY'S acceptance of such subcontract.
- 28.4 CONTRACTOR shall incorporate all the material provisions of this CONTRACT in the subcontracts relating to the WORK. The COMPANY shall have the right (but not obligation) to act as CONTRACTOR'S authorized representative for the purpose of conducting audits of all accounting and records related to the PROJECT in the possession of all SUBCONTRACTORS. CONTRACTOR agrees that the COMPANY has no contractual relationship with any SUBCONTRACTOR and that CONTRACTOR has the sole financial and contractual responsibility to resolve all issues with its SUBCONTRACTORS. No such audit or activity by the COMPANY or its agents or representatives shall release CONTRACTOR or any SUBCONTRACTOR from or waive any of CONTRACTOR'S or any SUBCONTRACTOR'S obligations under the CONTRACT DOCUMENTS.
- 28.5 If requested by the COMPANY, CONTRACTOR shall furnish it with the names and addresses of all SUBCONTRACTORS. CONTRACTOR shall include a provision in every subcontract that authorizes assignment of such subcontract to the COMPANY without requiring further consent from such SUBCONTRACTOR.
- 28.6 The COMPANY shall have the right from time to time to contact the SUBCONTRACTORS to discuss their progress.
- 28.7 As used in this CONTRACT, the term "subcontract" shall also include purchase orders and rental agreements for MATERIALS or CONSTRUCTION EQUIPMENT, and the term "SUBCONTRACTOR" shall also include vendors or suppliers of such material or CONSTRUCTION EQUIPMENT.
- 28.8 Notwithstanding any rights of CONTRACTOR under this Section, all WORK as identified by the COMPANY to be performed by CONTRACTOR shall not at any time be sub-contracted or

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otherwise undertaken by any PERSON other than CONTRACTOR.

- 28.9 CONTRACTOR'S revenues from the COMPANY for amounts owed to SUBCONTRACTORS shall not be considered to be earned by CONTRACTOR unless and until CONTRACTOR has paid such amounts to all such SUBCONTRACTORS. In the event the COMPANY determines, in its sole discretion, that CONTRACTOR has become insolvent or is in danger of becoming insolvent, then the COMPANY is authorized, but not required, to make direct payment to SUBCONTRACTORS with respect to any current or past-due amounts then outstanding. Alternatively, the COMPANY may, in its sole discretion, require that contracts between CONTRACTOR and any or all such SUBCONTRACTORS be assigned to the COMPANY, and CONTRACTOR hereby authorizes and consents to any such assignment. The COMPANY shall be entitled to reimbursement by CONTRACTOR for any payments made to any SUBCONTRACTOR under this Section 28.9, whether made pursuant to assigned subcontracts or otherwise. Title to any CONSUMABLES and MATERIALS for which such direct payment is made shall pass directly from such SUBCONTRACTOR to the COMPANY.

29. ASSIGNMENT

29.1 ASSIGNMENT BY CONTRACTOR

CONTRACTOR shall not assign, novate or otherwise transfer (including by change of ownership or control, by operation of law or otherwise) its rights and obligations under this CONTRACT in whole or in part without the prior written consent of the COMPANY, which may be granted or withheld by the COMPANY in its sole and absolute discretion. Any assignment, transfer or ENCUMBRANCE of its rights and obligations under this CONTRACT including any ENCUMBRANCES in favor of CONTRACTOR'S lenders in any manner, in whole or in part, without the prior written consent of the COMPANY shall be null and void.

29.2 ASSIGNMENT BY THE COMPANY

- (a) The COMPANY shall be entitled to novate, assign, transfer or otherwise dispose off any or all rights, obligations or interest of the COMPANY under this CONTRACT in whole or in part. The COMPANY may create any ENCUMBRANCE over any such rights, obligations or interest without the prior written consent of CONTRACTOR. CONTRACTOR shall, at its own cost, do any acts and execute any documents reasonably required by the COMPANY to effect such assignment, transfer, ENCUMBRANCE or disposal by the COMPANY.
- (b) In addition to the foregoing, the COMPANY shall have the right to assign by way of security its rights and obligations under this CONTRACT without the consent of CONTRACTOR, to any financial institution(s), banks and other lenders. CONTRACTOR agrees to execute such consent to the assignment of this CONTRACT as may be reasonably required by such assignees, so long as such consent neither materially diminishes the rights of CONTRACTOR under this CONTRACT nor imposes any material additional obligations on CONTRACTOR. CONTRACTOR acknowledges that as a result of an assignment of the COMPANY'S rights and obligations under this CONTRACT: (i) CONTRACTOR may be obligated to notify the assignee if the COMPANY is in default under this CONTRACT; (ii) the assignee may have the right to cure defaults by the COMPANY under this CONTRACT; and (iii) the assignee may have the right, upon the occurrence of a default under the financing agreements, to assign the rights under this CONTRACT to a nominee and to assume or cause such nominee to

