

## Corrigendum : 1

Tender NIT NO: AEML/DTPS/2019-20/06

**Tender Description: SUPPLY OF GIRTH GEAR & PINION ASSEMBLY FOR TUBE COAL MILL AT 2 X 250 MW ADANI DAHANU THERMAL POWER PLANT IN DAHANU**

Corrigendum Description: GCC file attached below

GENERAL CONDITIONS OF CONTRACT (G.C.C.)

For Supply Contracts

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**GCC 1.0 DEFINITION AND RULES FOR INTERPRETATION**

1.1 The following terms shall have the meanings defined below when used in capital letters herein

**“Acceptance Tests”** means the collective reference to the performance and reliability demonstrations and tests as set out in the Scope of Work and Technical Specifications.

**“Acceptance”** or **“Accepted”** or **“Accept”** means the successful completion by the Vendor and or Purchase as set forth in the scope of work of Acceptance Tests in respect of Goods or any relevant portion thereof as evidenced by the issuance of Acceptance Certificate.

**“Acceptance Certificate”** means the certificate issued by Purchaser upon the successful completion of all the Acceptance Tests as mentioned in the SCC, duly executed by an authorized signatory of Purchaser who has been specifically designated in writing by Purchaser for such purpose.

**“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 of Affiliate, “control”, “controlled” or “controlling” shall mean, with respect to any Person, any circumstance in which such Person is controlled by any Person by virtue of the latter Person controlling the composition of the board of directors or managers or owning or controlling percentage of the voting securities or interests of such Person or by virtue of any contractual arrangements or otherwise.

**“Applicable Law”** means in relation to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, all domestic and foreign laws (including, but not limited to, any environmental laws), treaties, ordinances, judgments, injunctions, writs, orders and stipulations of any court, arbitrator or governmental agency or authority and statutes, rules, regulations, orders and interpretations thereof of any governmental entity, instrumentality, agency, authority, court or other body (i) applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject or (ii) having jurisdiction over all or any part of Purchaser’s network or the work to be performed pursuant to the terms of the Agreement in force and effect, as of the Effective Date and which may be promulgated or brought into force and effect subsequently including any revisions, amendments or re-enactments.

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**“Authorised Person”** means such Person as may be authorized in writing by the Purchaser to exercise any rights or perform and fulfill any obligations of the Purchaser under this Contract / Agreement.

**“Appendix” or “Appendices”** means, individually, an appendix and collectively, the appendices attached to the Contract.

**“Bill of Quantity”** shall mean subsequent to the placement of the Contract/Agreement/Purchase Order the successful bidder shall be required to furnish the detailed price break-up within a specified time frame. This detailed break-up of items and prices shall be considered as Bill of Quantities (BOQ).

**“Business Day / Working Day”** means any Day that is not (i) a Day on which banks in a India is legally permitted to be closed for business (including partial Days), and (b) a holiday declared by Central Government of India or State Government of India.

**“Change in Tax Law”** means the occurrence of any of the following after the Base Date

- a) The enactment of any new Indian law;
- b) The repeal, modification or re-enactment of any existing Indian law;
- c) The commencement of any Indian law which has not entered into effect until the date of execution of the Contract;
- d) Change in the interpretation or application of any Indian law by a court as compared to such interpretation or application twenty eight (28) days prior to the last date of submission of tender;
- e) Change in laws does not include changes in corporate income tax.

*For the purposes of this definition, “Base Date” shall mean the date which is seven (7) days prior to the submission of the tender.*

**“Change in Work”** means any addition to, deletion from, suspension of or other modification, to the Work, or to the quality, function or as delineated in this Contract, including any such addition, deletion, suspension or other modification, which requires a change in one or more of the Technical Specifications and the completion schedule.

**“Change Order”** shall have the meaning set forth in Article 67.0 (*Change Orders*) herein.

**“Combined Release”** means an upgrade that is combined with any Enhancement.

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“**Company**” shall have the same meaning as per Companies Act 2013.

“**Communication**” means instruction or information or written notice issued on letter head or through electronic mail exchange between Parties and excludes verbal or short messaging services (SMS).

Unless otherwise stated in the Contract, all communications to be given under the Contract shall be in writing. Communication may be sent by competent authority or authority delegated to such officer/employee, through electronic mail (Email) and or project communication system of the Purchaser. Communication on letter head of Party signed by competent authority/authorized signatory of the Party. Communication having financial impact or commercial impact on changes/amendment in Works or performance of the Contract or Liquidated Damages / Penalty shall be signed by authorized signatories (at least two) who may be finance head/chief executive officer (CEO) of the Project or Chief Financial Officer or Chief Executive Officer or Project Director (PD) or Chief Project Director.

“**Consultant**” means any consultant appointed for and on behalf of Purchaser/Owner.

“**Contract/ Agreement**” means collectively Letter of Agreement (LoA), General Conditions of Contract (GCC) ,Special Condition of the Contract (SCC), the Technical Specifications and together with all of the Appendices attached hereto, Purchase Order, Work Order any special conditions to be incorporated as a part of LoA and Appendices, written agreements, tender documents, all annexes, annexures, schedules, enclosures and documentation attached hereto or thereto, or incorporated herein or therein as may be amended, modified or supplemented or superseded from time to time.

“**Contract Closure**” as mentioned in **Clause 67.0**.

“**Contract Price**” means, the fixed lump sum value including Taxes and Duty set out in Appendix 1 (Breakdown of Contract Price).

“**Vendor’s/Supplier’s/Contractor’s Party**” means the Vendor/Supplier/Contractor, its Affiliates and subsidiaries, and Sub-Vendor/Supplier/Contractor and Vendor/Supplier/Contractor and their respective directors, shareholders, officers, employees, servants and agents.

“**Day**” means a calendar day of twenty-four consecutive hours beginning at 0000 hours

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**“Dispute”** means any dispute, difference or disagreement of any kind whatsoever between Owner and the Vendor/Supplier in connection with or arising out of this Contract, including, without limitation, any dispute or difference concerning the existence, validity or enforceability of this Contract or any provision hereof.

**“Defects”** or **“Deficiencies”** or **“Defective”** means in relation to Goods, any fault, imperfection, shortcoming or inadequacy in the quality, quantity, potency, purity or non-conformance to design, materials, or training, as per performance criteria and quality standards set forth in Scope of Work, Technical Specifications and recognized best industry practices nature and manner of performance which is required to be maintained by or under any law for the time being in force or as has been undertaken to be performed by the Vendor (under the Agreement, expressed or implied, or) as is claimed by the Purchaser in any manner whatsoever.

**“Defect Liability Period (DLP)”** Defects Liability Period” shall mean minimum period of twelve (12) months calculated from the date of issuance of each Acceptance Certificate for the Stage or mentioned in this Contract/Agreement, Works or any part of the Works. Provided that, if any part of the Works or subsystems or part or component of that part of the Works has been replaced, renewed or repaired during the Defects Liability Period, the Defects Liability Period in respect of such part or subsystem or components of that part shall again start for a period of twelve (12) months from the date of such replacement, renewal or repair has been completed to the satisfaction of the Purchaser.

**“Documents/Documentation”** means all material, technical data, instructions, descriptions, manuals and other documents (whether recorded in writing or on electronic storage media) related to the design, certificates, forms, manufacture, development, installation, configuration, optimization, operation, maintenance, management, administration or Interoperability of the Goods, training and operations, including factory tests reports/Acceptance Test reports, and Vendor’s standard technical documentation to be provided by the Vendor under the Agreement or which may be necessary to support Purchaser’s business requirements (such as testing, operating, and troubleshooting).

- (a) **“Drawings”**
- (b) Drawings furnished by the Owner;

- (c) Drawings submitted by the Supplier/Vendor with its bid proposal which have been accepted in writing by the Owner;
- (d) Drawings in the Technical Specifications;
- (e) Supplementary drawings furnished by the Owner to clarify and/or to define in greater detail the intent of this Contract;
- (f) Drawings furnished by the Owner to the Supplier/Vendor during the progress of the Work;
- (g) Engineering data and drawings submitted by the Supplier/Vendor during the progress of the Work which have been accepted in writing by the Owner; and
- (h) Any other documents, manuals and instructions furnished by the Owner pertaining to the design, engineering, procurement, construction, erection, installation, testing, completion, commissioning, performance testing and achievement of Acceptance Certificate.

**“Effective Date”** means with reference to (a) LoA, the date on which a copy of LoA along with all its annexures and GCC, duly accepted by the Vendor is returned to the Purchaser, or with reference to (b) Purchase Order, the date of issue of Purchase Order

**“Environmental Guidelines”** means the environmental guidelines and occupational health and safety standards of the World Bank Group as in effect.

**“Environmental Liabilities”** means all losses, damages, and expenses (including, without limitation, the reasonable costs of investigation, testing, containment, removal, cleanup, abatement or remediation and reasonable attorneys’ fees and costs), whether or not quantified in amount, relating to the presence in the environment of Hazardous Materials attributable to the Complete Plant or the Site, or the violation by the Supplier/Vendor, its agents or employees of any environmental Laws of the India or the Environmental Guidelines.

**“Environmental Matters”** means any of the following

- (a) any release, emission, entry or introduction into the air, including the air within buildings and other natural or man-made structures above ground of any

Hazardous Materials or any, material or substance regulated under the Environmental Guidelines;

- (b) any discharge, release or entry into water, including into any river, watercourse, lake or pond (whether natural or artificial or above ground or which joins or flows into any such water outlet above ground) or reservoir, or the surface of the river bed or of other land supporting such waters, ground waters, sewer or the sea of any Hazardous Material or any material or substance regulated under the Environmental Guidelines;
- (c) and deposit, disposal, keeping, treatment, importation, exportation, productions, transportation, handling, processing, carrying, manufacture, collection, sorting or presence of any Hazardous Material or any material or substance regulated under the Environmental Guidelines (including, in the case of waste, any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it reusable or reclaiming substances from it) and any substance or articles which is required to be disposed of as being broken, worn out, contaminated or otherwise spoiled);
- (d) the conservation, preservation or protection of the natural or man-made environment or any living organisms support by the natural or man-made environment; or
- (e) any other matter whatsoever directly affecting the environment or any part of it.

**“Environmental Standards”** means the Environmental Guidelines, the equator principles and any prescribed standards under Applicable Law relating to (a) pollution, contamination, clean-up, protection and reclamation of the environment; (b) health and safety, including, without limitation, the exposure of employees or other Persons to any Hazardous Materials; (c) the release or threatened release of any Hazardous Materials; (d) the management of any Hazardous Materials, including, without limitation, the manufacture, generation, formulation, processing, labelling, distribution, introduction into commerce, registration, use, treatment, handling, storage, disposal, transportation, reuse, recycling or reclamation of any Hazardous Materials; and (e) any applicable permit, approval, notice, requirement or order issued by a Competent Authority with respect to the foregoing.

**“Force Majeure”** shall have the meaning ascribed to it in Clause 39.

**“Free Issue Material/Item/Items”** The Purchaser shall provide Free Issue Material (FIM) if specified in the Purchase Order to Contractor, as per quantities/sizes indicating costs of such free issue material mentioned in the Purchase Order.

**“Fraudulent Practice”** means a misrepresentation of facts in order to influence a procurement process or the performance of this Contract to the detriment of the Owner and includes collusive practices among the Contractor and any other Persons (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Owner of the benefits of free and open competition.

**“Goods/Equipment”** means all items to be provided under the Agreement including raw materials, processed materials, equipment, fabricated goods, services, Drawings, instruments, Hardware and Software or other documentation as applicable.

**“Good Industry Practice”** means those practices, methods, acts, techniques, procedures and standards and the exercise of a degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a first-class reputable internationally recognised, skilled and experienced Contractor, Equipment manufacturer and/or operator in the design, procurement, manufacture and would be expected to be applied in the performance of the Work in a manner consistent with reliability, safety, environmental protection, economy, efficiency and any Applicable Law and directive.

**“Goods Receipt”** or **“GR”** means, with respect to goods, the goods receipt notice confirming receipt of goods, issued by the transporter of such goods includes lorry receipt, rail receipt. Original goods consignment note (LR/RR/BoL/Airway bill/ courier note/bilty or any other similar name or nomenclature), shall be handed over to the Purchaser along with Goods/Equipment..

**“GCC”** means General Conditions of Contract.

**“Hardware”** means (a) all equipment, components, hardware, spare and replacement parts, accessories, test bed, firmware therein and other items of tangible personal property furnished to Purchaser by the Vendor pursuant to the Documents; (b) all Enhancements, Upgrades and combined releases relating to the equipment, hardware, spare and replacement parts and other items of tangible personal property described in (a) above; and (c) all Documentation relating to (a) and (b) of this definition.

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**“Hazardous Materials”** means (i) any element, compound, substance, chemical or biological derivative, radiation, noise, vibration, material or combination thereof which by reason of its composition or characteristics is defined in any Applicable Law or Directive as a hazardous material; (ii) any pollutant, contaminant, solid waste, hydrocarbon product, toxic or hazardous substance or waste, any flammable, explosive or radioactive materials regulated under, or subject to, any Laws of India; and (iii) any other material which any statutory authority shall determine from time to time is harmful, toxic, or dangerous, or otherwise ineligible for handling, storage or disposal by unregulated means.

**“Incoterms”** shall mean trade term and the rights and obligations of parties there under shall be as prescribed by Incoterms 2000. Incoterms means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

**“Information”** means all present and future technical, financial and commercial information and data (whether oral or in writing) relating to a Party's or its Affiliates' respective businesses, finances, planning, facilities, products, techniques and processes and shall include, but is not limited to, the Agreement, as well as the discussions, negotiations, Communications and proposals related to the Agreement, discoveries, ideas, concepts, know-how, techniques, software, designs, Technical Specifications, drawings, blueprints, tracings, diagrams, models, samples, flow charts, data, computer programs, disks, diskettes, tapes, marketing plans, customer names and other technical, financial or commercial information and intellectual properties in any form including written or oral, tangible or intangible, visual or electronic.

**“Imported Goods”** means Goods/Equipments, Mandatory Spare Parts, Commissioning Spare Parts, special tools and tackles, materials and plant and other spare parts supplied from a location outside India, into India under Indian Customs Act / GST laws.

**“Intellectual Property Rights”** means all patents (whether registered or not), trademarks (whether registered or not), copyrights (whether registered or not), design rights (whether registered or not), trade secrets, marks or any other intellectual property rights in Goods and to the work licensed, granted or assigned by Vendor to, or otherwise vested in, Purchaser pursuant to the Agreement.

**“Interoperate”, “Interoperable” or “Interoperability”** means the ability through the use of open interfaces and published standards for (i) Purchaser’s network or any

material part thereof to interconnect and successfully operate with another portion of Purchaser's network or any material part thereof provided by or for the Vendor, Third Party Providers (as defined below) and/or other Contractors and/or other Vendors whose equipment and software also meet relevant standards in accordance with the Technical Specifications, (ii) Goods to operate with one another and to operate with and within Purchaser's network in accordance with the Technical Specifications, and (iii) Goods and Purchaser's network to operate and, wherever applicable, interoperate with the networks of other domestic and national tele communications providers in the Territory.

**"Latent Defect"** shall mean a defect, inherently lying within the Goods/Equipment or arising out of design deficiency, which do not manifest themselves and/or was not reasonably discoverable/discovered up to end of Defect Liability Period.

**"Letter of Award" or "LoA"** means the formal Letter of Award issued by the Purchaser to the Vendor/Supplier/Contractor for purchase of Goods, if applicable.

**"Management Control"** shall mean change in ownership of Purchaser Company under Companies Act 2013 /laws of India. It shall also encompass operational control of the Purchaser.

**"Net Price"** means such price to be paid by Purchaser for Goods determined after applying all discounts, credits, rebates and concessions available to Purchaser under the Agreement and subject to definitions and provisions under Indian GST laws.

**"Notice to Proceed" or "NTP"** means the written notice issued by Owner to the Supplier/Vendor/Contractor in accordance with the Execution Cover.

**"Owner/Client"** defined in Execution Cover or Special Condition of Contract (SCC) or Purchase Order or in any other contractual document(s) exchanged with Vendor/Supplier/Contractor.

**"Onshore Supply/Locally purchased goods"** means Goods/Equipments, mandatory spare parts, commissioning spare parts, special tools and tackles, materials and plant and other spare parts manufactured by Vendor/Sub Vendor within India.

**"Party" and "Parties"** means one or both of the parties as defined in the Contract.

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**“Penalty”** to be paid or payable by Vendor under this Contract/Agreement or under combination of other Agreements. Penalty may be in form of compensation, breach of any stipulated Clause or any damages.

**"Person"** means any natural person, entity, firm, organization, operation, company, voluntary association, partnership, joint venture, trust, limited organization, unlimited organization or other entity.

**“Port of Dispatch”** means the port of origin at which any Imported Goods are loaded onto the ship for transportation to the Port of Discharge.

**“Port of Discharge”** means the port in India at which Imported Goods are unloaded for onward transportation to the Project Site /Site or designated place defined in the Contract.

**“Political Event”** shall mean any event or circumstance or combination of events or circumstances of a political nature, social unrest in India or directly involving India or a change in the Constitutional Law/Federal Laws of India or State(s) in India (including the effects of such events and circumstances or combination of events or circumstances) referred to in this Contract that materially and adversely affects the performance by a Party of its obligations under this Contract,

**“Project”** means design, engineering, manufacturing, transportation, supply, inspection and testing, as the case may be, of the stores, plants, materials, components, equipment, machineries, instruments, appliances and accessories, in accordance with the technical specifications and drawings of the Contract documents.

**“Punch List”** means the list prepared in conjunction with and as a result of Acceptance Testing and included in any Substantial Completion Certificate, which only contains non-service-affecting and non-performance-affecting failed tests or tests not carried out by the Parties, determined not to have been fully completed in accordance with the Technical Specifications by Vendor as of the date of the related Acceptance Certificate.

**“Purchaser”** shall mean entity named in the Execution Cover or Special Conditions of the Contract and includes Employer, assignees, successors, associated company/subsidiary/joint venture/firm/representative.

**“Purchase Order”** means any purchase order issued pursuant to LoA together with all annexure, schedules, enclosures, Documents and any other attachments and amendments thereof.

**“SCC”** means ‘Special Conditions of Contract forming part of this Contract / Agreement.

**“Scope of Work” (“SOW”) or “Work”** means Purchaser’s requirements describing in details including the nature of the work and activities to be performed by the Vendor, Technical Specifications, the duration of such requirement, and work performed, the expected time of commencement and completion, detailed responsibilities and other relevant particulars.

**“Severability”** If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

**“Shelf Life”** means in relation to any Goods, such period of time, as prescribed or guaranteed by the manufacturer or Vendor/Supplier/Contractor of such Goods, during which they are approved for use for achieving their optimum performance.

**“Site/Project Site”** means Purchaser’s designated place where the Goods are required to be delivered and/or to install/to commission

**“Software”** means, collectively, one or more programs, including Upgrades, capable of operating on a controller, processor or other hardware product and shall include any firmware contained in the Hardware. Upgrades and all complete and commercially released computer programs as set out in the Agreement including all flow charts, schematics and annotations that comprises the pre-coding detailed design and all Documentation relating thereto.



**“Source Code”** means the programs written in programming languages, including all comments and procedural code in a form intelligible to programmers and capable of being translated into object code through assembly or compiling for operation on computer equipment.

**“Supplier”** means a Vendor or a Contractor identified in the Contract/Agreement to provide Supply of Goods or services or both.

**“Sub-Supplier”** means any Person, firm or Company supplying Goods or services or both to a Supplier in connection with a Purchase Order or supplying Goods to Purchaser on behalf of Supplier in connection with a Purchase Order and shall include a manufacturer, Supplier of any goods, materials, labour or service to whom a part of the SOW has been sub-contracted by the Vendor with the consent of the Purchaser.

**“Sub-Order”** means any order placed by Vendor on a Sub -Vendor.

**"Substantial Completion"** means the execution of a Substantial Completion Certificate in accordance with the provisions of the Agreement.

**"Substantial Completion Certificate"** means a document submitted by Vendor to Purchaser and signed by an authorized representative of each of the Vendor and the Purchaser stating that the Vendor has (i) successfully completed the Acceptance Tests covered by such certificate with the exception of items covered under the related Punch List (ii) submitted to Purchaser the Documentation, completed checklists and signed certificates specified in the Scope of Work.

**“Technical Specifications”** means the specifications as set out in the SOW.

**“Third Party Provider”** means any person or entity that provides any goods, equipments, machinery , hardware, software, networks, systems or other work to Purchaser, excluding Goods provided by or for Vendor or any Sub-Vendor hereunder, but including the goods, equipments, machinery, hardware, software and other activities that is provided internally by Purchaser.