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assume all of the obligations of the COMPANY under this CONTRACT. No assignment by the COMPANY under this Section and no assumptions of the COMPANY'S obligations by the assignee or its nominee shall relieve the COMPANY of its obligations herein, unless all of the COMPANY'S obligations herein are assumed by an assignee (including a nominee of any lenders).

30 GOVERNING LAW AND JURISDICTION

This CONTRACT shall be governed by and construed in accordance with the laws of the Republic of India excluding its conflicts-of-laws provisions which would refer construction hereof to the laws of another jurisdiction. Save and except the remedies of equitable relief, interim relief, or interim measures, the PARTIES shall be bound to refer the DISPUTES to arbitration in accordance with the provisions of Section 32, and each PARTY irrevocably submits to the non-exclusive jurisdiction of the Courts at Vadodara , India for the purpose of seeking such equitable relief, interim relief, or interim measures. Notwithstanding anything contained herein to the contrary, the PARTIES shall have the discretion to seek equitable relief, interim relief, or interim measures or enforce any AWARD in any court of competent jurisdiction (a) before commencement of arbitration proceedings, or (b) during arbitration proceedings, or (c) at any time after the making of the AWARD but before it is enforced.

31 SETTLEMENT OF DISPUTES

- 31.1 Any PARTY claiming that one or more claims, questions or differences of opinion (each a "DISPUTE") has arisen which is attributable to the construction, interpretation or performance of the terms and conditions of this CONTRACT, whether during the performance of this CONTRACT or after its termination, abandonment, or breach, must give notice thereof to the other PARTY as soon as practicable after the occurrence of the event, matter or thing which is the subject of such a DISPUTE and in such notice such PARTY shall provide particulars of the circumstances and nature of such DISPUTE and of its claims in relation thereto and shall designate an executive from its top management as its representative having authority to enter into negotiations and settle any or all DISPUTES.
- 31.2 The other PARTY shall, within fifteen (15) days of such notice, specify in writing its position in relation to each of the DISPUTES and designate an executive from its top management as its representative having authority to enter into negotiations and settlement of any and all DISPUTES. The executives so designated by the COMPANY and CONTRACTOR shall be referred to as DESIGNATED EXECUTIVES.
- 31.3 The DESIGNATED EXECUTIVES shall make, and PARTIES shall procure the DESIGNATED EXECUTIVES to make, good faith efforts and use all reasonable endeavors, including engaging in discussions and negotiations, to settle all the DISPUTES within thirty (30) days after receipt of the particulars of each DISPUTES.

32. ARBITRATION

- 32.1 If any DISPUTE has not been resolved by good faith negotiations between the DESIGNATED EXECUTIVES in accordance with Section 31, either PARTY may, within thirty (30) days from the date of failure to reach either an amicable resolution or a settlement, issue the other PARTY a notice in writing of the existence of a DISPUTE ("ARBITRATION NOTICE"), specifying its nature and the points at issue including a detailed description of the facts of the DISPUTE with relevant dates, names of personnel involved, references to relevant documentation (with copies

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attached), the pertinent contractual provisions, and a statement of claim and submission of the DISPUTE to be resolved by arbitration in accordance with the provisions of the Arbitration & Conciliation Act, 1996 ("ARBITRATION ACT").