**"Upgrades and Enhancement"** have its meaning described in **Clause 43** hereto.

**“Supplier”** shall mean the person, firm or company and its Affiliates, legal successors in title and permitted assigns with whom Purchaser acting through itself or any of its Affiliates or nominees has placed the Purchase Order. It shall also encompass other

terms such as Supplier, Seller, or, manufacturer, bidder as used in documents referenced herein or in Purchase Order or attached hereto or thereto and includes a Contractor.

“**Warranty**” includes (i) Vendor’s warranties applicable in connection with supply of Goods under the Agreement and (ii) warranties contained in GCC 19.

“**Warranty Period**” with reference to the Goods, means the period during which Warranty obligations of the Vendor are effective under the Agreement. .

Capitalised terms used herein but not defined shall have the meaning assigned to them under LoA/ Purchase Order/SCC.

“**Work/Works**” shall mean scope of work defined under this Contract/Agreement/Purchase Order.

## 1.2 Interpretation

In the Agreement except where the context requires otherwise

- 1.2.1 Words indicating one gender include all genders;
- 1.2.2 “Written” or “in writing” means hand-written, written, or electronically made and resulting in a permanent record;
- 1.2.3 Any reference to any provision of an Act of Parliament or of a State Legislature shall be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof, to all instruments, orders or regulations then in force;
- 1.2.4 The singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities;
- 1.2.5 The headings are inserted for convenience and shall not limit, alter or affect the meaning of the Agreement;
- 1.2.6 The terms defined in schedules shall have the same meaning ascribed thereto when used elsewhere in the Agreement and vice versa;
- 1.2.7 The words “include” and “including” shall be construed without limitation;

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- 1.2.8 The word “consent” wherever used, shall mean prior written consent;
- 1.2.9 Any reference to any Contract/Agreement, deed, instrument, license, code or other document of any description shall be construed, at the particular time, as a reference to that Contract/Agreement, deed, instrument, license, code or other document as the same may be or have been amended, varied, supplemented, modified, suspended or novated;

**GCC2.0 ENTIRE AGREEMENT AND AMENDMENT, ORDERING**

- 2.1 The Purchase Order, SCC, GCC, tender documents and documents attached therewith and herewith constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all proposals, oral or written, all previous negotiations, and all other Communications between the Parties with respect to the subject matter hereof.
- 2.2 No changes, amendments, modifications or waiver of any of the terms and conditions hereof shall be valid unless reduced to writing and signed by duly authorized representatives of both Parties.
- 2.3 Purchaser and/or its Affiliates/Authorized Person will have right to issue Purchase Orders to Vendor from time to time for provision of Goods. All Purchase Orders will be in writing, specifying the technical details, the quantity and the date of shipment/delivery, shipping method, location and other relevant details as mutually agreed between the Parties. The Purchaser and/or its Affiliates/Authorized Person will have right to issue revised Purchase Orders in the event of any change in law including changes in tax laws impacting details such as quantity, mode of delivery, price, etc.
- 2.4 Vendor shall acknowledge, accept, sign and return a copy of Purchase Order as mentioned in SCC from the date of receipt of the Purchase Order by Vendor, unless such Purchase Order is not in material conformance with the terms of the Agreement, in which event, Vendor shall notify Purchaser of such non-conformance within the aforesaid period as mentioned in SCC and Purchaser may issue a revised Purchase Order removing such non-conformities within a reasonable period after receipt of Vendor’s notification. For avoidance of doubt, it is clarified that the time period for delivery mentioned in the non-conforming Purchase Order shall be extended by the time from the date of Vendor’s notification and the date of receipt of the conforming Purchase Order by Vendor.

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- 2.5 The execution of the SOW by the Vendor shall be wholly in accordance with the Agreement and fit for the purposes for which they are intended. The Vendor shall deliver the Goods as per the Purchasers requirements and as implied under the Agreement.
- 2.6 The Vendor is deemed to have satisfied itself as to the correctness and sufficiency of the Purchaser's requirements and other terms of the Agreement relating to its risks, liabilities and obligations set out in or implied by the Agreement and all matters and things necessary for the execution of Scope of Works.
- 2.7 The Agreement does not obligate Purchaser to purchase any Goods. Except as specifically provided, Vendor shall not and the Agreement does not impose any condition on Purchaser including a condition to procure any goods as a precondition to provision of any Goods.
- 2.8 The term of Agreement shall be as mentioned in SCC from the Effective Date of GCC unless terminated earlier by either Party in accordance with the Agreement.

In the event that a Change in Law, including but not limited to the introduction of GST, occurs during the term of the contract, which results in any benefit to the Vendors, the Vendors shall be bound to pass on such benefit arising out of the Change in Law to the Purchaser.

**GCC 3.0 CHANGES / CHANGE ORDER / CHANGES IN WORK**

- 3.1 Purchaser, may at any time, and from time to time, direct, in writing, changes, including but not limited to changes to a Purchase Order including but not limited in any one or more of the following
- (1) Drawings or Technical Specifications;
  - (2) Additions to or deletions from quantities ordered;
  - (3) Delivery schedule;
  - (4) Method of shipment or packing;
  - (5) Place of delivery;
  - (6) Place and Time of transfer of title / ownership
  - (7) Payment Terms

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(8) Any other terms and conditions mentioned in the Contract.

If any such change causes an increase or decrease in the cost of or the time required for performance of any part of the work contained herein, an equitable adjustment may be made in the Net Price or delivery schedule, or both, and the Purchase Order shall be modified by written amendments.

3.2 Any claim by Vendor for such adjustment made under this GCC 3.1 must be asserted within **seven (7)** working days from the date of receipt by Vendor of the notification of such change. However, nothing in this GCC shall relieve Vendor from proceeding with the order or Purchase Order as changed and performing the obligations under the relevant Purchase Order.

3.3 If the Purchaser Order requires Purchaser to review and comment on Vendor's technical documents, Vendor shall assert any claims for adjustment, which would result from implementation of Purchaser's comments within five (5) working days from the date of Vendor's receipt of such comments. No adjustment will be made after the Purchase Order has been dispatched and no adjustment of any type will be made hereunder unless Purchaser confirms the changes to be made in Purchase Order in writing.

### **3.4 No Change in Work**

3.4.1 The following shall not be considered as a Change in Work, under any circumstance, nor shall any of the following be taken into account when calculating the effect on the Contract Price of a Change in Work nor shall any of the following themselves be considered as the basis for any adjustment to the Contract Price

3.4.2 any escalation in the cost of Equipment, services or labour to be provided in connection with the Works;

3.4.3 any increase in manpower hourly rates;

3.4.4 currency fluctuations in respect included within the Contract Price; or currency fluctuation in sub order placed by Contractor ; currency fluctuations after completion time in execution of Supply or part thereof. Currency exchange rate fluctuation variation shall not be considered in any circumstances.

3.4.5 any change in the sourcing of Equipment; and,

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3.4.6 any activity, services or work relating to the remedy, rectification, correction, repair and/or replacement of any non-compliant, defective or deficient or non-performance of the Works or Equipment.

3.5 The Purchaser shall not grant an increase in the Contract Price with respect to a Change in Work if

3.5.1 the additional activities, services or work are required because of delays in the performance of the Works attributable to the Contractor, late deliveries of the equipment or the Contractor's equipment or due to labour shortages or related to any remedy, rectification, correction, repair and/or replacement of any non-complaint, defective or deficient or non-performance of Work ;

3.5.2 the additional equipment, components or services are required because of a breach of the Contractor's General Warranties set forth in this Contract; or

3.5.3 the change relates to re-performance of any of the Works because of the Contractor's failure to follow the Owner's specifications.

### **3.6 Change in Law**

3.6.1 In the event of a Change in Law that requires a material modification or service amendment, the Purchaser or the Supplier/Vendor/Contractor may submit a request for a preliminary change order in accordance with Contract/Agreement herein in respect of the cost of any material modification or changes which are necessary for compliance with the Change in Law or within the requirements of Law. The Contractor shall promptly notify the Owner of any Change in Law applicable to the Technical Specifications or in accordance with the Contract.

## **GCC 4.0 TITLE AND RISK OF LOSS**

4.1 Except as otherwise provided herein, all Goods furnished by Vendor hereunder shall become the property of Purchaser (without any lien, encumbrance or security interest) when the first of the following events occurs

1. The Goods or part thereof are first identifiable as being appropriated to the Purchase Order.

2. When Purchaser pays for the Goods or part thereof in accordance with the terms of the Agreement.

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3. When the Goods or part thereof are delivered to Purchaser or its Affiliates or the Authorised Persons as applicable.

4.2 Notwithstanding the foregoing, Vendor shall be responsible for and shall bear any and all risk of loss or damage to the Goods until delivery thereof in accordance with the delivery provisions of the Agreement. Upon such delivery, risk of loss or damage shall pass to Purchaser; provided however, that any loss or damage, whenever occurring, which results from Vendor's non conforming packaging, crating or handling shall be borne by Vendor.

**GCC 5.0 PURCHASER'S RIGHTS**

5.1 Any Technical Specifications, plans, drawings, patterns or designs supplied by Purchaser to Vendor in connection with the Agreement shall remain the property of Purchaser as applicable.

5.2 Title to all drawings, Technical Specifications, calculations and other documents specifically prepared by Vendor or Sub-Vendor in connection with Goods to be supplied to Purchaser shall vest in Purchaser and Purchaser shall have the right to use these drawings, Technical Specifications, calculations and other documents without any obligation of any kind to Vendor or Sub-Vendors.

**GCC 6.0 DRAWINGS AND DOCUMENTATION**

6.1 The Vendor shall submit four copies (or such other number as may be specified in the Agreement) of all its Drawings to the Purchaser within fourteen (14) days of the Vendor's acceptance of the Purchase Order (or such other period as may be specified therein) but in any event before starting the execution of Purchase Order to enable the Purchaser to review the Drawings and make any comments thereon which it may consider appropriate.

6.2 One copy of the Drawings referred as above duly signed by the Purchaser for the purposes of identification and showing the Purchaser's comments (if any) shall, unless otherwise stated in the Purchase Order, be returned to the Vendor within seven (7) days of receipt of the said Drawings by the Purchaser. Unless otherwise stated in the Purchase Order, the Vendor shall, within seven (7) days of receiving the Drawings upon which the Purchaser has made its comments incorporate them into such Drawings and return two copies thereof (or such other number as may be specified in the Purchase Order) to the Purchaser. The procedure set forth in this Clause shall apply again to

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such Drawings. Notwithstanding any review or comments by the Purchaser, responsibility for the sufficiency and accuracy of the final Drawings remains with the Vendor.

- 6.3 No deviation from or modification to the general or detailed Drawings of the Purchaser or the duly reviewed and signed Drawings of the Vendor may be made without Purchaser's prior approval in writing.
- 6.4 In the event of any inconsistency, inaccuracy or ambiguity in the Purchaser's drawings or documentation, or if, in the opinion of the Vendor, any detail thereof requires modification; the Vendor shall notify the Purchaser immediately in writing and obtain its instructions before proceeding with the work in question, which it shall perform in compliance with such instructions.
- 6.5 The Vendor shall promptly correct at its cost, any error, discrepancy or omission in any Drawing. If the Vendor neglects or refuses to make any such correction, the Purchaser may, without prejudice to its any other rights, and after giving notice of its intention to do so to the Vendor, proceed to make the correction itself, or the Purchaser may employ another party to do so and to recover the cost thereof from the Vendor. The Purchaser shall not be obliged to accept from the Vendor any drawing corrected by the Vendor under this Clause after the date of such notice. The Purchaser shall not be obliged to make any payment for or associated with such incorrect Drawing but if made, any such payment shall be subject to applicable provisions of price and payment.
- 6.6 The Vendor shall reimburse to the Purchaser any abortive costs, which the Purchaser may have incurred on any incorrect Drawing.
- 6.7 The Vendor shall furnish all drawings, Technical Specifications, specific design data, preliminary arrangements and drawings arising from or related to the SOW or as otherwise required for the Vendor to perform its responsibilities under the Purchase Order. Such materials shall be in sufficient detail to indicate that the SOW to be supplied and performed under the Purchase Order complies with the Technical Specifications and the other requirements set forth herein. Vendor will maintain and provide all of the documentation and records produced in connection with the implementation of the work under the Purchase Order and any other documents that may be required by Purchaser to (a) meet and comply with any Applicable Laws, (b) for operation and maintenance of the Goods and or Purchaser's network. The Vendor shall be responsible for any loss arising out of or relating to the negligent act or omission of the Vendor, its employees,



agents or Sub Vendors in failing to maintain proper records and documentation for Purchaser's property. The Vendor shall reimburse Purchaser for any such loss of Purchaser's property at the replacement cost applicable thereto. Any financial liability accruing due to wrong documentation shall be borne by the Vendor.

6.8 Vendor agrees to provide a set of all Drawings. All the Documentation shall be delivered along with the Goods. The Vendor shall provide detailed manufacturing drawings, data sheets, calculations, engineering data, schematics, and other drawings related to Goods.

6.9 Vendor agrees to provide all preliminary data and information which may be required by the Purchaser within fifteen days of issuance of Purchase Order or as per mutually agreed timeline. Failure to do so shall result in deduction of 5% of Net Price as penalty.

**GCC 7.0 TESTING AND ACCEPTANCE**

7.1 The Goods shall be tested strictly in accordance with the procedure for Acceptance Testing as specified in Scope of Work and Technical Specifications. Goods shall be said to have been Accepted when Purchaser issues an Acceptance Certificate, signed by the authorized representative of Purchaser, to Vendor. The Acceptance Certificate shall specifically state that Vendor has successfully completed the Acceptance Tests applicable to Goods covered by such certificate to the satisfaction of Purchaser.

7.2 Purchaser may, at the request of the Vendor and at its sole discretion, issue a Substantial Completion Certificate duly signed by authorized representatives of Purchaser, pending completion of Punch List items, subject to such conditions as it may deem fit, including but not limited to retention of portions of payments till completion of Punch List Items and time periods for completion of Punch List items.

**GCC 8.0 BACKWARD COMPATIBILITY AND INTEGRATION (WHEREVER APPLICABLE)**

8.1 Vendor warrants that (i) each Revision Level shall be Backwards Compatible (as defined), and (ii) all point releases and other bug-fixes shall be Backwards Compatible with all of the last **five (5)** consecutive Revision Levels prior to the current Revision Level. In the event that any Goods supplied by the Vendor at any time do not provide Backwards Compatibility, then the Vendor shall provide, without charge to Purchaser, any and all necessary Upgrades and Enhancements (and otherwise take such steps as may be necessary) to achieve Backwards Compatibility. Additionally, if any other

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customer of the Vendor or the Vendor's Affiliates is provided Backwards Compatibility with Revision Levels more in number than those offered to Purchaser, and/or is permitted to deploy any one of such numbers of Revision Levels that are more than those permitted to Purchaser hereinabove, the Vendor shall be deemed to have agreed to provide Purchaser, with immediate effect, Backwards Compatibility with such number of Revision Levels as provided to such other customer and/or permission to deploy any one of such additional numbers of Revision Levels as permitted to such other customer, as applicable. For the purpose herein, "**Revision Level**" shall mean each version of Goods that reflects any modification or change from the immediately preceding version of such items of Goods.

8.2 Interoperability and Integration Vendor shall ensure that the Goods shall be fully Interoperable with Purchaser's network as set forth in the Technical Specifications/Scope of Work. Vendor shall be fully responsible for integrating the Goods into Purchaser's network. Vendor shall also reasonably co-operate with Third Party Providers as directed by Purchaser to the extent necessary for the implementation of Purchaser's network subject to suitable confidentiality Purchase Orders with such Third Party Providers.

8.3 Test Bed Laboratory Vendor shall provide and install and keep updated and upgraded at all times all Goods described in the Technical Specifications for the operation of a test bed laboratory at no additional charge to Purchaser. In order to work towards achieving Interoperability, Purchaser may bring other infrastructure vendors' equipment into the test-bed laboratory. Notwithstanding anything contained herein to the contrary, the Vendor shall share with these other infrastructure vendors that Purchaser brings into the test-bed laboratory, all necessary interfacing information (under suitable conditions of confidentiality) to reasonably assure the timely achievement of each of the mutually agreed Interoperability milestones. Vendor shall provide the test bed Goods and same shall be delivered not later than thirty (30) days from the Effective Date of a Purchase Order, at no extra cost to Purchaser.

## **GCC 9.0 SUPPLIER CODE OF CONDUCT**

9.1 Vendor shall be liable to adhere to the Vendor Code of Conduct, attached hereto as Annexure A ("Supplier Code of Conduct" and hereinafter referred to as "Code") of the Agreement and shall be liable to comply with the following procedure/ mechanism in regard to the said Code.

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## 9.2 Compliance and Monitoring

- a) Vendor through established internal management routines shall monitor the actual performance of the requirements under the Code.
- b) In the event the Vendor becomes aware of any non-compliance with the Code within its own and/or its vendors' organization, Vendor shall immediately notify the Purchaser of such non-compliance. Purchaser shall be entitled to give inputs on how non-compliance issues should be remedied which shall be taken into due consideration by Vendor. For the avoidance of doubt, this shall include an obligation for Vendor to instruct any of its vendors to remedy non-compliant issues in accordance with the input Vendor receives from the Purchaser. Further Vendor shall address and at its own cost remedy the identified non-compliant issues within its own organization.
- c) Vendor shall prepare an annual compliance report (as applicable) which will assess Vendors performance and compliance with the Code and shall submit the same to the Purchaser for its review. Vendor acknowledges that the Purchaser has the right to request and receive further information, if deemed necessary. Vendor will also grant access, subject to the restrictions and limitations following from applicable mandatory law(s) and the Code, to its premises, work sites etc. to the Purchaser's authorized representatives in order to perform audits including unannounced on-site inspections and worker interviews to ensure Vendors compliance with the Code. Information received from, or obtained as a result of the inspections of Vendor shall, to the extent not incompatible with the purpose of the Agreement and / or Code, or to the extent not related to a possible termination of the Agreement, be treated confidential by the Purchaser.
- d) Purchaser shall implement effective monitoring and follow-up activities of the actual performance of their Vendors, in order to verify the adherence/compliance of the Code. This shall include unannounced on-site inspections and inspection of premises of Vendors in India as well as interviews with the workers, staff and management. Further inspections are allowed in order to verify compliance or remedial efforts. Purchaser shall bear the costs with regard to carrying out such inspections.

- e) To the extent gaps are identified between the Code and the actual situation under the joint inspection with the Vendors, Purchaser will initiate improvement processes to properly and efficiently address the gaps in accordance with the purposes of this Agreement. Further, Purchaser will without undue delay notify the Vendors of the identified gaps and present a satisfactory plan, including timelines, for how remediation will be carried out in order to promote effective remediation.
- f) Vendors will produce and submit an annual compliance report (As applicable) of the compliance status, to Purchaser for review.
- g) The Parties agree that all annual compliance reports, audit reports, and any other documents shall remain confidential between the Parties. In addition to the restrictions on the disclosure of confidential information contained herein, Vendor, its officers, employees, agents and representatives shall not make any public announcement or disclosure relating to its discussions and remedial suggestions without the prior written approval of Purchaser. For the purpose of the Agreement, "Public Announcement" means the disclosure to any person or entity other than the receiving parties representatives by any means including but not limited to a press release, a written or oral statement made to the media, trades, publications or any other public audience or unauthorized third party; a written or oral statement published on a parties website or on another internet site or chat room and/or distributed by facsimile, email, voice mail, regular mail, private delivery service, news letter and/or recorded message.
- h) In order to fully conform to the Code, Vendor shall be given a period of twelve (12) months or other mutually agreed time period, to be fully compliant with the Code and any other obligations set forth herein, from the Effective Date herein.

9.3 Non-Compliance and Termination

- a) In the event Purchaser deems that Vendor is not in compliance with the Code, Vendor shall enter into discussions with the Purchaser, which shall be conducted in good faith and in an expeditious manner, with the aim of remedying any such non-compliant issues.
- b) In the event of any breach of the Code and these terms and conditions, Purchaser shall by giving a written notice of fifteen (15) days, require the Vendor

to remedy or cure such material breach within the said notice period. In the event Vendor fails to remedy the said breach, Purchaser may at its sole discretion terminate the Agreement, in accordance with the provisions of the Agreement.

- c) Vendor agrees that if Purchaser exercises the right to terminate the Agreement with Vendor, for any of the reasons provided above, and after providing the Vendor the time period of (12) twelve months as mentioned in sub Clause 9.2 (h) or other mutually agreed time period, it shall not be considered a breach on part of Purchaser and consequently, no sanctions, exit fees or any other claim for any other reasons shall be admitted.

**GCC 10.0 TOOLS AND TEST EQUIPMENT**

Vendor agrees, at no cost or expense to Purchaser, to provide all tools and test equipment along with their accessories and consumables required for the installation, commissioning, and testing services of Goods and all tools and test equipment required for network integration. Upon Acceptance of the Goods, Vendor may remove only such tools and test equipment that will not be required to keep the Goods running in conformance with the Technical Specifications and Documentation at no cost to Purchaser.

**GCC 11.0 TRAINING (WHEREVER APPLICABLE)**

- 11.1 Vendor shall provide training to Purchaser’s personnel according to a mutually agreed training program. Such training courses shall be carried out at Purchaser’s facilities. Such training services shall be provided at no additional cost, including but not limited to boarding and lodging costs for trainers, to Purchaser. The scope and nature of the training services shall be agreed between the Parties at the relevant time.
- 11.2 Vendor shall also provide study material and comprehensive question bank relating to Goods being supplied for further training needs of the Purchaser’s representatives. Failure to provide study material/question bank and conduct online tests shall result in deduction of 20% of Net Price as penalty.
- 11.3 Vendor shall organize training for Purchaser’s representative for Goods which require specialized storage and installation.

**GCC 12.0 PRODUCTION PROGRAMME**

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Vendor shall within seven (7) working days from receipt of Purchase Order submit to Purchaser a production programme stating start, duration and finish of engineering, issue of Drawings and other documentation, procurement of raw materials, manufacturing/fabrication, testing, inspection and delivery in accordance with the delivery schedule stated in Purchase Order. Vendor shall maintain such programme up-to-date and issue revisions immediately to reflect any change(s) agreed by Purchaser resulting from amendment(s) to Purchase Order or from Vendor's actions in executing Purchase Order. Vendor shall submit fortnightly progress reports as defined in the GCC/SCC.

### **GCC 13.0 FREE ISSUES OF MATERIAL AND/OR EQUIPMENT**

- 13.1 Where Purchaser issues material/equipment 'Free of Charge' (i.e. Free Issue Items) to Vendor in order that Vendor may fulfill its obligations under the Agreement, such material / equipment shall be, and shall remain, the property of Purchaser and shall be clearly labelled as such by Vendor until delivery of the completed Goods in accordance with the terms of the Agreement. Risk of loss in respect of all such Free Issue Items shall pass to Vendor upon receipt of such items by Vendor and remain with Vendor until delivery of the completed Goods to Purchaser in accordance with the terms of the Agreement. Vendor shall maintain all such Free Issue Items in good condition and shall use them solely in connection with the requirements of the Agreement. Disposal of surplus items shall be in accordance with written instructions from Purchaser. Loss or damage to such items whilst in the possession of Vendor shall be made good at the expense of Vendor. Vendor shall insure all such Free Issue Items at their full replacement value against loss or damage for the period that such items are in the possession of Vendor and at Vendor's risk as detailed above. Vendor shall provide certificates of insurance showing Goods are insured at full replacement value.
- 13.2 Periodic accounting and reconciliation of Free Issue Items shall be undertaken by Vendor and reports furnished to Purchaser to ensure that material quantities, specifications and tolerances meet the overall requirements of the Agreement.
- 13.3 Taxes, as applicable, will be paid by the Purchaser on the supply of free issues of material and / or equipment to the Vendor and such taxes would be recovered from the Vendor without any recourse to changes in the prices agreed.

### 13.A MATERIAL ACCOUNTING

1. The Contractor shall reconcile all delivered Goods/Equipment as per BOQ with Purchaser. Any deficiency in quantity shall be supplied as per BOQ within the scheduled time set out in the SCC.
2. In case of requirement of any additional items/quantities beyond this BOQ to complete the scope of the Work under this Contract/Agreement, the prices of such additional items/quantities shall be deemed to have been included in the Contract Price and as such additional price implications if any, are to be absorbed by the Contractor.
3. Any quantities/items delivered as per this BOQ which is found to be in excess on completion and handing over of the Work under this Contract/Agreement, shall remain as the property of the Purchaser.
4. In case the Contractor brings in some items/quantities in excess of the items/quantities mentioned in the BOQ to meet the exigencies of the Site works, all such excess items if left over after the execution of the Contract, Contractor will be allowed to be taken back by the Contractor.
5. On completion of scope of Work under this Contract/Agreement, the Purchaser and Contractor agrees that the surplus Goods/Equipment are no longer required, provided quantity of such Goods/Equipment specifically stipulated under this Contract/Agreement shall be the property of the Purchaser whether or not incorporated in the commissioning of Project.
6. The Contractor shall remove from the Site such surplus Goods/Equipment sold by him in persuasion of the Contract, subject to the Contractor producing the necessary clearance from Purchaser and competent statutory authorities (GST, Customs, etc), if required by law, in respect of re-export/purchase of the surplus Goods/Equipment.  
The Contractor shall make the payment as per Contract or on advise by Purchaser for surplus Goods/Equipment. The liability for the payment of the applicable Taxes/Duties including reversal of fiscal benefits if any, on the surplus Goods/Equipment so re exported / purchased shall be on part of the Contractor. In case the Applicable Laws require the Purchaser to take prior permission of the relevant authorities before handing over the surplus Goods/Equipment to the Contractor, the same shall be obtained by the Contractor at his own cost and risk, on behalf of the Purchaser.
7. The Contractor shall also indemnify the Purchaser harmless from any act of omission or negligence on the part of the Contractor in following the statutory requirements with

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regard to re export/purchase of surplus Goods/Equipment. The Bank Guarantee/Indemnity Bond shall be furnished by the Contractor as per the format given by Purchaser.

8. In the event the Contractor is not able to procure and produce necessary clearance from the competent statutory authorities (GST, Customs, etc) in respect of re-export / purchase of the surplus Goods/Equipment, such surplus Goods/Equipment shall be handed over to the Purchaser and deposited at the Purchasers' stores at the Site.

**GCC 14.0 EXPEDITION**

- 14.1 Vendor shall be solely responsible for delivery in accordance with the requirements of the Agreement and for expediting all matters relating to the Agreement and sub-orders with its suppliers. Notwithstanding the foregoing the Goods furnished under the Agreement, including all warranty work shall be subject to expediting by Purchaser.
- 14.2 Purchaser's representatives shall be afforded free access during working hours to Vendor's plants, and Vendor agrees to procure a similar right for Purchaser, for expediting purposes with respect to Vendor's suppliers. As required by Purchaser, Vendor shall supply schedules, progress reports and unpriced copies of Vendor's Purchase Orders and sub Purchase Orders for Purchaser's use in expediting Works.
- 14.3 Vendor shall notify Purchaser in writing of any actual or anticipated delays immediately upon discovery. Such notice shall include an estimated period of delay, cause, and corrective actions being taken. In the event of slippage in Vendor's schedule, Purchaser may demand in writing that Vendor provide adequate assurances that Vendor shall correct such slippage and deliver in accordance with the obligations of the Agreement.
- 14.4 If Purchaser considers that corrective actions being taken by Vendor are insufficient or, if within a reasonable period as determined by Purchaser, Vendor does not improve its performance to meet requirements, Purchaser may require specific additional measures such as an increase in Vendor's management, staff and work forces, overtime operations, additional days of work per week or the like. No increase of the Contract Price shall be payable for Vendor's efforts arising from such measures.



## **GCC 15.0 EXAMINATION, TESTING AND INSPECTION**

- 15.1 Vendor shall carry out all examinations and tests and provide certification, all in accordance with the Agreement /Specifications/Drawings.
- 15.2 Purchaser reserves the right to attend and witness all examinations and tests of Goods and to carry out his own examination, testing and inspection of Goods at all reasonable times during the execution of Agreement. Vendor shall give Purchaser at least ten (10) working days notice in writing of Goods being available for such examination, testing and inspection including the address at which such examination, testing and inspection is to take place.
- 15.3 Vendor shall provide to Purchaser examination, testing and inspection personnel, without charge, all reasonable and necessary equipment, supplies and facilities to enable their tasks to be carried out in Vendor's premises.
- 15.4 Goods which are required to be painted before dispatch shall be in an unpainted condition for examination, testing and inspection and any approval stamp mark shall be left unpainted, or if not practicable, the mark shall be encircled with paint specified by Purchaser, for easy identification.
- 15.5 Purchaser reserves the right to carry out his own examination, testing and inspection on receipt of Goods.
- 15.6 The attendance of Purchaser at examination and testing performed by Vendor and the performance of examination, testing and/or inspection by Purchaser shall not relieve Vendor of any obligations, liabilities and guarantees.
- 15.7 Purchaser reserves the right to nominate authorities/ third party inspection agencies to examine, test and inspect on his behalf and Vendor shall treat these nominees as if they were Purchaser's own examination, testing and inspection personnel.

## **GCC 16.0 QUALITY STANDARDS**

- 16.1 Vendor shall comply with the standards of quality specified by the Agreement in addition to those customary in the industry.
- 16.2 Purchaser quality surveillance representative shall be afforded free access during working hours to plants of Vendor and Vendor agrees to procure a similar right for

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Purchaser for quality surveillance purposes with respect to Vendor's suppliers in order to monitor compliance with quality requirements.

- 16.3 Purchaser's right to inspect, examine, and test the Goods shall extend through the manufacturing process, the time of shipment and a reasonable time after arrival at the final destination. In the event of Vendor's failure to adhere to the standards of quality required under the Agreement, the Purchaser may demand in writing that Vendor provides adequate assurances of Vendor's ability to meet said standards.
- 16.4 In the event that any inspection or test indicates that the Goods fail to meet the requirements of the Agreement, Vendor shall take immediate steps to rectify the failure at its own cost and expense. Upon completion of said rectification, Vendor shall notify Purchaser of availability for re-inspection or retest and this procedure shall be repeated as necessary until the Goods are deemed by Purchaser to be in complete conformity with the requirements of the Agreement. Such procedure shall be without prejudice and shall not release Vendor from any obligations under the Agreement.
- 16.5 The Goods shall not be deemed accepted until finally inspected by Purchaser's representative at Site. The making or failure to make an inspection, examination or test of, or payment for, or acceptance of the Goods shall in no way relieve Vendor from its obligation to conform to all of the requirements of the Agreement and shall in no way impair Purchaser's right to reject or revoke acceptance of non conforming Goods, or to avail itself of any other remedies to which Purchaser may be entitled, notwithstanding Purchaser's knowledge of the nonconformity, its substantiality or the ease of its discovery.
- 16.6 If at any time prior to the start of the Warranty Period, a problem develops in Vendor's equipment due to any cause, whether originating from Vendor's scope of work or equipment, or from the equipment or scope of Sub-Vendors or others, Vendor shall, upon notification from Purchaser, immediately remedy or fix Vendor's work to remedy the problem without regard to the origin. In the event, the Vendor does not commence within a reasonable time to remedy the problem, Purchaser, after notice to Vendor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Vendor. Subsequent to the remedy or an investigation by Purchaser, Vendor shall determine the actual origin of the problem and the party or parties responsible for the cost of the repairs.

16.7 The Contract is awarded to achieve the Scope of Work mentioned in Contract and hence the Contractor irrevocably commits and undertakes to the Purchaser its unequivocal intent to fulfill the terms of the Contract, also adhering to quality and performance parameters given in the Contract.

**GCC 17.0 INSPECTION (VENDOR QUALITY ASSURANCE) CHARGES**

Vendor shall indicate separately all costs relating to transportation, boarding and lodging, man-hour rate and any other incidental charges of Purchaser appointed/approved inspector(s) (quality surveillance representative(s)). However if Inspection becomes infructuous due to any omission or commission on the part of Vendor then same shall be borne by Vendor.

**GCC 18.0 SOURCE CODE ESCROW (WHEREVER APPLICABLE)**

18.1 Vendor represents and warrants that as of the Acceptance Date, neither Vendor nor any of Vendor's Affiliates has established a Source Code escrow for any of its existing other customers.

18.2 Vendor further grants Purchaser a right to access the Source Code of the Goods and an irrevocable, perpetual license thereto from the date of such access to use and modify the same for the maintenance, enhancement and support purposes under the following circumstances and with the terms and conditions that may be set forth in a mutually agreed escrow Purchase Order ("**Escrow Purchase Order**") consistent with the Agreement.

18.3 In the event that any Affiliate of the Vendor establishes a Source Code escrow before the Vendor as agreed upon, which applies to any of the Goods furnished to Purchaser hereunder, Vendor shall add, or cause the Purchaser/Affiliate that establishes a Source Code escrow to add, Purchaser as a beneficiary of such Source Code escrow. Purchaser shall be entitled to receive a copy of the escrowed Source Code in the event of the occurrence of any of the events set out below. In addition to the foregoing, Vendor shall immediately deliver and hereby grants, or cause the Purchaser/Affiliate that establishes a Source Code escrow to immediately deliver and grant, Purchaser a right to access the Source Code and to modify the Goods ("**RTM License**") for the maintenance, enhancement and support of the Goods licensed from Vendor and operated by Purchaser or any Affiliate, under the following circumstances, provided that

any such released Source Code shall be subject to the confidentiality provisions set forth in the Agreement

- (i) if Vendor or any Affiliate of Vendor that owns or controls such Source Code (“**Control Affiliate**”) becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy or an involuntary petition in bankruptcy is filed against Vendor or the Control Affiliate which is not dismissed within **ninety (90)** days of such involuntary filing, or a receiver is appointed for its business, or its assets become subject to any proceeding under a bankruptcy or insolvency law, domestic or foreign, or has liquidated its business, or Vendor, or a business unit or Affiliate of Vendor that is responsible for maintenance of the Goods, ceases doing business without providing for a successor, and Purchaser has reasonable cause to believe that any such event shall cause Vendor to be unable to meet its warranty service or support requirements under the Documents; or
- (ii) if Vendor or Affiliate of Vendor that is responsible for maintenance of the Goods ceases to maintain or support a previously supported version of the Goods and Purchaser cannot obtain, with Vendor’s assistance (for example, by providing a third party with Source Code or by any other appropriate method) the same support services Vendor is required to provide under the documents, from another entity (either working with or independently from Vendor) at a price that is equal to or less than the prices for such support as provided in the documents, or there is a persistent and material failure by Vendor to provide the warranty service or support it is required to provide pursuant to the terms of the documents.
- (iii) Vendor, or a business unit of Vendor that is responsible for all matters relating to the Goods, ceases doing business without providing for a successor who takes over all of Vendor's responsibilities or, if a successor is provided for by Vendor, Purchaser has reasonable cause to believe that any such successor shall be unable to meet the warranty or support requirements of Purchaser.

**GCC 19.0 REPRESENTATIONS AND WARRANTIES**

19.1 Vendor represents, warrants and covenants (Hereinafter referred to as “Warranties”) that

- a) Vendor is the owner and / or valid licensee and authorized user/manufacturer/Vendor of the Goods, Documentation and Vendor internal use tools;
- b) Vendor has and shall have full and sufficient right to sell, license, customize, assign, sublicense or grant the Goods;
- c) Vendor has no obligations to any third party that shall in any way limit or restrict its ability to sell or license Goods in the manner provided herein and the Goods at the time of delivery to the Purchaser shall be free from liens and any other encumbrances;
- d) The Goods shall be free from Defects and Deficiencies;
- e) The Goods will perform in accordance with the Technical Specifications;

19.2 During the Warranty Period, Vendor shall provide, at its own cost and expense, to Purchaser warranty support including without limitation, to correct Defects or Deficiencies in the Goods and Upgrades as well as provide twenty four hours a day, seven days a week, toll-free access to the Vendor’s Indian and international technical assistance centres at no cost to Purchaser. If in reasonable opinion of Purchaser a visit to the Site is required by the Vendor’s engineer for the, replacement or correction of Defective Goods the same shall be provided by the Vendor at no additional cost to Purchaser.

19.3 During the Warranty Period, Vendor shall provide to Purchaser, at no extra cost to Purchaser, all Upgrades and all other releases of Goods furnished by Vendor at such times as they become generally available to the Vendor’s customers. Purchaser shall also be entitled to receive all basic or optional features, at no additional cost to Purchaser. The Vendor shall give Purchaser an advance notice of the introduction of any Upgrade of Goods or Enhancement, any Combined Release and all releases containing any optional features.

In the event an Upgrade is delivered and installed, the same shall be tested for a period of **ninety (90)** days (“**Trial Period**”). During the Trial Period if Purchaser is not satisfied with the functioning of such Upgrade and /or the same do not perform in accordance with the Technical Specifications, Purchaser shall have the right to reject and/or return such Upgrade. In the event the functioning of the installed Goods is adversely affected by reason of the testing as aforesaid, the Vendor shall provide all required services as well as necessary additional goods to restore the functioning of the installed Goods. The Vendor should also ensure that all such prior Goods versions and all existing in-service Vendor provided Goods already installed in Purchaser’s network remain fully functional in accordance with and up to the performance levels to which each was performing immediately prior to the testing of or with such Upgrade and/or Combined Release relating to Goods at no additional cost to Purchaser.

19.4 Vendor shall immediately, and in no event later than **7** days, remedy any breach to Warranties to the complete satisfaction of Purchaser so that the Goods conform to all the warranties stated hereinabove. Vendor shall provide any corrected or replaced Goods.. In the event a breach of Warranties would be cured (whether on a temporary or permanent basis) with the installation of additional equipment/Goods, Vendor shall provide such equipment/Goods, together with related implementation services as are reasonably required to remedy the breach, at no cost or expense to Purchaser. Further, throughout the Warranty Period, Vendor shall be solely responsible for all costs and expenses associated with (a) removing the Goods subject to the Warranty claim from any other Equipment/Goods to which the same is attached or connected; and (b) dismantling surrounding equipment or Goods in order to so remove the Goods subject to the Warranty claim.

19.5 However, in the event Vendor is unable to correct a breach of Warranty or replace non-conforming Goods with conforming Goods within the aforementioned **7** day period, the Vendor shall be deemed to be in material breach of its obligations pursuant to the Purchase Order and shall refund to Purchaser the Net Price paid for such Goods without any further obligation on Purchaser to pay any additional amounts in connection with such Defective Goods. Vendor shall further bear and pay any additional costs incurred by Purchaser for procuring goods substantially similar to the Defective Goods. Vendor's liability hereunder shall extend to all damages caused by the breach of any of the foregoing Warranties.

- 19.6 If the Vendor purchases or subcontracts for the design, development, supply, delivery, or installation of any part of any Goods from a third party, the warranties given to the Vendor by such third party shall inure, to the extent applicable or permitted by law, to the benefit of Purchaser, and Purchaser shall have the right, at its sole discretion, to enforce such warranties directly and/or through the Vendor. The warranties of such third parties shall be in addition to and shall not, unless otherwise expressly stated herein, be in lieu of the Warranties given by the Vendor herein.
- 19.7 Vendor shall provide the Warranty with respect to Goods which are replaced or rectified in accordance with the provisions of this Clause for a period of **12** months or as agreed from the date of replacement or rectification as the case may be or the remainder of the Warranty Period, whichever is the longer period (“**Extended Warranty Period**”).
- 19.8 The Vendor shall protect and keep free all Goods free from any and all claims, liens, charges, security interests, levies, rights of third parties or encumbrances (“**Liens**”) arising from or related to provision of the Goods or any Intellectual Property Rights. In the event of any Lien being filed/ caused to be imposed on the Goods, the Vendor shall ensure that Purchaser is not affected by the same, including exchanging the Goods so affected with Goods not so affected within **ten (10)** working days or such other time which the Parties mutually agree.
- 19.9 During the Warranty Period, Vendor shall perform all the warranty obligations as set out in the SOW, in addition to the warranty obligations described in this Clause, at no cost to Purchaser.
- 19.10 It is a corporation duly organized, validly existing, and in good standing under the laws of the State of its incorporation 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 the Agreement makes such qualification necessary;
- 19.11 Execution, delivery and performance of the Agreement by Vendor and the consummation of the transactions contemplated hereby do not and will not contravene the certificate of incorporation or by-laws of Vendor and do not and will not conflict with or result in (i) a breach of or default under any indenture, Purchase Order, judgment, decree, order or ruling to which Vendor is a party that would materially adversely affect the Vendor's ability to perform its obligations under the Agreement; or (ii) a breach of Applicable Law;

- 19.12 All authorizations by, approvals or orders by, consents of, notices to, filings with or other acts by or in respect of any Governmental entity or any other Person required in connection with the execution, delivery and performance of the Agreement by Vendor have been obtained or shall be obtained in due course;
- 19.13 Vendor has and shall have full and sufficient right to assign or license the Intellectual Property Rights (as may be required for the purpose of the Agreement), including without limitation to sublicense the Goods (in accordance with the Agreement) and the Documentation;
- 19.14 Vendor shall not disclose to Purchaser, nor make use in the performance of its obligations under or pursuant to the Agreement, any trade secrets or other proprietary information of any third party, unless Vendor may do so without Vendor or Purchaser incurring any obligation (past or future) to such third party for such disclosure or work or any future application thereof.
- 19.15 Vendor shall not have any right, title, charge or lien on any materials or equipment belonging to Purchaser nor shall at any time sell, assign, sub-let, pledge hypothecate the same.
- 19.16 In the event of termination or early determination or expiration of the Agreement, Vendor shall immediately return all such Goods/materials, equipments, belonging to Purchaser which is in its custody or in possession with Vendor, if any, irrespective of any settlement of payment. If Vendor fails to return all such Goods/materials, equipments belonging to Purchaser, then Purchaser shall take all such necessary actions to recover its materials or equipments lying in the custody of Vendor.
- 19.17 Vendor warrants that Goods supplied under any Purchase Order/s hereunder shall have been produced, sold, delivered and furnished in strict compliance with all Applicable Laws. Vendor shall execute and deliver to Purchaser any documents as may be required to effect or to evidence compliance with the Warranty Clause. All laws and regulations required to be incorporated in Purchase Orders of this character are hereby incorporated herein by reference.
- 19.18 Vendor shall not disclose to Purchaser, nor make use in the performance of the work, any trade secrets or other proprietary information of any third party, unless Vendor may do so without Vendor or Purchaser incurring any obligation (past or future) to such third party for such disclosure or work or any future application thereof.