- 32.2 The arbitration proceedings shall be conducted in accordance with the provisions of the ARBITRATION ACT by an arbitration tribunal constituted of three arbitrators ("ARBITRATION TRIBUNAL") as provided in Section 32.3.
- 32.3 Each PARTY shall appoint one independent arbitrator, and the two appointed arbitrators shall appoint a third independent arbitrator who shall act as the presiding arbitrator of ARBITRATION TRIBUNAL. The arbitration proceedings shall be held in Vadodara, India. The arbitration proceedings shall be conducted in English language. The decision of the majority of arbitrators on any DISPUTE before the ARBITRATION TRIBUNAL shall constitute an award of ARBITRATION TRIBUNAL ("AWARD") and shall be final and binding on PARTIES.
- 32.4 The AWARD must be in writing and signed by each of the arbitrators and shall specify in reasonable detail the evidence and factors considered by the ARBITRATION TRIBUNAL and the reasons for the decision on each issue including dissenting opinion of any arbitrator. The AWARD may be enforced and entered as a judgment in any court of competent jurisdiction.
- 32.5 The arbitrators shall not be an employee of either PARTY or in any way financially interested in this CONTRACT or the DISPUTE.
- 32.6 If either PARTY is unable to appoint an arbitrator within thirty (30) days after receipt of an ARBITRATION NOTICE, the ARBITRATION TRIBUNAL shall be appointed in accordance with the applicable provisions of the ARBITRATION ACT. The PARTIES agree that the PARTY prevailing in the arbitration proceeding shall be awarded costs (including its reasonable attorneys' fees) incurred in initiating (or responding) to a DISPUTE and resolving the DISPUTE, provided, that, during the arbitration proceedings the PARTIES shall each bear one-half of the cost of the ARBITRATION TRIBUNAL.
- 32.7 Notwithstanding the pendency of resolution of any DISPUTE or payment of any CLAIM of CONTRACTOR or commencement and continuation of arbitration proceedings with respect to any CLAIM of CONTRACTOR, CONTRACTOR shall continue to perform its obligations without interruption, and CONTRACTOR shall not delay, suspend or stop the performance of WORK under this CONTRACT.

33. COMMUNICATION AND NOTICE

- 33.1 All communications between the PARTIES shall be in English.
- 33.2 Any notice or demand or other communication required or permitted to be given under this CONTRACT or APPLICABLE LAW shall be effective only if it is in writing and signed by the applicable PARTY, properly addressed at the addresses provided for in the WORK ORDER and may be (i) personally delivered or delivered by courier, in which case it shall be deemed to have been given upon delivery at the relevant address if it is delivered not later than 1700 hours on a BUSINESS DAY or, if it is delivered later than 1700 hours on a BUSINESS DAY or on a day which is not a BUSINESS DAY, at 0800 hours on the next BUSINESS DAY; or (ii) sent by facsimile, in which case it shall be deemed to have been given when dispatched, subject to confirmation of uninterrupted transmission by a transmission report provided that any notice

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dispatched by facsimile later than 1700 hours on a BUSINESS DAY or on a day which is not a BUSINESS DAY shall be deemed to have been given at 0800 hours on the next BUSINESS DAY.

- 33.3 Notices shall be effective upon the earlier of, (i) receipt by the PARTY to whom it was addressed, or (ii) four (4) BUSINESS DAYS after delivery to the courier service. The notice address may be changed by written notice in accordance with Section 33.2.
- 33.4 If any legal process commenced by any PERSON in any way concerning any WORK performed pursuant to this CONTRACT is served upon CONTRACTOR or the COMPANY, such PARTY agrees to notify in writing the other PARTY in the most expeditiously manner following receipt of such legal process.

34. GENERAL PROVISIONS

- 34.1 Each PARTY acknowledges that it has an opportunity to be represented by legal counsel and such legal counsel has represented it, and that the provisions of this CONTRACT will not be construed against a PARTY because that PARTY or its counsel has drafted any of the provisions.
- 34.2 Without prejudice to any other mode of recovery, the COMPANY, without waiver or limitation of any rights or remedies of the COMPANY shall be entitled from time to time to deduct or setoff (i) any costs incurred by the COMPANY with respect to any obligation of CONTRACTOR under the CONTRACT and any amounts due or that may become due to the COMPANY from the CONTRACTOR, against (ii) any amounts due or that may become due to the CONTRACTOR from the COMPANY.

Without prejudice to the generality of the foregoing, the COMPANY may deduct any amounts paid by it, together with any legal and other costs, charges and expenses incurred by the COMPANY in defending any action and/or in obtaining legal advice or opinion relative to the ENCUMBRANCE or claim or action, from any amount then due or thereafter becoming due to CONTRACTOR and/or retained by the COMPANY (i) if CONTRACTOR does not dispute any ENCUMBRANCE or claim or action made against the COMPANY as set out in Section 14.8 above, or (ii) if in the opinion of the COMPANY, such ENCUMBRANCE or claim or action is otherwise valid. If there is no amount due or retained or if the same is insufficient to satisfy the required payments, CONTRACTOR shall, on demand, pay to the COMPANY the deficiency.