## **GCC 20.0 PERFORMANCE SECURITY**

- 20.1 Vendor shall, within fifteen (15) days from the issue of LoA provide unconditional bank guarantees (Bank Guarantees) in the format annexed as **Annexure B** (Advance Bank Guarantee) & Annexure C (**Performance Bank Guarantee**) in favour of the Purchaser for an amount in accordance with the Agreement.
- 20.2 All the Bank Guarantees (Advance/ Performance) required under the Agreement shall only be from Scheduled/Nationalised/Other Banks in India acceptable to the Purchaser. The Purchaser may in its sole discretion agree to appoint an overseas branch as its agent to receive the amount under the guarantee and to immediately make available the aforesaid amount to the Purchaser through its Indian branch.
- 20.3 Vendor shall maintain the Bank Guarantees at its own expense, and shall ensure that the same shall remain valid at all times till the expiry of the Warranty Period and for a period of three (3) months thereafter.
- 20.4 If the Bank Guarantee(s) becomes invalid for any reason (other than its expiry), the Vendor shall immediately notify the Purchaser and obtain within five (5) days a replacement of such Bank Guarantee(s) in the form stated above.
- 20.5 No later than sixty (60) Business Days before the expiry of the Performance Bank Guarantee, the Vendor shall, upon request of the Purchaser obtain extension of the validity of such Performance Bank Guarantee for the period stated in such request by the Purchaser and provide a copy of such renewed guarantee.
- 20.6 The Performance Bank Guarantee shall be returned to the Vendor, after the expiry of three (3) months post the Warranty Period. In the event of any claim or any other outstanding contractual obligations remaining unfulfilled, the Contractor shall be required to extend the Performance Bank Guarantee till the settlement of all claims and completion of all contractual obligations.
- 20.7 The Performance Bank Guarantee shall be released upon compulsory submission of the i) No Demand Certificate ii) Letter of Indemnity. The format of No Demand Certificate and Letter of Indemnity are attached as Annexure D.

**GCC 21.0 ASSIGNMENT BY VENDOR**

- 21.1 Any assignment of the Agreement or of any rights there under or creation of any charge / hypothecation in respect thereof in any manner, in whole or in part, by operation of law or otherwise, by the Vendor without the prior written consent of Purchaser shall be void.
- 21.2 Upon ten (10) days written notice to Purchaser, Vendor may assign monies due or to become due under the Purchase Order, provided that any assignment of monies shall be subject to proper Set-offs in favour of Purchaser and any deductions provided for in the Purchase Order.
- 21.3 Any assignment, transfer or Sub-contract of the SOW or part thereof by the Vendor in accordance with the Agreement shall not relieve or absolve the Vendor from any of its obligations and liabilities under the Agreement nor shall it create any kind of privity between the Purchaser and any assignee, transferee or subcontractor of the Vendor.

**GCC 22.0 ASSIGNMENT BY PURCHASER**

The Purchase Order/Contract/Agreement, and the rights and obligations of Purchaser under the Purchase Order/Contract/Agreement shall be assignable to Affiliates, associate company, joint venture or any other company including change in Management Control and Purchaser's lenders without consent of the Vendor. Upon written notice issued within seven Business Days (07 days) by the Purchaser, the Purchase Order/Contract/Agreement shall deemed to be Assigned to the third party under this Article/Clause. This Clause shall fulfills its meaning notwithstanding the acceptance of notice by the Vendor and Purchaser shall not be obliged to the Vendor after seven days (07) of issue of notice.

**GCC 23.0 SUSPENSION OR EXTENSION**

Notwithstanding any other provisions of the Contract/Agreement , Purchaser may at any time upon **seven (7)** days prior written notice to the Vendor, order the Vendor, in writing, to suspend or to extend any part of the Work/ performance under such Purchase Order or the Purchase Order itself for such reasonable period of time as Purchaser may determine. Vendor shall resume performance of its obligations as directed by Purchaser. Purchaser shall not be liable to pay any compensation, costs or expenses to the Vendor for any such suspension up to a period of **ninety (90)** days. Purchaser shall only be liable for actual out of pocket expenses for the storage of the Goods directly affected by such suspension for a period exceeding the aforesaid **ninety (90)** days.

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## **GCC 24.0 TERMINATIONS FOR CONVENIENCE**

- 24.1 Vendor's performance of its obligations under the Agreement or any Purchase Order may be terminated by Purchaser at any time, in whole or in part in accordance with this GCC 24.0. Any such termination shall be effected by delivery to Vendor of a prior notice of not less than **thirty (30)** days ("**Notice of Termination**") specifying the extent to which performance of its obligations under the Agreement/Purchase Order is terminated, and the date upon which such termination becomes effective. Upon receipt of any such Notice of Termination, Vendor shall, unless such notice requires otherwise (a) immediately discontinue any work under any Purchase Order on the date and to the extent specified in the notice; (b) place no further orders for any goods or services other than as may be necessarily required for completion of such portion of work that is not terminated; (c) assist Purchaser, upon request in the maintenance, protection, and disposition of Goods and/or any property acquired by Purchaser under the Agreement/Purchase Order.
- 24.2 If requested in writing by Vendor within **fifteen (15)** days after the Notice of Termination, Purchaser will pay to Vendor as full and final settlement of any amounts payable by Purchaser to Vendor under the relevant Purchase Order(s) (a) all undisputed amounts due and not previously paid to Vendor for the Goods delivered in accordance with relevant Purchase Orders prior to such Notice of Termination, and for work thereafter completed by Vendor pursuant to Purchaser's directions contained in the Notice of Termination; (b) a reasonable amount to be determined by Purchaser for any Goods then in production; provided that no such adjustment shall be made in favour of Vendor with respect to any Goods which are a part of Vendor's standard stock
- 24.3 The total payment made by Purchaser to the Vendor under this Clause, inclusive of settlement costs as aforesaid if any, shall not exceed the Net Price as reduced by the amount of payments otherwise made and as further reduced by the portion of the Net Price of Purchase Orders not terminated, and shall not include any consideration for loss of anticipated profits on the terminated work, all claims for which Vendor agrees to waive.
- 24.4 Vendor hereby agrees that substantiation for settlement of any claims submitted by Vendor shall be complete and in sufficient detail to allow Purchaser's evaluation.

## **GCC 25.0 TERMINATION FOR DEFAULT**

25.1 (i) Purchaser may terminate the whole or any part of the Contract/Agreement or a Purchase Order in any one of the following circumstances

(a) Vendor fails to deliver the Goods or to perform its any other obligation within the stipulated time period or any extension thereof; or

(b) Vendor delivers non conforming or Defective Goods; or

(c) Vendor fails to meet the quality standards as specified for the Goods in the Technical Specifications or in SCC and/or Scope of Work, or

(d) Vendor fails to perform any of its obligation under a Purchase Order in accordance with its terms or so fails to take corrective measures so as to endanger performance of a Purchase Order; or

(e) Vendor abandons or repudiates the Agreement or a Purchase Order or suspends the delivery of Goods during the subsistence of any Dispute under the Agreement, whether or not such dispute is being resolved under the Dispute resolution provisions of the Agreement under Clause 27; or

(f) Vendor subcontracts or assigns the Agreement except in accordance with the terms of the Agreement; or

(g) Vendor persistently disregards instructions of the Purchaser or contravenes any provisions of the Agreement; or

(h) Vendor fails to furnish or renew any of the Bank Guarantees; or

(i) Vendor commits default under any Applicable Law; or

(j) Vendor's liability for Liquidated Damages under the Agreement exceeds the maximum limit as specified in the Agreement and the default or Defect (committed by the Vendor) for which price adjustment are/were charged continues to exist, or

(k) Vendor is found to be in breach of any representation or warranty under GCC 19; or

(l) Vendor

(i) is insolvent,

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(ii) files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it that is not dismissed within ninety (90) days of such involuntary filing,

(iii) admits the material allegations of any petition in bankruptcy filed against it,

(iv) is adjudged bankrupt,

(v) makes a general assignment for the benefit of its creditors, becomes insolvent or institutes or has instituted against it a proceeding in bankruptcy.

Each of the aforesaid circumstances mentioned in this GCC 25.1 are hereinafter referred to as an “**Event of Default**”.

(ii) Upon the occurrence of an Event of Default, Purchaser will provide Vendor with written notice mentioning the nature of default and Purchaser's intention to terminate for default. In the event Vendor fails or refuses to cure such default within ten (10) days of the date of such notice of termination, except in case of Event of Default mentioned at (i) in this GCC 25.1, for which no cure period shall apply, Purchaser may, in its sole discretion, terminate the Agreement/Purchase Order or any part thereof with immediate effect and/or reject the Goods without any further notice.

(iii) Notwithstanding anything contained in the Agreement, if the Vendor suspends the execution of Works as entailed in the Purchase Order/SOW during the subsistence of any Dispute under the Agreement, whether or not such Dispute is being resolved under the Dispute resolution provisions of the Agreement, the Purchaser shall be entitled to continue the execution of the balance Work through any third party at the sole cost and risk of the Vendor.

25.2 In the event Purchaser terminates the Agreement/Purchase Order in whole or in part and rejects the Goods as provided in this GCC, Purchaser may at its sole option require Vendor to refund the full value of the rejected Goods including the Net Price, import duty, any transportation, clearing and forwarding, storage and insurance cost incurred by Purchaser with respect to such rejected Goods and/or procure, upon such terms and in such manner as Purchaser may deem appropriate, goods similar to rejected Goods. Any additional costs including the price, import duty, any transportation, clearing and forwarding, storage and insurance costs incurred with respect to such procurement of such similar goods shall be solely borne by Vendor. The Purchaser shall also be entitled

to invoke the whole or a part of the Bank Guarantees; provided that Vendor shall at all times continue the performance of its obligations under the Purchase Order to the extent not terminated under this GCC 25.

25.3 Vendor agrees to provide all necessary or reasonably requested assistance and co-operation including making available to Purchaser necessary information regarding work relating to a Purchase Order which may be in progress, Sub-Vendor or other sub-Contractors to Purchaser in the event that Purchaser procures goods similar to the Goods in accordance with GCC 25.1 and 25.2.

25.4 Any Goods held in Vendor's works on the happening of any events giving the right of Termination granted under GCC 25.0 or otherwise that have already been paid for by Purchaser shall not be held to be part of the assets of Vendor, title having already been passed to the Purchaser under Clause 4.0 of GCC and shall be released to Purchaser on demand.

#### **GCC 26.0 TERMINATIONS BY VENDOR**

26.1 The Vendor shall have the option to terminate the Agreement/Purchase Order by issuing a notice intending termination and setting out the default, without any penalty or payment obligations, other than undisputed outstanding payment under the terms of the Agreement as of the date of any such termination (with Disputed payment obligations being subject to the Dispute resolution provisions of GCC 27 pursuant to the terms and conditions hereof if

- (i) an order is passed against the Purchaser ordering its winding up and no order has been passed that overrules the earlier order within a period of 120 days; or
- (ii) Purchaser passes a resolution to wind up (other than for the purposes of solvent amalgamation, compromise or reconstruction or arrangement with creditors and members); or
- (iii) In the event or a receiver is appointed for all or a substantial portion of its assets and is not discharged within one hundred and eighty days (**180**) days after his appointment, and any such filing, proceeding, adjudication or assignment as described herein above shall otherwise materially impair Purchaser's ability to perform its obligations under the Agreement; or

- (iv) Purchaser commences any proceeding for relief in any court under any state insolvency statutes; or
- (v) Purchaser fails to make payments of undisputed amounts relating to the Goods due to the Vendor pursuant to the terms and conditions hereof that are more than ninety (90) days overdue; provided, that such failure has continued for at least thirty (30) days after the Vendor has notified Purchaser of its right and intent to so terminate on account of such overdue amount.

26.2 Notwithstanding termination of Contract/Agreement under Clause 26, the obligation of the Purchaser to return the Bank Guarantee(s) to the Vendor shall only arise pursuant to final Contract Closure in terms of Clause 67.0.

**GCC 27.0 CLAIMS, DISPUTES, CONCILIATION AND ARBITRATION**

**27.1 Procedure for Claims**

- (a) If the Vendor intends to claim any additional payment in addition to the Contract Price on the occurrence of any event entitling the Vendor to any additional payment, the Vendor shall give notice to the Purchaser as soon as possible and in any event within ten (10) days of the start of the event giving rise to the claim.
- (b) The Vendor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at any other location acceptable to the Purchaser. Without admitting the Purchaser's liability, the Purchaser shall, on receipt of such notice, inspect such records and may instruct the Vendor to produce and maintain further contemporary records. The Vendor shall permit the Purchaser to inspect all such records, and shall submit copies to the Purchaser on request.
- (c) Within thirty (30) days of such notice, or such other time as may be agreed by the Purchaser , the Vendor shall send to the Purchaser an account, giving detailed particulars of the amount and basis of the claim.
- (d) Where the event giving rise to the claim has a continuing effect, such amount shall be considered as interim. The Vendor shall then, at such intervals as the Purchaser may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Purchaser , the Vendor shall send a final account within thirty (30) days of the end of the effects resulting from the event.
- (e) If the Vendor fails to comply with this Clause 27.1, the Vendor shall not be entitled to claim any

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additional payment.

- (f) Notwithstanding anything contained in the Contract, the Purchaser shall not be liable for any claim for any matter, arising out of or in connection with the Contract or the performance of the Works, unless the Vendor shall have given a notice to the Purchaser in respect thereof, in writing, within sixty (60) days from the date of Acceptance Certificate. It is clarified for the avoidance of doubt for any such claim under this Clause 27.1(f), the Vendor shall still be required to comply with the procedure set out under Clause 27.1(a) to 27.1(e).

### **27.2 Payment for Claims**

The Vendor shall be entitled to additional costs as the Purchaser considers due, after taking approval from the Purchaser. If the documents or information supplied by Vendor as requested by Purchaser clearly in support of claim are insufficient to substantiate the whole of the claim, the Vendor shall be entitled for payment for such part of the claim as agreed by the Purchaser.

### **27.3 No legal action till Dispute settlement procedure is exhausted**

Any Dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to the Contract shall be settled in accordance with the provisions of Clause 27 (other than Clause 27.1 and 27.2). No action at law concerning or arising out of any such Dispute, differences or controversy shall be commenced unless and until all applicable Dispute resolution procedures set out in Clause 27 (other than Clause 27.1 and 27.2) shall have been finally exhausted in relation to that Dispute, difference or controversy.

### **27.4 Notice of Dispute**

For the purpose of Clause 27, a "Dispute" shall be deemed to arise when one Party serves on the other Party a notice in writing (hereinafter called a "**Notice of Dispute**") stating the nature of the Dispute, differences or controversy provided that no such notice shall be served later than sixty (60) days after the date of issue of Acceptance Certificate by the Purchaser.

### **27.5 Two Stages for Dispute Resolution**

Disputes shall be settled through two stages

- (a) Negotiations between the Vendor and Purchaser; and
- (b) Arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (as amended from time to time) and in accordance with this Clause 27.

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## 27.6 Negotiation

The Parties shall first endeavour to settle amicably any Dispute arising out of or in connection with the Contract, including without limitation, their existence, interpretation, performance, or termination, by negotiation in accordance with this Clause 27.6, as follows

- (a) The Party raising the Dispute shall address to the other Party a notice requesting a negotiation of the Dispute within fifteen (15) days of notification.
- (b) The Dispute shall then be referred for resolution between an authorized officer or director of the Vendor and the Purchaser or any other authorised officer of Purchaser. The Vendor and the Purchaser shall attempt to resolve such Dispute by negotiation, and document any settlement that may be agreed, within a further period of thirty (30) days.

## 27.7 Arbitration

If the efforts to resolve all or any of the Dispute, differences or controversy through negotiation fails, then such Dispute or differences, whatsoever arising between the Parties, arising out of or relating to performance of Works or effect of the Contract or the breach thereof shall be referred to arbitration in accordance with the following provisions

- (a) Matters to be arbitrated upon shall be referred to a sole arbitrator if the total value of the claim is upto Rupees ten (10) million and to a panel of three (3) arbitrators if total value of claims is more than Rs. 10 million. The sole arbitrator shall be appointed mutually by the Parties and in case the Parties fail to agree on the sole arbitrator, then the sole arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996. In the arbitration panel, each Party shall nominate one (1) arbitrator each and the third arbitrator shall be chosen by the two (2) arbitrators nominated by the Parties. The arbitrator(s) shall be appointed within a period of thirty (30) days from the date of receipt of written notice/ demand of appointment of arbitrator from either Party.
- (b) The arbitration proceedings shall be held in Mumbai. The language of proceedings, documents and communication shall be English.
- (c) The award of the sole arbitrator or the award by majority of three arbitrators as the case may be shall be binding on all Parties.

### **27.8 Interest on Arbitration Award**

Where the arbitral award is for the payment of money, no interest or charges or taxes or cess shall be payable on whole or any part of the money for any period, until the date on which the award is made.

### **27.9 Cost of Arbitration**

The cost of arbitration shall be borne by the respective Parties. The cost shall, *inter alia*, include the fees of the arbitrator(s) as per rates fixed by the Purchaser from time to time.

### **27.10 Jurisdiction of Courts**

Where recourse to a Court is to be made in respect of any matter, the courts at Mumbai shall have exclusive jurisdiction.

### **27.11 Suspension of Work on Account of Arbitration**

The reference to negotiation/arbitration shall proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Purchaser, the Purchaser and the Vendor shall not be altered by reasons of arbitration being conducted during the progress of the Works. In no event shall the Vendor be entitled to suspend the Execution of the Works or part of the Works to which the Dispute relates on account of arbitration and payments to the Vendor shall continue to be made in terms of the Contract.

## **GCC 28.0 DELIVERIES AND LIQUIDATED DAMAGES FOR DELAY**

28.1 Time is essence of the Contract.

28.2 In the event, the Vendor fails to supply the Goods as per delivery schedule mentioned in the Purchase Order Purchaser may without prejudice to any other right or remedy available under the Agreement alter / modify the price agreed under the contract by deducting an amount @ 0.5% (Zero point five Percent) of Basic Order Value excluding taxes of undelivered portion of Goods per week of delay or part thereof subject to a maximum of 10 %( ten Percent) of Basic Order Value of undelivered portion of Goods as Liquidated Damages.

28.3 However, in case of Package units / Assemblies / Systems / Turnkey supplies where price breakdown is provided to facilitate Vendor to dispatch the Goods on pro-rata basis and to raise invoices for payments for supplies on pro-rata basis, Liquidated Damages shall be made on overall Order Value.

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28.4 Purchaser shall deduct the above sum on account of Liquidated Damages for delay from any monies due or that may become due to Vendor or if such monies are insufficient, Vendor shall forthwith pay the deficient amount within forty five (45) days of written request.

28.5 Purchaser reserves its right to impose Penalty / Liquidated Damages through notice or debit note without consent/approval/acceptance of the Vendor. The quantum of Penalty / Liquidated damages on Contractor shall depend on as that imposed by Owner/Client on the Purchaser or non fulfillment of Contractual obligation by the Supplier/Vendor.

**GCC 29.0 SUB-ORDERS(S)**

29.1 Upon request by Purchaser, Vendor shall furnish Purchaser with **four (4)** copies of unpriced Sub-orders immediately upon their placement, unless otherwise stated in a Purchase Order. Such copies shall be in the English language and shall be complete with all attachments, drawings and technical specifications applicable. The Sub-Order shall quote Purchaser's Purchase Order number(s) and Purchaser's item number(s) of Goods where applicable.

29.2 Vendor shall promptly notify Purchaser representatives of Sub-Vendor's delivery obligation to Vendor, subsequent changes thereto and Sub-Vendor's reference number.

29.3 Purchaser reserves the right to progress, expedite and inspect the Sub-Orders in the manner laid down in the Agreement. Vendor shall ensure that Purchaser shall have the right of access at all reasonable times to Sub-Vendor's premises and information in connection with Purchase Order and Sub-Orders.

29.4 Vendor shall ensure that Sub-orders reflect the requirements of the relevant Purchase Order.

29.5 In the event that a Change in Law, including but not limited to the introduction of GST, occurs during the term of the contract, which results in any benefit to the sub-vendors, the sub-vendors shall be bound to pass on such benefit arising out of the Change in Law to the Purchaser.

**GCC 30.0 SPARE PARTS, DISCONTINUATION**

30.1 Vendor agrees to provide the recommended spares for the Goods, at a discount to be agreed between the Purchaser and Vendor, including without limitation spares for all

Upgrades and Enhancements purchased by Purchaser, and in accordance with industry standards. Vendor shall also recommend storage locations for such spares. Vendor warrants that such spares shall be sufficient for the maintenance and repair of all of the Goods during the lifetime of the Goods, to maintain and enable the Purchaser equipment to operate in accordance with the Technical Specifications at all times. In the event any additional spares (over and above the recommended number) are required by Purchaser, the same shall be promptly supplied by the Vendor at its own cost and expense (which cost shall include all applicable taxes, duties, insurance, freight) to the place designated by Purchaser.

30.2 Vendor shall be responsible for movement of spares to and from Purchaser and Vendor's storage locations. Vendor shall replenish all spares at the Site from which they are used, provided that in all events, Vendor shall ensure that the initial number of spares as recommended are maintained at all times at Purchaser's storage locations.

30.3 The spares inventory shall be replaced by Vendor in accordance with the procedures set forth in the Specifications, and shall comply with the response time and service level requirements in the Specifications. The Vendor shall maintain a fully equipped service centre and a depot with all tools, spares and test equipment to ensure a spares replenishment period of twenty four (24) hours for critical spares and seven (7) working days for normal spares. Following the expiration of the applicable Warranty Period, the Vendor shall at all times provide spare and replacement parts at the Net Prices as set forth in the Purchase Order.

30.4 Vendor agrees that in the event of obsolescence or discontinuance of the production of the Goods or part thereof, Vendor shall provide an advance notice in writing to Purchaser for a period of not less than twelve (12) months prior to discontinuation of the Goods and shall undertake to stock sufficient spare parts and or equivalent replacements. Vendor shall effectively provide support and maintain the Goods for the life of the Goods, which shall be for a minimum of ten years from the date of Acceptance. In the event of such discontinuation Vendor shall provide the Goods so discontinued at a further discount of **50%** of the then applicable Net Price for the Goods discontinued. Purchaser shall raise all Purchase Orders for the discontinued Goods during the notice period of twelve (12) months prior to discontinuation.

30.5 Vendor agrees that in the event of obsolescence of Goods or part thereof, it shall stock sufficient spare parts to effectively maintain Goods for the life of the Goods, which shall be for minimum of ten years.

**GCC 31.0 BACK CHARGES**

31.1 In the event , any or all item or items furnished by Vendor under the Purchase Order are found to be Defective as to workmanship or materials or Goods or not to be in conformance with plans or Technical Specifications, it remains the responsibility of Vendor to promptly correct any Defects when so directed. Purchaser will take reasonable measures to discover such non-compliance as quickly as practicable; however, failure to do so shall in no way relieve Vendor of its responsibility during the term of the Agreement and the Warranty Period, to promptly make such modifications as are required.

31.2 If upon being notified by Purchaser of any Deficient work or materials or Goods, and having been directed to correct the Deficient work or materials or Goods by a specific date consistent with the Project requirements, Vendor states or by its actions indicates its inability or unwillingness to comply, then Purchaser shall proceed to accomplish the work by the most expeditious means available to it and back charge Vendor for the cost of the required work ("Back Charges").

The cost of such Back Charge work shall be computed as follows

1. Labour shall be charged at actual cost plus 50% to cover payroll additives.
2. Material shall be charged at net delivered cost.
3. Equipment and Tool Rentals shall be charged at rates paid by Purchaser.
4. 100% shall be added to items 1 and 2 for Purchaser's indirect costs, overhead, supervision and administration.
5. Provided however the maximum Back Charges amount shall not exceed the total value of the Purchase Orders under the Agreement.
6. Applicable taxes on such back charge and tax cost incurred to accomplish the work

31.4 Before proceeding on such Back Charge work and, if available, Purchaser shall furnish Vendor with a written estimate of the cost of performing the work, and solicit Vendor's signed authorisation to proceed. Regardless of Vendor's willingness to provide such written authorisation, when forced to proceed with the work, Purchaser will invoice Vendor for actual costs incurred, computed as shown above, or withhold such sum from funds still due to Vendor.

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**GCC 32.0 MALICIOUS AND DISABLING CODE (WHEREVER APPLICABLE)**

Vendor represents warrants and covenants that all Software will at all times be free of malicious code and disabling code. Vendor shall provide Purchaser with procedures and capabilities in order to allow Purchaser to re-assign Software key codes or similar items whose purpose is to enable the functioning of further features, functions or capacity within and among network elements in connection with changing the capacity of such network elements purchased throughout Purchaser's network. In the event of any breach of the foregoing warranty Vendor shall, at no additional charge to Purchaser, diligently take all commercially reasonable efforts to (a) remove such Malicious code and Disabling Code and restore or recover all data and information lost due to the Malicious Code or Disabling Code; and (b) reimburse Purchaser for all damage proximately caused by the Malicious code or Disabling code.

**GCC 33.0 NON-WAIVER**

33.1 Failure by Purchaser to insist upon strict performance of any of the terms and conditions hereof, or failure or delay in exercising any rights or remedies provided herein or in Applicable Law, or to properly notify Vendor in the event of breach of any provision of the Agreement by Vendor, or acceptance of or payment for any Goods, or review of any design, shall not release Vendor from any of its obligations under the Agreement and shall not be deemed a waiver of any of Purchaser's rights to insist upon strict performance hereof or any of its rights or remedies as to any such Goods regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any termination of the Purchase Order by Purchaser operate as a waiver of any of the terms hereof.

33.2 Those provisions of the Agreement that by their very nature survive payment, Acceptance of Goods or termination under the Agreement shall remain in full force and effect after such payment, Acceptance or termination by Purchaser. In addition to and without limiting the generality of the foregoing, provisions of the GCC and shall survive termination or expiration of the Agreement or part thereof.

**GCC 34.0 NON-DISCLOSURE**

34.1 Each Party (hereinafter referred to as the "**Receiving Party**") shall keep all Information received from the other Party (hereinafter referred to as the "**Disclosing Party**") in whatever form (oral or in writing) as strictly confidential and shall not disclose it to third

parties without the prior written consent of the Disclosing Party. However Purchaser is entitled to disclose the Information to its Affiliates. Information shall not be used by the Receiving Party for any purpose other than in connection with the Agreement . The foregoing obligations shall not apply to any 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 the Receiving Party;
- (b) was known to the Receiving Party prior to disclosure by the Disclosing Party as proven by the contemporaneous written records of the Receiving Party;
- (c) is disclosed to the Receiving Party by a third party who did not obtain such Information, directly or indirectly, from the Disclosing Party subject to any confidentiality obligation;
- (d) is at any time independently developed by the Receiving Party as proven by its contemporaneous written records;
- (e) is expressly authorized in writing by the Disclosing Party; or
- (f) is required by law, court order or a governmental agency to be disclosed (in which case the Receiving Party will give the Disclosing Party as much notice thereof as reasonably practicable and which will be done subject to confidentiality protection to the extent reasonably available).

34.2 Vendor may disclose to a Sub-Vendor such Information as is necessary for the Vendor to perform its obligations under the Purchase Order and Sub-Vendor to perform its obligations under a Sub-order provided that such Sub-Vendor accepts a like obligation of non-disclosure.

34.3 Information shall be deemed the property of the Disclosing Party, and the Receiving Party will, upon receipt of a written request from the Disclosing Party, return all Information received in tangible form to the Disclosing Party or destroy all such Information and all copies thereof or documents containing Information (except that a single copy may be retained by counsel for record purposes, to be used only if a Dispute arises concerning an alleged disclosure).

34.4 Each Party shall limit access to Information to only those of its employees, agents, representatives, Contractors or advisors to whom such access is reasonably necessary

or appropriate for proper performance of the Purchase Order and shall obtain written undertakings of confidentiality from them.

- 34.5 The provisions of this GCC 34 shall bind the Parties for a period of three years from the date of final performance (including Warranty) or early termination or expiry of the Agreement whichever is earlier.

### **GCC 35.0 PRESS RELEASES**

Vendor shall not (or permit any Affiliate, Sub-Vendor or other party to) put out any press or other media release or make any public announcement or statement relating in any way to the transactions contemplated herein, the business of Purchaser, the activities of Purchaser or any other arrangement between the Parties hereto (and Sub-Vendor) without the prior written consent of Purchaser.

### **GCC 36.0 INFRINGEMENT**

- 36.1 In additions to other representations and warranties in the Purchase Order, Vendor represents and warrants that Goods, Documentation and Purchaser's proposed use thereof and any work does not and shall not infringe the Intellectual Property Rights of any third party, nor has any claim of such infringement been threatened or asserted, nor is such a claim pending against Vendor.
- 36.2 Vendor shall, at its sole cost and expense, defend, indemnify and hold harmless Purchaser, its Affiliates, Authorised Persons and their respective directors, officers, agents, representatives, and employees (“**Purchaser Indemnified Parties**”) from and against all losses, liabilities, claims, obligations, damages, costs, expenses including all reasonable attorneys' fees and costs which arise from, arise in connection with or are in any way related to any claim by any third party that the Goods or any part thereof, the form of the Goods supplied by Vendor or subsequently modified by Vendor or use thereof infringe or misappropriate any third party's Intellectual Property rights (“**Vendor Infringement Claim**”); provided that (a) Vendor is given written notice of any Vendor Infringement Claim against Purchaser Indemnified Parties of which Purchaser has actual knowledge and (b) Vendor is given full authority to assume control, at its sole cost and expense, of the defense of the Vendor Infringement Claim through its own counsel. However, Vendor shall not compromise or settle any Vendor Infringement Claim or admit any criminal liability or wrongdoing by Purchaser Indemnified Parties without the express prior written consent of Purchaser, unless such compromise or



settlement includes an unconditional release of all claims against Purchaser Indemnified Parties, does not in any manner change, modify or alter the Technical Specifications and does not involve any stipulation, judgment or injunction against Purchaser Indemnified Parties, in which event such written consent of Purchaser shall not be required. Purchaser shall reasonably co-operate, at Vendor's sole cost and expense, with the Vendor in the defense of Vendor Infringement Claim.

36.3 In the event Goods or any part thereof or the use of Goods or any part thereof is held to constitute an infringement or misappropriation of any third party's Intellectual Property rights or the use of Goods or any part thereof is enjoined, Vendor shall, at its sole cost and expense

(a) procure the right for Purchaser to continue the use of those Goods or any part thereof without interruption or cost and expense to Purchaser;

(b) replace the Goods or any part thereof with non-infringing Goods or work that complies with Technical Specifications; or

(c) modify the Goods or parts thereof, or work so that the modified Goods or part thereof are non-infringing; provided, that

(i) the modified Goods or any part thereof or work complies with the Technical Specifications and

(ii) Vendor fully indemnifies Purchaser in accordance with the Purchase Order.

If Vendor fails or refuses to fulfill its obligations set forth in the Purchase Order, Vendor shall

(a) refund to Purchaser the full value of the infringing Goods including the Net Price, import duty, any transportation, clearing and forwarding, storage and insurance costs incurred by Purchaser with respect to such infringing Goods without any further obligation on Purchaser to pay any additional amounts in connection with such Goods, and

(b) bear and pay any additional cost incurred by Purchaser in procuring the right to continue using such infringing Goods or part thereof.

36.4 Notwithstanding any proprietary legends or copyright notices to the contrary, Purchaser may copy or reproduce Documentation or any other information furnished by Vendor in

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connection with Vendor's proposal and with the Purchase Order and distribute such copies or reproductions to others for the limited purposes of designing, constructing, operating, maintaining or licensing Purchaser's network.

**GCC 37.0 SOFTWARE LICENSES (WHEREVER APPLICABLE)**

- a) Upon delivery of Software, the Vendor shall grant to Purchaser or its Affiliates (and to third parties whom Purchaser or its Affiliates have contracted to operate Purchaser's network on their behalf (and to the extent of the same) by Purchaser and/or its Affiliates, a perpetual, irrevocable, non-exclusive, unrestricted, unlimited, royalty-free license, for the Software in object code form and the documentation, inter alia, for storing, loading, installing, executing, displaying, analysis, customization, configuration, training, enhancement, implementation, interfacing and/or integration purposes for the benefit of Purchaser in connection with the ownership, operation and maintenance of the Software and Purchaser's network wherever it is located ("**Territory**") and the provision of relevant services in the Territory to Purchaser's customers.
  
- b) The aforementioned license set forth above shall hereinafter be referred to as the "**Software License**". Such Software License shall not be transferred, assigned, sublicensed by, or used by outsources of, Purchaser without Vendor's consent except with respect to (i) the sale of Purchaser's network (or any relevant component thereof); (ii) the financing of Purchaser's network (or any component thereof); or (iii) the outsourcing by Purchaser of any operating or maintenance functions related to Purchaser's network; or (iv) the transfer, assignment or sublicense by Purchaser of the Software License to a Purchaser Affiliate (or vice versa) or between Purchaser Affiliates, in conjunction with a transfer of a portion of Purchaser's network, provided that in each such case, such transferee, assignee, sublicensee or outsourcee agrees in writing to abide by all the terms and conditions set forth in the Software License and the Vendor is informed of the same in writing by Purchaser and provided further that the rights transferred, assigned, sublicensed or granted to outsources, as the case may be, shall be those reasonably necessary to fulfil the purpose for which they are transferred, assigned, sub-licensed or granted.
  
- c) The rights and obligations of Purchaser under the Software License shall survive the termination of all or any portion of the Agreement. In the event that Purchaser fails to pay the applicable and undisputed charges for the Software, Vendor may terminate Purchaser's right to use the Software to which such charges apply; provided that Vendor has given to Purchaser written notice of termination and details of such failure to

pay Purchaser, which notice shall not be for a period of less than **sixty (60)** days, and Purchaser does not make payment within the said period. Such terminated rights shall be immediately reinstated upon payment of all applicable license fees. In no event other than as set forth in this Clause may Vendor terminate Purchaser's right to use the Software. Notwithstanding any other provision of the Agreement, if there is a Dispute hereunder, pending final resolution of such Dispute, all of Purchaser's rights under the Agreement shall continue in full force and effect, and Vendor will not terminate the Software License, and so long as Purchaser continues to pay Vendor applicable fees, Vendor will not terminate, suspend, interrupt or delay maintenance and support of the Software.

- d) Notwithstanding any proprietary legends or copyright notices to the contrary, Purchaser and its Affiliates shall have the right to translate, abridge and / or make as many copies and reproductions of the Documentation or any other information furnished by Vendor in connection with the operation, maintenance and support of Purchaser's network. Purchaser may distribute such copies to others for the purpose of designing, constructing, operating, maintaining or licensing Purchaser's network. Further, Purchaser and its Affiliates shall have the right to make as many copies of the Software as are reasonably necessary for the use of the Software in accordance with this Agreement. Purchaser shall reproduce all copyright notices as provided in the original Software on all copies thereof.
- e) Purchaser shall not translate, reverse engineer, modify, decompile, disassemble or create derivative works from the Software, except as expressly provided under Applicable Law. However, tailoring of the Software by use of the utilities provided in the Software shall not be construed as modification of the Software.
- f) Vendor shall obtain and keep valid (either perpetually or till replacement) all consents, authorizations, licenses, permissions or approvals, including but not limited to rights of access to and use of third party software, systems or other material required to validly and effectively provide and license the Software to Purchaser and its Affiliates ("**Required Consents**"), at no additional cost or expense to Purchaser. Vendor shall pay all fees and costs (such as transfer, re-licensing or upgrade fees, termination or underutilization costs) associated with the Required Consents. Failure to obtain any Required Consent shall not relieve Vendor of its obligations under this Agreement and Vendor shall pay any additional costs incurred by Purchaser as a result of such failure in addition to any other remedies available to Purchaser hereunder.

- g) The Vendor shall provide the keys and passwords of all software along with the delivery of such software supplied under this Contract.
- h) Vendor hereby covenants that the Software is free from any encumbrance, charge, lien or security interest. Further, in the event of such encumbrance, charge or lien the Vendor shall (i) notify the party in whose favour such encumbrance, charge or lien is created, of Purchaser's rights under this Agreement; and (ii) obtain such party's consent (and intimate such consent to Purchaser within **seven (7)** days of obtaining thereof) and in no case later than **thirty (30)** days from the date its supplying such Software to Purchaser Further, Vendor shall not, at any time, undertake any act or omission that shall limit, regress or abrogate either the licenses granted to Purchaser and Affiliates hereby or any rights accruing to Purchaser and Affiliates hereunder.

**GCC 38.0 GOVERNING LAW & JURISDICTION**

The Agreement shall be interpreted in accordance with and shall in all respects be subject to the laws of the Republic of India. Subject to the provisions of Clause 27 and to the extent permitted under the provision of (Indian) Arbitration & Conciliation Act, 1996 the principal civil court of original jurisdiction of Mumbai (India) shall have exclusive jurisdiction in all matters relating to or arising out of the Agreement.

**GCC 39.0 FORCE MAJEURE**

**39.1** In this Clause, "Force Majeure" means an event which makes it impossible or illegal for the party claiming Force Majeure ("Affected Party") to perform its obligations under the Agreement and which act or event is (i) beyond the reasonable control and not arising out of the fault of the Affected Party; (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care; and (iii) has a material adverse effect on the works. For the purpose of this Clause 39 a Force Majeure event shall include

(a) Act of God or events beyond the reasonable control of the Affected Party and against which an experienced party could not be reasonably expected to take precautions, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire to the extent originating from a source external to the Site or beyond design specification for the construction Works;

(b) Contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous

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properties of any explosive nuclear assembly or nuclear component of such an assembly;

(c) Riot, commotion or disorder, strikes or boycotts which interrupt supplies and services to the Works for a period exceeding a continuous period of seven (7) days in a year, unless solely restricted to employees of the Vendor or of his Sub-Vendors ;

(d) Any discoveries or archaeological finding that prevents a Party from discharging its obligations;

(e) Expropriation or compulsory acquisition by any governmental agency of any assets or rights of the Parties;

(f) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, sabotage, insurrection, act of terrorism, military invasion or civil commotion which interrupt supplies and services for a period exceeding a continuous period of (7) days in a year ; and

(g) Industry wide, city wide, state wide or India wide strikes or industrial action or any public agitation.

(h) Act of terrorism. For this purpose an act of terrorism means any terrorist or disruptive activity perpetrated by an outfit banned by the Government of India as a terrorist organization.`

(i) Any events/Act due to Political Event such as amendment in Constitutional Law of State or India, adversely impacting in execution of Supply or performance of Work.

39.2 In the event of either Party being rendered unable by Force Majeure to perform any obligation required to be performed by them under the Agreement, the relative obligation of the Party affected by such Force Majeure shall be suspended for the period during which such cause lasts. Time for performance of the relative obligation suspended by Force Majeure shall then stand extended by the period for which cause lasts.

39.3 Upon the occurrence of any Force Majeure event, the Party so affected in the discharge of its obligation shall promptly, but no later than **five (5)** days give written notice of such event to the other Party. The Affected Party shall make every reasonable effort to remove or remedy the cause of such Force Majeure or mitigate its effect as quickly as possible. If such occurrence results in the suspension of all or part of a Purchase Order

for a continuous period of more than **thirty (30)** days, the Parties shall meet and determine the measures to be taken. If the Parties do not reach an agreement on such measures within 7 days Purchaser shall be entitled in its discretion to terminate the Agreement or Purchase Order affected by such occurrence, without any obligation or liability EXCEPT for amount due for the certified completion of Work up to the date of termination/suspension of Contract.

39.4 Any delay or failure in performance by either Party hereto to the extent, such delay or failure is caused by Force Majeure, shall not give rise to any claims for damages or loss of anticipated profits or compensation or Contract Price related to unexecuted performance of the Contract.

The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure, including but not limited to, the payment of all reasonable sums of money by or on behalf of the affected Party, which sums are reasonable in light of the likely efficacy of the mitigation measures. Save as expressly provided above, the Purchaser/Owner shall not be liable to make any payments in respect of a period of or for consequences arising out of a Force Majeure.

#### **GCC 40.0 PROTECTION AND PACKING**

40.1 Unless otherwise provided in the Purchase Order, all Goods shall be suitably protected against corrosion during transit and shall be painted in accordance with the Purchaser's general specification for corrosion prevention and painting, respectively, listed in the Purchase Order.