- 34.3 Unless otherwise stated herein, none of the provisions of this CONTRACT shall be for the benefit of or be enforceable by any third party or creditor of any PARTY hereto. This CONTRACT is not intended to confer any rights or remedies upon, and shall not be enforceable by, any PERSON other than the PARTIES (and their permitted successors and assigns) and, solely with respect to the provisions of Section 26 of this CONTRACT, each PERSON entitled to indemnification thereunder.
- 34.4 Time is of the essence for the performance of this CONTRACT or any part thereof by the CONTRACTOR. The PARTIES agree that availability of any other remedies to the COMPANY or invocation of such remedies by the COMPANY in any instance (i) shall not nullify that time is of the essence in this CONTRACT; or (ii) shall not be construed as a waiver of this principle or remedies thereunder for any subsequent delays by CONTRACTOR.

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- 34.5 CONTRACTOR shall not issue any public statement (or any private statement unless required in the performance of CONTRACTOR'S obligations hereunder), except as stated below, relating to or in any way disclosing any aspect of this CONTRACT, including with respect to scope, extent or value. This provision is not intended to exclude the provision of necessary information to permitted CONTRACTOR PERSONNEL and SUBCONTRACTOR personnel. All other such public or private disclosures shall require the prior written consent of the COMPANY. CONTRACTOR shall not take any photographs of any of the COMPANY'S equipment, installation or property, the SITE and the WORK SITE, unless CONTRACTOR obtains the COMPANY'S prior written consent.
- 34.6 No amendment, waiver or modification of this CONTRACT shall be valid or binding upon the PARTIES unless such amendment, waiver or modification shall be in writing and duly executed by the AUTHORIZED REPRESENTATIVES of both PARTIES. No assurance, representation, promise or other statement by any COMPANY PERSONNEL in relation to this CONTRACT shall be binding upon the COMPANY unless the same is communicated to CONTRACTOR in writing by the COMPANY in accordance with provisions of this CONTRACT. All authorizations, approvals or consents by or in respect of the COMPANY in connection with the execution, delivery and performance of this CONTRACT shall be obtained in writing, and signed by the COMPANY'S AUTHORIZED REPRESENTATIVE.
- 34.7 Any failure of either PARTY to enforce any of the provisions of this CONTRACT or any rights in respect thereof on one or more occasions, or to exercise any option herein provided, shall in no way be considered to be a waiver of any provisions, rights or option as to any other occasion or in any way affect the validity of this CONTRACT. No failure of the COMPANY to insist upon strict compliance by CONTRACTOR with any provision of this CONTRACT shall operate to release, discharge, modify, change or affect any of the obligations of CONTRACTOR under this CONTRACT. Any waiver by a PARTY of any rights relating to a breach of any of the provisions of the CONTRACT by the other Party shall be deemed to extend only to the particular breach in respect of which such rights are waived and shall not limit or otherwise affect any rights that such PARTY may have with respect to any other or future breach.
- 34.8 All rights and remedies provided in this CONTRACT are cumulative and the exercise of one remedy by the COMPANY under this CONTRACT shall not preclude the COMPANY from pursuing any other remedy under this CONTRACT. Further, the remedies available to the COMPANY under this CONTRACT are not exclusive but are in addition to all other remedies available to the COMPANY under law or equity.
- 34.9 If any provision or part thereof of this CONTRACT is determined to be invalid, illegal or incapable of being enforced by any rule or law, or public policy it shall not affect the validity and enforceability or the other provisions of this CONTRACT, which shall continue to remain in full force and effect. Upon such determination that any provision is invalid, illegal or incapable of being enforced, the PARTIES hereto shall negotiate in good faith to modify this CONTRACT so as to effect the original intent of the PARTIES as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.
- 34.10 This CONTRACT and any CONFIDENTIALITY AGREEMENT executed pursuant to this CONTRACT, embody the entire agreement between the COMPANY and CONTRACTOR with respect to the subject matter hereof and supersedes all prior oral or written statements, representations, promises or understandings. Trade custom and trade usage are superseded by this CONTRACT and shall not be applicable in the interpretation of performance of this CONTRACT.

General Conditions of Contract

34.11 Sections 1, 12, 13, 17, 18, 19, 21, 24, 25, 26, 30, 31, 32, 34 and all other provisions of this CONTRACT which by their nature are intended to survive the termination, cancellation, completion or expiration of this CONTRACT shall continue as valid and enforceable obligations of the PARTIES notwithstanding any such termination, cancellation, completion or expiration of this CONTRACT.

35. CONTRACTOR SAFETY AND SECURITY GUIDELINES:

Please Refer to Annexure A for Contractor Safety and Security Guidelines.