40.2 The Goods shall be carefully packed and protected or bundled according to the nature of the Goods and in a manner appropriate for safe and secure transit according to the destination and in accordance with any special instructions contained in the Purchase Order. All packing cases are non-returnable unless otherwise specified in the Purchase Order.

Domestic Packing The Goods must be suitably packaged to withstand the handling and elements encountered during shipment on a common carrier from Vendor's point of shipment to point of installation, anywhere in India.

Import Packing The Vendor shall provide for secure protection and packing of the material in accordance with the best established practices, so as to protect material from damages under conditions which may involve multiple handling, transportation by

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ship/ rail/road, storage, exposure to heat, moisture, rain etc. Any breakage, damage, and/or pilferage, including when in transit, arising from faulty packing shall be the responsibility of the Vendor. Bill of Lading shall not be considered as sufficient proofs that material are securely packed.

All packages shall be visibly marked mentioning Purchase Order number and name of Purchaser in bold letters and must contain copies of challans /packing slips inside and/or as specified in the Purchase Order(s).

#### **40.3 Shelf Life of Goods**

Upon delivery of Goods at Purchaser's/Owners' designated premises, the Shelf Life of such Goods must be performed 100% as prescribed / guaranteed. . The Vendor shall submit the manufacturer's certificate towards its Shelf Life against each of such Goods delivered.

Any delivery of Goods at Purchaser's designated premises having Shelf Life less than the Shelf Life mentioned above, shall be subjected to prior written approval of Owner/Purchaser and such Goods may be accepted or rejected at the absolute discretion of Owner/ Purchaser. If any Goods are delivered, whose Shelf Life does not conform to the above requirements, it shall promptly be replaced by the Vendor at its own cost within seven (7) working days upon being notified by the Purchaser. Such replaced Goods must have the Shelf Life, at least for the balance period of the original replaced Goods. The expenses/cost of replacement of such Goods along with all other ancillary costs including taxes, duties and cess etc., shall be borne by the Vendor and the Purchaser shall in no way bear any cost/expenses towards such replacement.

#### **GCC 41.0 MARKING**

Unless otherwise provided in the Purchase Order, all the parts and components of the Goods shall be identified by a hard stamped metal tag or some other indelible marking to be specified or approved by the Purchaser, showing Purchase Order number, item number, material code, Shipment Control Note (SCN) number, barcode and part number (where applicable). The metal tag shall be secured to the part or component by metal wire or by some other method with prior approval in writing by the Purchaser. The same marking shall be legibly painted on the item where practicable. Such marks shall be embodied on the Drawings and shall confirm to those indicated on the Purchaser's drawings in cases where these are supplied. Further ,all the Parties and components of the Goods shall be indentified by pasting /sticking RFID /barcode tag to be provided by

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the Purchaser ,loaded with relevant data like Purchase Order number, item number, material code and part number (where applicable ), TC, or any other document as advised by the Purchaser .

## **GCC 42.0 SHIPPING, INSPECTION AND DISPATCH**

### **42.1 Shipping**

1. Prior to shipment, the Goods shall be thoroughly cleaned and all water, dirt, sand, weld metal, spatter, welding electrode, stubs and foreign matter shall be removed.

2. Finished surfaces shall be coated with heavy grease, and flanged openings shall be properly protected with suitable covers as per details given below

Machined surface shall be coated with easily removable rust protective grease or strippable protective coating and the entire gasket surface of the flanges shall then be covered over with heavy duty plastic flange protectors duly bolted together. Alternatively steel- strapped wood, wood fiber, or metal covers may be used with a plastic sheet placed between the coated flange and cover for additional protection.

### **42.2 Pre-Inspection Intimation**

As soon as Goods are ready for inspection, Vendor shall intimate Purchaser/CONSULTANT/INSPECTION AGENCY by Courier/Email/Fax indicating the details of Goods that will be offered for inspection.

### **42.3 Post-Inspection Intimation**

Vendor shall advise the Purchaser the details of Goods that have been cleared for dispatch with P.O.NO. to enable Purchaser to issue “dispatch instructions”.

### **42.4 Dispatch of Goods**

1. Vendor shall notify Purchaser when Goods are ready for dispatch but shall not effect dispatch until instructed by Purchaser in writing.

2. Should Goods be dispatched prior to receipt of written instruction, Purchaser reserves the right to return Goods to Vendor’s or Sub-Vendor’s works at Vendor’s risk and cost. Irrespective of whether Goods are so returned or not, payment will be deferred until Purchaser accepts Goods for their intended use. Such an acceptance will be

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subject to the satisfactory fulfillment of Purchaser's requirement, which may include alternative examination, testing and inspection, additional guarantees and other compensations, all at Vendor's cost.

3. Vendor shall be liable for any additional cost incurred by Purchaser resulting from Vendor's failure to comply with Purchase Order requirements for documentation, certification, packing, marking, shipment and place of delivery. Any cost incurred by the Purchaser due to submission of incorrect documentation by the Vendor, shall be to the account of the Vendor.

#### **42.5 Receipt of Goods**

On receipt of the Goods at Purchaser's designated premises, Vendor and Purchaser/Purchaser's Representative shall jointly acknowledge receipt of the Goods.

### **GCC 43.0 UPGRADES AND ENHANCEMENTS**

43.1 Upgrades shall be in the form of

- a. Major Version a hardware or software package which provides substantial operational and performance improvement over the previous version as well as adds additional features (whether basic, optional, or otherwise) and services, plus Enhancement/s, accumulation of minor releases, Maintenance Releases and Patch/es issued since the previous major release. "Enhancement" shall mean the modification or improvement over the previous version that improves the performance, functionality, or capacity of the Goods.
- b. Minor Version contains minor elements of new functionality, enhancements, performance or features, plus accumulation of maintenance releases and patches issued since the previous minor release.
- c. Maintenance Release contains fixes to several problems, plus accumulation of patches issued since the previous maintenance release; may include one or more minor enhancements to existing functionality, performance or features.
- d. Patch a fix to one or more specific problems, defect, and/or enhancements.

Upgrades are identified by a version number A.B.C.D in which

- a. "A" is the Major Version number

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- b. "B" is the Minor Version number
- c. "C" is the Maintenance Release number
- d. "D" is the Patch number

An Upgrade, which is renamed for any reason whatsoever, will however continue to be covered hereunder as "Upgrade".

Further, all variants of the Goods that perform substantially similar functions as the Goods, shall be deemed to be Upgrades.

**43.2** The Vendor will make available to Purchaser, at such times as they become generally available to other customers, all Upgrades and Enhancements for any Goods that Purchaser has purchased pursuant to the terms of the Agreements. The Vendor shall give Purchaser no less than **three (3)** months' prior written notice of the introduction of any Enhancement. In addition, on half yearly basis in each year during the Term, as a part of the technology planning process, the Vendor shall provide Purchaser with a forecast of future Upgrades and Enhancements then currently being developed by Vendor or any Vendor Affiliate. The Vendor shall at all times take all reasonable measures to ensure that Upgrades and Enhancements will not introduce or release any Malicious Code or Disabling Code into any part of the Purchaser network.

**43.3** Software and firmware Upgrades and Software and firmware Enhancements shall be provided and appropriately installed by Vendor (i) at no charge, during the Warranty Period; and (ii) subject to the purchase of the Goods at no additional charge.. With respect to any Software or firmware Upgrade, Enhancement or Combined Release, Purchaser shall not be responsible for bearing the cost of any additional hardware that may be required to support the same. Additionally, Purchaser shall not be obligated to pay any amount for any features contained in any Upgrade.

**43.4** In the event that any Upgrade or Enhancement supplied by the Vendor has the effect of preventing the Purchaser network or any part thereof from satisfying, or performing in accordance with the Technical Specifications or otherwise adversely affects the functionality or features of the Purchaser network or any part thereof, the Vendor shall promptly retrofit or take such other corrective action (including the installation of any additional Products, at the Vendor's sole cost and expense) as may be necessary to assure that the Purchaser network or any such affected part thereof, as modified to include each such Upgrade or Enhancement, shall satisfy and perform in accordance

with the Technical Specifications, and restore all pre-existing functionality and features, in each case without any cost or expense to Purchaser. Failing this, the Vendor shall promptly and at no cost to Purchaser, remove such Upgrade and/or Enhancement from the Purchaser network, restoring the Purchaser network to its pre-existing state, and refund to Purchaser all Charges paid for the same. Following such removal, Vendor shall perform all necessary corrective actions in and upon such Upgrades and/or Enhancements and shall re-test and re-deploy the same no later than **thirty (30)** days from the date of initial introduction into the Purchaser network.

#### **GCC 44.0 INDEMNIFICATIONS AND LIMITATION OF LIABILITY**

44.1 The Vendor shall, at its own cost and expense, defend, indemnify and hold Purchaser and its Affiliates, Authorised Persons and their respective partners, directors, officers, agents and employees ("**Purchaser Indemnities** ") harmless from and against any and all loss, claims, demands, actions, suits, proceedings, damages, costs, expenses, liabilities (including, without limitation all reasonable attorneys' fees) (collectively referred to as "**Liabilities**") which are brought against or incurred by any Purchaser Indemnitees for

(a) injury to persons (including physical or mental injury, libel, slander and death) caused by or relating to the strict liability of the Vendor, its Affiliates, any Sub-Vendor or their respective officers, employees, representatives or agents (collectively referred to as "**Vendor Indemnitors** "),

(b) loss or damage to real and tangible property, caused by (or relating to the strict liability of) Vendor Indemnitors.

(c) violation of Applicable Laws by Vendor Indemnitors.

(d) any claims arising out of or in connection with the Vendor's obligations in accordance with and pursuant to GCC 36 ('**Infringement**') and GCC 34 ('**Nondisclosure**'), or

(e) any other liability or loss that shall

(i) have resulted from any fraud, negligent or willful act or omission or from the default of Vendor Indemnitors in the performance of the Agreement or,

(ii) shall be a liability or loss for which the Vendor Indemnitors are legally liable.

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44.2 Subject to this GCC 44, Purchaser shall, at its sole cost and expense, defend, indemnify and hold harmless Vendor and its respective directors, officers, agents, representatives, and employees (collectively referred to as “**Vendor Indemnitees**”) from and against any and all Liabilities which are brought against or incurred by any Vendor Indemnitees for

(a) injury to persons (including physical or mental injury, libel, slander and death) caused by or relating to the strict liability of Purchaser,

(b) loss or damage to real and tangible property, caused by (or relating to the strict liability of) Purchaser or

(c) violation of Applicable Laws by Purchaser

d) any claims arising out of or in connection with Purchaser's obligations in accordance with and pursuant to GCC 34 (Nondisclosure) or

(e) any other liability or loss that shall (i) have resulted from any fraud, negligent or willful act or omission or from the default of Purchaser in the performance of the Agreement; or (ii) be a liability or loss for which Purchaser is legally liable.

**44.3 Limitation on Liability** Notwithstanding anything to the contrary in the Purchase Order but subject to GCC 45 (**‘Consequential Damages’**), the aggregate liability of either Party to the other Party in respect of all claims for Liabilities arising under the Purchase Order shall not exceed the aggregate value of the Purchase Order(s) under which the Liabilities arose except that such limitation shall not apply to the provision of GCC 44.1(a-e), , 44.2 (a-b) and 44.2(d-e), GCC 34 or pursuant to any other GCC where such limitation is expressly excluded.

#### **GCC 45.0 CONSEQUENTIAL DAMAGES**

Notwithstanding anything to the contrary in the Purchase Order, except for breach of obligations under GCC 34 (“**Non-disclosure**”) and except as expressly provided in a Purchase Order, in no event, as a result of breach of contract or breach of warranty or otherwise, shall either Party hereto or either Party’s Affiliates or sub Contractors, be liable under the Purchase Order to the other Party for any consequential, special, indirect, exemplary or incidental damages, and/or for any lost profits, goodwill or revenues of such Party, howsoever arising, before or after Acceptance of the Goods and whether or not such damages are foreseeable.

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**GCC 46.0      WARRANTY DEFECTS AND LIABILITY**

46.1 Vendor warrants that the Works or any part thereof shall be,

- a) Free from defects and deficiencies
- b) Of the quality as specified in the in the Technical Specifications or SCC and;
- c) Conform to and comply with in all respects to the terms of this Contract
- d) Free from any liens or any other encumbrances.

46.2 This Contract is awarded to achieve the intent of the Contract and scope of Work mentioned therein and hence the Vendor irrevocably commits and undertakes to the Purchaser its unequivocal intent to fulfill the terms of the Contract with respect to the requirement set in the tender besides adhering to quality and performance parameters given in the Contract.

46.3 Completion of Outstanding Work and Remedying Defects

“Defects Liability Period” shall mean minimum period of twelve (12) months calculated from the date of issuance of each Acceptance Certificate for the Stage or mentioned in this Contract/Agreement, Works or any part of the Works. Provided that, if any part of the Works or subsystems or part or component of that part of the Works has been replaced, renewed or repaired during the Defects Liability Period, the Defects Liability Period in respect of such part or subsystem or components of that part shall again start for a period of twelve (12) months from the date of such replacement, renewal or repair has been completed to the satisfaction of the Purchaser’s Representative.

46.4 Scope of Work during the Defects Liability Period

During the Defects Liability Period, the Vendor shall be solely responsible for carrying out and completing the Rectification Work. The Purchaser's Representative shall also have the right but not the obligation to instruct the Vendor to complete certain Rectification Works set out in such instructions. The Vendor shall in addition to Rectification Works listed out by it, shall also carry out the Rectification Works instructed by the Purchaser's Representative and for carrying on such work the Vendor shall at its own cost provide competent and skilled personnel and maintain adequate stock of spares so as to promptly fulfill its obligations during the Defects Liability Period. The Vendor shall if required by the Purchaser's Representative carry out such searches, tests or trials as may be necessary to determine the cause of any defect, imperfection or fault. The Rectification Works must be carried out at all times and in all respects to meet

the Purchaser's Requirements throughout the Defects Liability Period. In case the Vendor performs corrective action, and/or repairs, modifies, rebuilds and/or replaces any part of the Work/facility performed pursuant to its obligations under this Contract, the Warranty Period in respect of the part so corrected, repaired, modified, rebuilt and/or replaced shall be extended by period equals to the period during which the Work/facility or such part could not be used by the Purchaser because of any aforesaid reasons or equals to Work originally performed by the Vendor.

#### 46.5 Cost of Remedying Defects

46.5.1 All Rectification Works referred to in Clause 10.4 shall be executed by the Vendor at its own cost, if the necessity for such work is due to

- a) The defect or shortcoming in Drawings and Designs for the Works or any pattern failure;
- b) Plant, Materials or workmanship not being in accordance with the Purchaser's Requirements; or
- c) Failure by the Vendor to comply with any of its obligations under the Contract.

46.5.2 If in the opinion of the Purchaser's Representative, any Rectification Work is required to be carried out due to reasons other than as set out in Clause 10.5.1 above, the Purchaser's Representative may, in consultation with the Purchaser, require the Vendor to carry out such rectification works for which a reasonable amount as determined by the Purchaser's Representative shall be payable.

46.5.3 If the Vendor fails to complete the Rectification Works during the Defect Liability Period, the Purchaser (at its sole discretion) may

- a) Carry out the work itself or by others, at the risk and cost of the Vendor;
- b) Require the Purchaser's Representative to determine and certify a reasonable reduction to the Contract Value;
- c) If the defect or damage is such that the Purchaser has been deprived of substantially the whole of the benefit of the Works or part of the Works, terminate the Contract in respect of such parts of the Works as cannot be put to the intended use, the Purchaser shall then be entitled to recover all sums paid for such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Vendor.

#### 46.6 Removal of Defective Work

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If the defect or damage is such that it can not be remedied expeditiously on the Site and if the Purchaser gives consent, the Vendor may, remove from the Site for the purpose of repair any part of the works, which is defective or damaged. The consent may require the Vendor to increase the amount of Performance Bank Guarantee by the full replacement cost of items which are to be replaced or to provide other appropriate security acceptable to the Purchaser.

#### 46.7 Further Tests

If remedying of any defect or damage is such that it may affect the performance of the Works, the Purchaser's Representative may require that certain tests be repeated to the extent necessary. The requirement shall be made by notice within twenty eight (28) days after the defect or damage is remedied.

### **GCC 47.0 TAXES & DUTIES**

#### **(A) TAXES & DUTIES (IMPORT ORDERS)**

- 47.1 Prices for Goods is inclusive of all taxes and duties that are payable outside India. Vendor shall be solely responsible for payment of all expenses incurred outside India and up to CIF( as defined under Incoterms) Indian port including packing and forwarding, Ocean Freight and Insurance, any and all taxes and levies that are payable outside India. Payment of import duties under Indian Customs Act and taxes under India GST, payable on the importation of the Goods into India shall be the responsibility of the Purchaser.
- 47.2 Vendor shall be liable for any increase in the customs duties during or post clearance including fines, penalties, interest or any other liability imposed by Indian authorities in terms of the Customs Act, 1962, which are due to non compliance of any rules, regulations, notifications, statutory requirements, any valuation discrepancies, technical documentation errors, errors in any bill of entry, any error in any packing lists, supply, labels, shipping documents or any reason that is attributable to the Vendor.
- 47.3 Purchaser shall not be liable to make any further payments whatsoever in connection with the purchase or use of the Goods to any other third party, including any license fees, royalties, levies or the like for use of the intellectual property embodied in or utilized with the Goods. For the avoidance of doubt it is clarified that, Vendor shall be responsible for all income taxes (including withholding taxes in India, if applicable) arising from Vendor's activities.

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**(B) TAXES & DUTIES (DOMESTIC ORDERS)**

- 47.4 The prices for Goods are on FOR destination basis. For the Goods covered under the GST laws, all taxes that are applicable under CGST, SGST, UGST, IGST and GST Compensation Cess shall be included in the price.. However, Supplier invoice shall indicate the value of Supply and GST on such Supply separately and in compliance with GST laws.
- 47.5 For the Goods not covered in the GST laws, the applicable ED, VAT / CST shall be payable extra at applicable rates.

**(C) OTHER CONDITIONS**

- 47.6 Vendor shall obtain GST registration in the State from where the supply will be carried out. Vendors supplying Goods to the Purchaser shall have a valid GST registration number and shall submit GST Tax Invoice and other documents as per SGST Act, CGST Act, IGST Act, UTGST Act, GST Compensation Cess Act and Rules made there under. Failure to submit GST Tax Invoice, shall be liable for withholding SGST, CGST, IGST, UTGST, GST Compensation Cess amount charged by the vendor while releasing the payment.
- 47.7 Vendor must compulsorily register at the Purchaser's Vendor Portal "[gstportal.adani.com](http://gstportal.adani.com)".
- 47.8 Vendor shall login into the Vendor Portal and enter invoice details in the portal before / on dispatch of goods. Vendor should upload the copy invoices and other documents in the portal and forward the original copies along with conveyance and to the address mentioned in the Purchase Order.
- 47.9 Vendor invoice should contain all information as required under GST Invoice, Debit Note and Credit Rules. (Sample format provided in SCC)
- 47.10 Vendor to carefully examine and charge relevant CGST / SGST, UGST , IGST and GST compensation cess as applicable to the transactions.
- 47.11 It is agreed that the invoices will be paid in two stages (a) Base Amount (b) Tax Amount. Tax Amount will be paid only after vendor provides sufficient proof that the GST amount charged in its invoice is declared in GSTR-1 and GSTR-3 returns and payment of taxes has been made.

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- 47.12 HSN for Goods shall be mandatorily included in the Invoice as per GST rules.
- 47.13 Purchaser has the right to recover tax loss, interest and penalty suffered due to any non-compliance of tax laws by the Vendor. In the event, Purchaser is not able to avail any tax credit due to any short coming on the part of the Vendor (which otherwise should have been available to Purchaser in the normal course), then the Vendor at his own cost and effort will get the short coming rectified. If for any reason the same is not possible, then the Vendor will make 'good' the loss suffered by Purchaser due to the tax credit it lost . In such event, any amount paid to the Vendors shall be first attributable to the tax (GST) charged in the invoice and the balance shall be considered towards the 'value' of supply of goods/ services.
- 47.14 Purchaser shall deduct "Tax Deducted at Source' wherever applicable and at the rate prescribed under the GST Laws or any other Indian law and remit the same to the Government. Necessary TDS certificates as per law shall be issued by the purchase to the vendor.
- 47.15 Wherever applicable, the Vendor shall be responsible to issue required transit documents / E Way Bills for movement of Goods and the logistic partner / transporter shall not be liable for any loss arising due to confiscation of goods by government agencies on account of lack of proper documents or any mis-declaration.
- 47.16 Any liability arising out of dispute on the tax rate, classification under HSN, calculation and payment of tax to the Government will be to the Vendor's account.
- 47.17 Where the supply of Goods are liable to GST under reverse charge mechanism, then the supplier should clearly mention the category under which it has been registered and also that "the liability of payment of GST is on the Recipient of Supply".
- 47.18 The invoice should clearly specify any abatement, if any claimed or otherwise from the Taxable Value while calculating the GST.
- 47.19 The PO shall be void, if at any point of time the Vendor is found be to a black listed dealer as per GSTN rating system and further no payment shall be entertained.
- 47.20 The Purchaser shall not accept materials if LR/ RR / Bilty and the original Tax Invoice are not handed over at site. The Vendor shall draw all dispatch documents in favor of Purchaser as Consigned to [ ] and Billed to Purchaser.

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47.21 The Vendor shall give an undertaking at the time of acceptance of Contract, in the absence of which tax payment as on the Vendor's invoice shall be withheld.

“The tax component as mentioned in the invoice shall be deposited with GST Department as per law by way of actual payment or by way of legal set off as per law. The turnover billed shall be duly declared in my GST returns a copy of which shall be filed with the Purchaser. Should the input tax credit to the Purchaser be denied by way of any lapse on the part of the Vendor, the same shall be paid on demand and in any case the Purchaser is authorized to deduct the tax equivalent amount from the amount payable to the Vendor”.

47.22 The Vendor shall ensure exact quantities are supplied as per standard packaging and if the quantities are short supplied, as per verification at the Vendor's site, the same shall be adjusted and net payment shall be made accordingly..

47.23 Time is the essence of this Order. The Vendor shall supply the materials at site strictly as per timelines in this Order.

47.24 The materials shall be supplied in the packaging as specified in this Order.

47.25 The materials shall be supplied during working hours from 10AM to 6PM. No delivery shall be effected after this time unless prior intimation is given to the Purchaser.

47.26 The Vendor shall take signature of the authorized person with Purchaser's seal clearly accepting the materials and the quantities in the absence of which payment shall not be made by the Purchaser.

47.27 Any statutory variation in the GST rates shall be reimbursed to the Vendor or given to the Purchaser as the case may be.

47.28 The Payment shall be made through RTGS only as per time lines given in this order. Vendor to furnish the details in the Vendor Registration form to be provided by Purchaser.

47.29 The Purchaser has exclusive right to reject the goods if not supplied strictly as per terms and conditions of this Order.

47.30 The Purchaser shall charge SGST, CGST, IGST, UTGST, SGST Compensation Cess on the value net of discount agreed in the Contract even if the discount is given subsequently.

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**Timely provision of invoices/ Debit Notes / Credit Notes & E way bills under GST laws**

- 47.31 Vendor to timely provide invoice/ Debit note/ Credit note to enable Purchaser to claim tax benefit on or before stipulated time period. All necessary adjustment entries (Credit Note, Purchase Returns, Debit Notes) shall be made within the time lines prescribed under the GST Laws.
- 47.32 In case of receipt of advance, the Vendor undertakes to raise the tax invoice. Purchaser, upon payment of advance, shall issue payment voucher as per applicable GST laws and rules. Three copies of the invoices need to be provided by suppliers and wherever the law requires, an Electronic Reference Number for each invoice.
- 47.33 Before commencement of movement of goods, vendor has to furnish information relating to such goods in Part A of E-way bill electronically on the common portal. Information should include GSTIN of Purchaser place of delivery (PIN Code), Invoice / Challan No. & date, Value of goods with HSN Code, LR No. / Airway Bill No./ Bill of Lading No. and reason for transportation. Purchaser will communicate its acceptance / rejection of the consignment covered by the e-way bill within 72 hours of the details being made available on the common portal.
- 47.34 Vehicle No. will be mentioned in Part B after which E-way bill will be generated.
- 47.35 Copy of the E-way bill or E-way bill No., mapped to an RFID embedded on the conveyance needs to be carried along with the vehicle in which the goods are being transported..Vendor to follow procedure of E way bill as per GST laws/Rules. Vendor shall make sure that the person in charge of a conveyance is carrying the following documents
- (a) the invoice or bill of supply or delivery challan, as the case may be; and
  - (b) copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance in such manner as may be notified by the GST Commissioner.
- 47.36 Vendor shall give attention to the GST provisions on times lines on raising of E Way Bills, documents to be accompanied with the conveyance and Vendor and / or transporter to adhere to the provisions on tran-shipment and part-shipment.

**(D) TAX INDEMNITY CLAUSE**

- 47.37 Vendor (along with its affiliates in India or overseas including any agent/ third party Vendor or any other person appointed by such affiliates for the purpose of this agreement) agrees that it will be solely responsible for performing all compliances and making payments of all taxes (direct tax or indirect tax including but not limited to income-tax, transfer pricing, value added tax, SGST, CGST, IGST, UTGST, GST Compensation Cess custom duty, excise duty, Research and Development Cess, etc.), cesses, interest, penalties or any other tax/ duty/ amount/ charge/ liability arising either out of laws/ regulations applicable in India and overseas or because of a demand/ recovery initiated by any revenue authority under laws/ regulations applicable in India or overseas.
- 47.38 In case any tax liability (including but not limited to income-tax, transfer pricing, value added tax, SGST, CGST, IGST, UTGST, GST Compensation Cess custom duty, excise duty, Research and Development Cess, etc.), cesses, interest, penalties or any other tax/ duty/ amount/ charge/ liability becomes payable by Purchaser due to failure of the Vendor, or any of its affiliates in India or overseas including any agent/ third party Vendor or any other person appointed by such affiliates for the purpose of this agreement, to comply with the relevant laws/ regulations applicable in India or overseas, Vendor undertakes to indemnify Purchaser for an amount equal to amount payable by Purchaser.
- 47.39 Further, Vendor undertakes to keep Purchaser indemnified at all times against and from all other actions, proceedings, claims, loss, damage, costs and expenses which may be brought against Purchaser or suffered or incurred by Purchaser and which shall have arisen either directly or indirectly out of or in connection with failure of The Vendor, or any of its affiliates in India or overseas including any agent/ third party Vendor or any other person appointed by such affiliates for the purpose of this agreement, to comply with relevant obligations/ compliance under any law/ regulations applicable in India and overseas.
- 47.40 The parties agree to follow the following process in case any Communication of demand, arising out non-compliance by Vendor (along with its affiliates in India or overseas including any agent/ third party Vendor or any other person appointed by such affiliates for the purpose of this agreement), is received by Purchaser

- a) On Purchaser receiving any Communication from a competent authority demanding tax liability (including but not limited to income-tax, transfer pricing, value added tax, SGST, CGST, IGST, UTGST, GST Compensation Cess custom duty, excise duty, Research and Development Cess, etc.), cesses, interest, penalties or any other tax/ duty/ amount/ charge/ liability, Purchaser shall, within 5 common working days from the date of receipt of such Communication (save where the period to respond to the relevant authority is less than five days, in which case, as soon as reasonably possible) inform Vendor in writing of such Communication.
- b) Pursuant to receiving Communication from Purchaser, Vendor shall suggest to accept the Communication and pay the demand amount to the competent authority. In such an event, Vendor shall reimburse such amount paid to Purchaser within 5 working days from the date of payment by Purchaser to the competent authority.
- c) If Vendor advises in writing and Purchaser agrees to Dispute the demand, then Purchaser shall Dispute the matter with competent authority as per due process prescribed under the regulations and Purchaser shall not pay the Tax Demand. In such scenario, cost of litigation including but not limited to Counsel cost, filing fees, other related charges, should be reimbursed by Vendor to Purchaser. Additionally, If any coercive steps of recovery are initiated by the department, then Purchaser would pay such amount (including by way of adjustment of refunds due to it) and the same would be reimbursed by Vendor within 5 working days from date of such recovery from Purchaser. Purchaser will take all necessary steps to avoid such recovery measures.
- d) On determination of the demand through an Order issued by a Tribunal or any other similar Authority, by whatever name called, under any law applicable in India or overseas, if the demand or any part thereof becomes payable and is paid by Purchaser, then Vendor undertakes to reimburse such amount to Purchaser within 10 days from the date of payment. Alternatively, if on determination of the demand through an Order, no amount is payable by Purchaser then any refund arising to Purchaser due to such an Order shall be passed on to Vendor within 10 days from the date of receipt of refund.

**(E) ANTI PROFITEERING CLAUSE**

47.41 Under the GST Law, any economic or tax benefit arising out of the implementation of GST is mandatorily required to be passed on to the Purchaser by the Vendor. Similarly, the benefits enjoyed by your vendors and other players in the supply chain are also required to be passed on to you by them, which in turn shall be passed on to us by way

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of price reductions. Accordingly, you are expected to pass on any direct or indirect benefits arising thereon. The responsibility to pass on the above benefits vests with you, as our 'responsible vendors' and we reserve our right to understand and seek the manner/ mechanism in which such benefits are passed on to us.

**47.42 Change in Taxes and Duties**

Subject to this Article, if there is a change in the taxes and duty or withholding taxes, imposed directly on the Vendor in respect of the Works, (each, a "Change in Tax Law"), the Contract Price shall be adjusted to take into account such Change in Tax Law by addition to the Contract Price or deduction there from, as the case may be, and Vendor may submit a request for a preliminary change order as per Contract.

The adjustments to the Contract Price shall be expressly limited to direct transactions between Purchaser and the Vendor and the Vendor shall not be entitled to submit a request for a preliminary change order with respect to (a) a Change in Tax Law directly or indirectly relating to income taxes, surcharges on income taxes, personnel income taxes and fringe benefit taxes; (b) a Change in Tax Law in connection with the procurement of raw materials and intermediary components by the Vendor; and (c) a Change in Tax Law in connection with taxes imposed on Goods dispatched from the facilities of a Sub-Vendor or Supplier or to the facilities of the Vendor. The Purchaser shall not be obligated to pay any increase in taxes incurred due to a delay in Acceptance Certificate attributable to the Vendor.

All tax credits / exemptions / concessions / incentives / other benefits that arise in the supply chain by way of any Change of Law, as mentioned above, thereby resulting into overall cost reduction, shall be to Purchaser's account without any dispute or litigations.

**GCC 48.0 INDEPENDENT VENDOR**

Nothing in the Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other Party, or to create any fiduciary relationship between the Parties. The Vendor is and shall remain an independent Vendor in the performance of its obligations hereunder, maintaining complete control of its employees, agents, Sub-Vendor and operations required for performance of the obligations under the Agreement.

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**GCC 49.0 CONSTRUCTION OF DOCUMENTS**

Each Party represents, warrants, and acknowledges that it has been represented by effective counsel and that the Agreement will not be construed in favour of or against either Party due to that Party's drafting of the Agreement.

**GCC 50.0 LANGUAGE**

All documents pertaining to the Purchase Order including correspondence, operating and maintenance manuals/instructions, schedules, reports, and other submissions by either Party to the other shall be in the English language.

**GCC 51.0 FINANCING (WHEREVER APPLICABLE)**

During the execution of the Purchase Order, the Purchaser may decide to novate the Purchase Order in full / part thereof to any Leasing or Financial Institution for financing or for any other purpose. In such cases Vendor shall be obliged to co-operate in meeting the requirements of the leasing Institutions. Purchaser shall ensure that all technical and commercial conditions of the Purchase Order are maintained. Vendor shall be compensated for any additional tax liabilities, which may result due to inability of the Purchaser or the LEASING Company to issue necessary certificates.

**GCC 52.0 DEFERRED PAYMENT GUARANTEE SCHEME (WHEREVER APPLICABLE)**

During the execution of the Purchase Order, the Purchaser may request the Vendor to organize the payments under valid Deferred Payment Guarantee Scheme if the Vendor has such facilities. In such cases Vendor shall be obliged to co-operate in meeting the requirements of the Financial Institution(s). Purchaser shall ensure that all technical and commercial conditions of the original Purchase Order are maintained. Vendor shall be compensating for any additional liabilities, which may result due to application of Deferred Payment Guarantee Scheme.

**GCC 53.0 DELIVERY TERMS & ADDRESS**

The Goods shall be delivered in accordance with the delivery terms specified in the Purchase Order. The Vendor shall also provide estimate of Freight & Insurance in case of FOB.

Transshipment- Not allowed unless specifically permitted in individual Purchase Orders.

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Part Shipment -Not allowed unless specifically permitted in individual Purchase Orders.

Acceptance of Goods shall also be subject to

- a) Receipt of factory/staging test and inspection reports from Vendor
- b) Receipt of test reports and dispatch clearance/release note by Purchaser
- c) Receipt of all Documentation.

**GCC 54.0 DELIVERY SCHEDULE**

- 54.1 Vendor shall deliver all Goods as set forth in the SOW of a Purchase Order as per the schedules set out in the Purchase Order.
- 54.2 Purchaser will have sole option to delay delivery of Goods by upto ninety (90) days and Vendor agrees to delay delivery of Goods up to ninety (90) days at no cost to Purchaser if so advised in writing by the Purchaser.

**GCC 55.0 NO INTEREST**

Vendor hereby certify that it does not have any subsisting direct or indirect and/or vested interest or relationship, including, without limitation, ownership interest or otherwise, in Purchaser and/or any of its Affiliates during and for the purpose of the Agreement.

**GCC 56.0 DISCLAIMERS**

The Vendor certifies that neither it, nor its Affiliates, nor to its knowledge any of its employees, representatives, or agents, has made, offered to make or agreed to make any loan, gift, donation or other payment, directly or indirectly, whether in cash or in kind, to or for the personal benefit of the employees of Purchaser or its Affiliates or any other Person or third party by whatsoever name called to obtain any Purchase Order or in connection with execution or performance of the Agreement. The Vendor further, confirms that if it learns of or has reason to know of any such payment, offer or agreement to make a payment to any of the above mentioned persons or entities for the purpose of obtaining any Purchase Orders or in connection with execution or performance of the Agreement, it will immediately inform the Purchaser in writing communicating to the Purchaser all information in respect of the above within the knowledge or possession of the Vendor.

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**GCC 57.0 CONFLICT AND PRIORITY OF DOCUMENTS**

57.1 Where there may be any disparity between any of the above general instructions, terms and conditions and the other specific requirements included in the Purchase Order, the other specific requirements shall take precedence over these general instructions, terms and conditions.

57.2 The documents forming the Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Purchaser shall issue necessary clarifications or instructions to the Vendor, and the priority of the documents shall be as follows

1. Post SAP Purchase Order changes which are mutually agreed and signed by Parties,
2. SAP Purchase Order duly acknowledged by Vendor,
3. Price Schedule,
4. Special Condition of Contract,
5. Technical Specifications, and
6. General Terms & Conditions of Contract.

**GCC 58.0 MOST FAVOURED CUSTOMER**

If, hereafter, Vendor sells, supplies, delivers the Goods, and renders any services to any party on a more favorable basis than the terms of the Agreement Vendor undertakes that it shall promptly offer the same terms to Purchaser retrospectively, and the terms of the Agreement shall stand revised accordingly. Alternatively the Vendor shall furnish the Auditor’s certificate that; it has not sold, delivered the Goods to the other parties on more favorable terms than the terms of the Agreement. Amounts required to be adjusted / reimbursed pursuant to this Clause shall be duly adjusted and/or reimbursed as the case may be at the Purchaser option. For the sake of clarity, reference to ‘terms’ shall include pricing and commercial terms.

**GCC 59.0 INSURANCE**

The Goods shall be insured as mentioned in SCC by the Parties.

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**GCC 60.0 CUSTOM CLEARANCE (FOR IMPORT)**

Purchaser shall do the Custom clearance, either by its own or through its authorised representative. The Vendor and its assigns shall ensure the availability of all required documentation for speedy clearance. If the cargo clearance gets delayed on account of non-availability of required documents to be furnished by the Vendor and cargo attracts demurrage, the same shall be recovered from the Vendor.

**GCC 61.0 DAMAGE / LOSS OF CARGO IN TRANSIT**

Vendor shall be solely responsible for co-ordinating with the concerned insurance company for procuring insurance for material and/or Goods, processing claim lodgment and settlement. Notwithstanding the insurance cover, in case of loss / damage to material and/or Goods, in any manner and for any cause whatsoever, Vendor shall cause the damaged cargo to be replaced and delivered to the Purchaser with new material and/or Goods within 30 days of such loss / damage. The Vendor shall be solely responsible for all expenses in relation to the replacement and delivery in such circumstances.

**GCC 62.0 PRICE VARIATION AND FOREIGN EXCHANGE FLUCTUATION**

62.1 The prices set in the Agreement shall be firm and fixed and no claim, escalation or price adjustment on any account whatsoever, by any Party, including a claim based on foreign exchange fluctuation, shall be tenable and shall not be entertained by Purchaser in relation to the increase of the price. Purchaser shall pay at the rate mentioned in the Agreement. Unless otherwise stated in the Purchase Order prices shall include all charges and expenses in connection with the supply of the Goods and the packing of the Goods and their carriage to the place of delivery to the Purchaser.

62.2 Vendor shall be paid after final delivery of all Goods in accordance with the terms of the Purchase Order together with a correct Invoice and all necessary shipping documents and any and all other documentation which may be required, including Drawings, data, manufacturing record books, Installation instructions and all final required documents as called in the Purchase Order.

62.3 Payment may, however, be withheld or portions thereof may be deducted if in Purchaser's reasonable opinion Vendor is not performing Work in accordance with the provisions of the Purchase Order or if proper set-off in favour of Purchaser in other transactions are asserted.

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- 62.4 Invoices shall be mailed on completion of the obligations of the Purchase Order and any cash discount period offered by Vendor shall be computed from the receipt of the Goods or receipt of the proper invoice, whichever is later, and provided required certification documents are received by Purchaser.
- 62.5 Final payment is conditional upon the fulfillment of Vendor's obligations to provide all Documentation as required under the Purchase Order. Invoices shall not be processed for payment until all such obligations are fulfilled. Purchaser may elect to pay Vendor through Purchaser's electronic disbursement system (EDS). Vendor shall advise Purchaser in writing within thirty (30) days prior to due date of first invoice of the bank and account number to which EDS payments may be made to Vendor.
- 62.6 Retention payment shall be released upon compulsory submission of the i) No Demand Certificate ii) Letter of Indemnity by the Vendor iii) proof of payment of applicable taxes on such retention payments. The format of No Demand Certificate and Letter of Indemnity are attached as Annexure D.
- 62.7 Vendor shall maintain at all times cost records and accounts related to the Purchase Orders.

**GCC 63.0 TIME IS ESSENCE OF AGREEMENT**

Time and date of completion of the Supply as stipulated in the Contract/Agreement shall be deemed to be the essence of the Contract/Agreement.

**GCC 64.0 SET OFF/ RECOVERIES**

Whenever under this Agreement any money is recoverable from and payable by the Vendor, Purchaser shall be entitled to recover such sum by appropriating in part or in whole by deducting any sum which at any time thereafter may become due from the Vendor in this or any other Agreement(s). Should the sum be not sufficient to cover the full amount recoverable the Vendor shall pay to the Purchaser on demand the remaining balance immediately without further request by Purchaser. Vendor shall not be entitled for any interest or charges or taxes/cess etc., on account of any delay from the Purchaser.

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**GCC 65.0 MISCELLANEOUS**

**65.1 Compliance with Applicable Laws**

The Vendor shall fully familiarize itself and conform in all aspects with all Applicable Laws. The Vendor shall be bound to give all notices, file all returns, etc., required by Applicable Laws, as aforesaid and to pay all fees and charges in respect thereof. The Vendor shall not be absolved from any of its obligations under Applicable Laws or the Agreement or claim any additional amount from the Purchaser or seek any extension of time due to its ignorance of any Applicable Law.

**65.2 Severability**

If any term, Clause or provision of the Agreement is held illegal or invalid or unenforceable under Applicable Laws for any reason whatsoever, the remaining provision shall remain in full force and effect as if the invalidated provisions had not been included in the Agreement, unless such invalidity or unenforceability adversely affects the underlying intent of the Agreement or unless the invalid or unenforceable provision comprises an integral part of, or is inseparable from the remainder of the Agreement. In such circumstances the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, illegal or unenforceable provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to Dispute resolution under the Agreement or otherwise.

**65.3 Impossibility**

If the performance of any individual provisions of the contract becomes legally impossible or impracticable, in whole or in part, the provision shall be replaced by a provision which, as far as legally possible, has the same commercial and financial effect. To the extent permitted by law, the validity of the other provisions contained in the contract shall not be affected thereby. Any commercial impossibility will not be an excuse for non-performance of the Agreement.

**65.4 Trade Terms**

It shall mean Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by Incoterms 2000. Incoterms means international rules for interpreting trade terms

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published by the International Chamber of Commerce (latest edition), 38 Cours Albert 1er, 75008 Paris, France.

#### **65.5 Survival**

Those provisions of the Agreement that by their very nature survive final acceptances under the Agreement shall remain in full force and effect after such acceptance and payment.

#### **65.6 No Third Party Rights**

Notwithstanding anything contained elsewhere herein, but without prejudice to rights expressed in favour of the Lenders and/or the Purchaser's/Owner's rights to assign its right, title, benefit or interest in or under the Contract in accordance with the Contract, nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

#### **65.7 Heading and Marginal Notes**

The headings and marginal notes to any Article, provision, Appendix or other similar attachment of this Contract shall not affect or control the interpretation or construction of such Article, provision, Appendix or attachment.

#### **65.8 Further Assurances and Assistance**

Each Party agrees to execute and deliver any instruments and perform any acts and exchange any information including documentations if any.

#### **66.0 AGENCY**

A. Vendor/Supplier represents and warrants and agrees that no broker, finder, intermediary, representative or investment banker (including any government official or employee) is, directly or indirectly, entitled or will be entitled to, or has been paid, any brokerage, finder's or other similar fee or commission or payment of any kind in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Vendor or any of its affiliates and no such person, directly or indirectly has been or will be engaged by Vendor and/or any of its affiliates in respect of this Agreement or the transactions contemplated hereby or in respect of any other contract or agreement related to this Agreement.

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B. Vendor/Supplier also represents and warrants that, to the best of its knowledge, no officer, director, employee, agent or representative of Vendor or any of its affiliates has, directly or indirectly, either engaged or has given any commission, payment, kickback, gift or other benefit or consideration to anyone for the purpose of any contract between the Parties (or their respective affiliates) Vendor agrees that it shall not, and shall cause its affiliates not make any such payment. Vendor also acknowledges and agrees that any breach of this provision is a strict violation of Adani Group's policies on conflicts of interest and business practices, and that in the event of any such breach of this provision Vendor shall be liable to pay Purchaser, and at the request of Purchaser Vendor shall pay Purchaser, as a penalty an amount equal to twenty times the amount of any such commission, payment, kickback or other benefit and Purchaser may, in sole discretion, cancel and terminate this Agreement and any or all other contracts between the Parties and/or withhold any payments, whether due or not.

C. Vendor/Supplier represents and warrants that it has (and its affiliates have) not given and agrees that it will not (and it will cause its affiliates not) give any commission, payment, kickback, gift, or other consideration (whether in the form of entertainment (other than business meals of a customary expenditure and in the ordinary course of conducting business) or otherwise) or other similar inducement to any employee of Adani Group in connection with this Agreement or any agreement or contract related hereto. Vendor also represents and warrants that, to the best of its knowledge, no officer, director, employee, agent or representative of Vendor or any of its affiliate has given, made or conducted any such payment, gift, entertainment, inducement or other consideration of value to any employee of Adani Group. Vendor agrees and acknowledges that a breach of this provision is a strict violation of Adani Group's policies on conflicts of interest and business practices, and in the event of any such breach of this provision Purchaser may in its sole discretion cancel and terminate this Agreement this Agreement and any or all other contracts between the Parties and/or withhold any payments, whether due or not.

D. Vendor/Vendor/Supplier /Consultant shall not, directly or indirectly, without the prior written approval of the Purchaser/Company/Purchaser/Owner hire, engage or employ, or solicit or offer any hiring, engagement or employment, or entice away or in any other manner encourage or persuade to discontinue his/her employment with the Purchaser/Company/Purchaser/Owner or their holding company or any of their associates and affiliates, any of the Employees of Purchaser/Company/Purchaser/Owner or their holding company or any of their

associates and affiliates during the subsistence of the Contract/Agreement and for one year thereafter or, for a period of one year after such Employee ceases to be in employment of the Purchaser/Company/Purchaser/Owner or their holding company or any of their associates and affiliates, whichever is earlier. For the purpose of this condition the term 'Employee' shall mean all the employees, officers and managers attached to the Central Procurement Group and the employees, officers and managers of the rank of Deputy General Manager or its equivalent and above, attached to other functions from time to time. In the event of any actual or threatened breach of this provision, the Purchaser/Company/Purchaser/Owner shall be entitled to an injunction restraining Vendor/Vendor/Supplier from such action(s) in addition to any other rights, remedies and claims available to it under the Contract/Agreement/Purchase Order or under law.

Provided that the above condition will not apply if the Contract Price under the Contract/Agreement together with the contract price(s) under other contracts/agreement(s), existing and that may be entered into during subsistence of the Contract/Agreement and until expiry of one year thereafter, in relation to sale/supply of goods and/or services by the Vendor/Vendor/Supplier /Consultant and/or any of its associates and affiliates to the Purchaser/Company/Purchaser/Owner, their holding company and any of their associates and affiliates, does not exceed Indian Rupees 250 Million or its equivalent in the aggregate. The provisions of this Clause will survive the termination of the Contract/Agreement/Purchase Order.

## **GCC 67.0 CONTRACT CLOSURE**

Contract shall be closed on completion of following formalities such as,

1. Material reconciliation with Vendor including Free Issue Materials. Submission and verifications that reconciliation of payment toward statutory provisions like GST Customs/Cess/fees, any other dues etc.
2. Certification from Vendor regarding payment of dues to its,
  - i. Sub-vendors
  - ii. Workers/ contract labourers,
  - iii. Payment of statutory dues toward Provident Funds, wages etc as required.

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Payment shall be made in cashless mode. Payment documents shall be submitted to the Purchaser along with invoice/bill in due course.

3. Payment reconciliation bills/invoice wise with the Vendor. Under terms and condition of this Purchase Order/Contract/Agreement, Vendor to accept debits upon Communication by the Purchaser.
4. No demand certificate issued by Vendor in format provided by Purchaser.
5. Indemnity Bond/Bank Guarantee in format suggested by the Purchaser.
6. Final payment shall be released on successful completion of Sr no (1) to (5) as above.
7. Performance Guarantee/ Security Bond shall be released and return to Vendor on successful completion of Contract closure to the satisfaction of Purchaser and after certificate about completion of Defect Liability Period/Latent Defect Liability period as case may be by Purchaser.

Purchaser to Communicate Contract Closure documents/information after submission of final invoice by the Vendor.

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ANNEXURE -A  
**VENDOR CODE OF CONDUCT**

Purchaser is committed to conducting its business in an ethical, legal and socially responsible manner. To encourage compliance with all legal requirements and ethical business practices, Purchaser has established this Vendor Code of Conduct (the "Code") for Purchaser's Vendors. For the purposes of this document, "Vendor" means any company, corporation or other entity that sells, or seeks to sell goods or services, to Purchaser, including the Vendor's employees, agents and other representatives.

Fundamental to adopting the Code is the understanding that a business, in all of its activities, must operate in full compliance with the laws, rules and regulations of the countries in which it operates. This Code encourages Vendors to go beyond legal compliance, drawing upon internationally recognized standards, in order to advance social and environmental responsibility.

**I. Labor and Human Rights**

Vendors must uphold the human rights of workers, and treat them with dignity and respect as understood by the international community.

- Fair Treatment - Vendors must be committed to a workplace free of harassment. Vendors shall not threaten workers with or subject them to harsh or inhumane treatment, including sexual harassment, sexual abuse, corporal punishment, mental coercion, physical coercion, verbal abuse or unreasonable restrictions on entering or exiting company provided facilities.
- Antidiscrimination - Vendors shall not discriminate against any worker based on race, color, age, gender, sexual orientation, ethnicity, disability, religion, political affiliation, union membership, national origin, or marital status in hiring and employment practices such as applications for employment, promotions, rewards, access to training, job assignments, wages, benefits, discipline, and termination. Vendors shall not require a pregnancy test or discriminate against pregnant workers except where required by applicable laws or regulations or prudent for workplace safety. In addition, Vendors shall not require workers or potential workers to undergo medical tests that could be used in a discriminatory way except where required by applicable law or regulation or prudent for workplace safety.

- Freely Chosen Employment - Forced, bonded or indentured labor or involuntary prison labor is not to be used. All work will be voluntary, and workers should be free to leave upon reasonable notice. Workers shall not be required to hand over government-issued identification, passports or work permits as a condition of employment.
- Prevention of Under Age Labor - Child labor is strictly prohibited. Vendors shall not employ children. The minimum age for employment or work shall be 15 years of age, the minimum age for employment in that country, or the age for completing compulsory education in that country, whichever is higher. This Code does not prohibit participation in legitimate workplace apprenticeship programs that are consistent with Article 6 of ILO Minimum Age Convention No. 138 or light work consistent with Article 7 of ILO Minimum Age Convention No. 138.
- Juvenile Labor - Vendors may employ juveniles who are older than the applicable legal minimum age for employment but are younger than 18 years of age, provided they do not perform work likely to jeopardize their health, safety, or morals, consistent with ILO Minimum Age Convention No. 138.
- Minimum Wages - Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally **mandated** benefits. Any disciplinary wage deductions are to conform to local law. The basis on which workers are being paid is to be clearly conveyed to them in a timely manner.
- Working Hours - Studies of good manufacturing practices clearly link worker strain to reduced productivity, increased turnover and increased injury and illness. Work weeks are not to exceed the maximum set by local law. Further, a work week should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. Workers should be allowed at least one day off per seven-day week.
- Freedom of Association - Open Communication and direct engagement between workers and management are the most effective ways to resolve workplace and compensation issues. Vendors are to respect the rights of workers to associate freely and to communicate openly with management regarding working conditions without fear of reprisal, intimidation or harassment. Workers' rights to join labor unions, seek representation and or join worker's councils in accordance with local laws should be acknowledged.

## II. **Health and Safety**

Vendors must recognize that in addition to minimizing the incidence of work-related injury and illness, a safe and healthy work environment enhances the quality of products and services,

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consistency of production and worker retention and morale. Vendors must also recognize that ongoing worker input and education is essential to identifying and solving health and safety issues in the workplace.

The health and safety standards are

- Occupational Injury and Illness - Procedures and systems are to be in place to prevent, manage, track and report occupational injury and illness, including provisions to a) encourage worker reporting; b) classify and record injury and illness cases; c) provide necessary medical treatment; d) investigate cases and implement corrective actions to eliminate their causes; and e) facilitate return of workers to work.
- Emergency Preparedness - Emergency situations and events are to be identified and assessed, and their impact minimized by implementing emergency plans and response procedures, including emergency reporting, employee notification and evacuation procedures, worker training and drills, appropriate fire detection and suppression equipment, adequate exit facilities and recovery plans.
- Occupational Safety - Worker exposure to potential safety hazards (e.g., electrical and other energy sources, fire, vehicles, and fall hazards) are to be controlled through proper design, engineering and administrative controls, preventative maintenance and safe work procedures (including lockout/tagout), and ongoing safety training. Where hazards cannot be adequately controlled by these means, workers are to be provided with appropriate, well-maintained, personal protective equipment. Workers shall not be disciplined for raising safety concerns.
- Machine Safeguarding - Production and other machinery is to be evaluated for safety hazards. Physical guards, interlocks and barriers are to be provided and properly maintained where machinery presents an injury hazard to workers.
- Industrial Hygiene - Worker exposure to chemical, biological and physical agents is to be identified, evaluated, and controlled. Engineering or administrative controls must be used to control overexposures. When hazards cannot be adequately controlled by such means, worker health is to be protected by appropriate personal protective equipment programs.
- Sanitation, Food, and Housing - Workers are to be provided with ready access to clean toilet facilities, potable water and sanitary food preparation, storage, and eating facilities. Worker dormitories provided by the Participant or a labor agent are to be maintained clean and safe, and provided with appropriate emergency egress, hot water for bathing

and showering, and adequate heat and ventilation and reasonable personal space along with reasonable entry and exit privileges.

- Physically Demanding Work - Worker exposure to the hazards of physically demanding tasks, including manual material handling and heavy or repetitive lifting, prolonged standing and highly repetitive or forceful assembly tasks is to be identified, evaluated and controlled.

### III. **Environmental**

Vendors should recognize that environmental responsibility is integral to producing world class products. In manufacturing operations, adverse effects on the environment and natural resources are to be minimized while safeguarding the health and safety of the public.

The environmental standards are

- Product Content Restrictions - Vendors are to adhere to applicable laws and regulations regarding prohibition or restriction of specific substances including labeling laws and regulations for recycling and disposal. In addition, Vendors are to adhere to all environmental requirements specified by Purchaser.
- Chemical and Hazardous Materials - Chemical and other materials posing a hazard if released to the environment are to be identified and managed to ensure their safe handling, movement, storage, recycling or reuse and disposal.
- Air Emissions - Air emissions of volatile organic chemicals, aerosols, corrosives, particulates, ozone depleting chemicals and combustion by-products generated from operations are to be characterized, monitored, controlled and treated as required prior to discharge.
- Pollution Prevention and Resource Reduction - Waste of all types, including water and energy, are to be reduced or eliminated at the source or by practices such as modifying production, maintenance and facility processes, materials substitution, conservation, recycling and re-using materials.
- Wastewater and Solid Waste - Wastewater and solid waste generated from operations, industrial processes and sanitation facilities are to be monitored, controlled and treated as required prior to discharge or disposal.
- Environmental Permits and Reporting - All required environmental permits (e.g. discharge monitoring) and registrations are to be obtained, maintained and kept current and their operational and reporting requirements are to be followed.

#### IV. Ethics

Vendors must be committed to the highest standards of ethical conduct when dealing with workers, Vendors, and customers.

- Corruption, Extortion, or Embezzlement - Corruption, extortion, and embezzlement, in any form, are strictly prohibited. Vendors shall not engage in corruption, extortion or embezzlement in any form and violations of this prohibition may result in immediate termination as a Vendor and in legal action.
- Disclosure of Information - Vendors must disclose information regarding its business activities, structure, financial situation, and performance in accordance with applicable laws and regulations and prevailing industry practices.
- No Improper Advantage - Vendors shall not offer or accept bribes or other means of obtaining undue or improper advantage.
- Fair Business, Advertising, and Competition - Vendors must uphold fair business standards in advertising, sales, and competition.
- Business Integrity - The highest standards of integrity are to be expected in all business interactions. Participants shall prohibit any and all forms of corruption, **extortion and** embezzlement. Monitoring and enforcement procedures shall be implemented to ensure conformance.
- Community Engagement - Vendors are encouraged to engage the community to help foster social and economic development and to contribute to the sustainability of the communities in which they operate.
- Protection of Intellectual Property - Vendors must respect intellectual property rights; safeguard customer information; and transfer of technology and know-how must be done in a manner that protects intellectual property rights.

## V. Management System

Vendors shall adopt or establish a management system whose scope is related to the content of this Code. The management system shall be designed to ensure (a) compliance with applicable laws, regulations and customer requirements related to the Vendors' operations and products; (b) conformance with this Code; and (c) identification and mitigation of operational risks related to this Code. It should also facilitate continual improvement.

The management system should contain the following elements

- Company Commitment - Corporate social and environmental responsibility statements affirming Vendor's commitment to compliance and continual improvement.
- Management Accountability and Responsibility - Clearly identified company representative[s] responsible for ensuring implementation and periodic review of the status of the management systems.
- Legal and Customer Requirements - Identification, monitoring and understanding of applicable laws, regulations and customer requirements.
- Risk Assessment and Risk Management - Process to identify the environmental, health and safety and labor practice risks associated with Vendor's operations. Determination of the relative significance for each risk and implementation of appropriate procedural and physical controls to ensure regulatory compliance to control the identified risks.
- Performance Objectives with Implementation Plan and Measures - Areas to be included in a risk assessment for health and safety are warehouse and storage facilities, plant/facilities support equipment, laboratories and test areas, sanitation facilities (bathrooms), kitchen/cafeteria and worker housing /dormitories. Written standards, performance objectives, targets and implementation plans including a periodic assessment of Vendor's performance against those objectives.
- Training - Programs for training managers and workers to implement Vendor's policies, procedures and improvement objectives.
- Communication - Process for communicating clear and accurate information about Vendor's performance, practices and expectations to workers, Vendors and customers.
- Worker Feedback and Participation - Ongoing processes to assess employees' understanding of and obtain feedback on practices and conditions covered by this Code and to foster continuous improvement.
- Audits and Assessments - Periodic self-evaluations to ensure conformity to legal and regulatory requirements, the content of the Code and customer contractual requirements related to social and environmental responsibility.

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- Corrective Action Process - Process for timely correction of deficiencies identified by internal or external assessments, inspections, investigations and reviews.
- Documentation and Records - Creation of documents and records to ensure regulatory compliance and conformity to company requirements along with appropriate confidentiality to protect privacy.

The Code is modeled on and contains language from the Recognized standards such as International Labour Organization Standards (ILO), Universal Declaration of Human Rights (UDHR), United Nations Convention against Corruption, and the Ethical Trading Initiative (ETI) were used as references in preparing this Code and may be useful sources of additional information.

ANNEXURE – B

**(To be executed on a Non-Judicial Stamp Paper of appropriate value)**

**FORMAT OF ADVANCE BANK GUARANTEE**

This Guarantee made at \_\_\_\_\_ this [\_\_\_\_] day of [\_\_\_\_] 20XX

1. WHEREAS M/s. \_\_\_\_\_ (Pl specify the name of the Company)\_,, a Company within the meaning of the Companies Act, 1956 having its Registered Office at \_\_\_\_\_ hereinafter referred to as the “ Purchaser”, (which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns).

2. AND WHEREAS the Purchaser has entered into a *contract for* \_\_\_\_\_ (Please specify the nature of contract here ) *vide Contract No.* \_\_\_\_\_ *dated* \_\_\_\_\_ (hereinafter referred to as the “Contract”) with M/s. \_\_\_\_\_, (hereinafter referred to as “the Supplier”, which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) for providing of the Goods and/or services on the terms and conditions as more particularly detailed therein.

3. AND WHEREAS in conformity with the provisions of Clause \_\_\_\_\_ of *Special conditions of Contract/GCC*, the Supplier has agreed to furnish a Bank Guarantee for an amount equivalent to the Advance Payment of Rs..... extended by the Purchaser to the Supplier for the faithful execution of the Contract.

4. AND WHEREAS the Supplier has agreed to provide the Purchaser and the Purchaser has agreed to accept the Advance Bank Guarantee for \_\_\_\_\_ percent (\_\_\_\_%) of the total Contract Value from [ \_\_\_\_\_ ] (*pl. specify the name of Bank*) having its head/registered office at [ \_\_\_\_\_ ] through its branch in \_\_\_\_\_ (*pl. specify the name of Branch through which B.G is issued*) hereinafter referred to as “the Bank”, (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns).

5. NOW THEREFORE, in consideration inter alia of the Purchaser granting the Suppliers the Contract, the Bank hereby unconditionally and irrevocably guarantees and undertakes, on a written demand, to immediately pay to the Purchaser any amount so demanded (by way of one

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or more claims) not exceeding in the aggregate [Rs. ].....)in words) without any demur, reservation, contest or protest and/or without reference to the Supplier and without the Purchaser needing to provide or show to the Bank ,grounds or reasons or give any justification for such demand for the sum/s demanded.

6. The decision of the Purchaser as to whether the Supplier has fulfilled its obligation or not towards set-off of Advance Payment extended by the Purchaser to the Supplier shall be final and binding on the Bank and the Supplier. The Bank acknowledges that any such demand by the Purchaser of the amounts payable by the Bank to the Purchaser shall be final, binding and conclusive evidence in respect of the amounts payable by the Supplier to the Purchaser. Any such demand made by the Purchaser on the Bank shall be conclusive and binding, notwithstanding any difference between the Purchaser and the Supplier or any Dispute raised, invoked, threatened or pending before any court, tribunal, arbitrator or any other authority.

7. The Bank also agrees that the Purchaser at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor without proceeding against the Supplier notwithstanding any other security or other guarantee that the Purchaser may have in relation to the Supplier's liabilities.

8. The Bank hereby waives the necessity for the Purchaser first demanding the aforesaid amounts or any part thereof from the Supplier before making payment to the Purchaser and further also waives any right the Bank may have of first requiring the Purchaser to use its legal remedies against the Supplier, before presenting any written demand to the Bank for payment under this Guarantee.

9. The Bank's obligations under this Guarantee shall not be reduced by reason of any partial performance of the Contract. The Bank's obligations shall not be reduced by any failure by the Purchaser to timely pay or perform any of its obligations under the Contract.

10. The Bank further unconditionally and unequivocally agrees with the Purchaser that the Purchaser shall be at liberty, without the Bank's consent and without affecting in any manner its rights and the Bank's obligation under this Guarantee, from time to time, to

- i. vary and/or modify any of the terms and conditions of the Contract;
- ii. forebear or enforce any of the rights exercisable by the Purchaser against the Supplier under the terms and conditions of the Contract; or and the Bank shall not be relieved from its liability

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by reason of any such act or omission on the part of the Purchaser or any indulgence shown by the Purchaser to the Supplier or any other reason whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

11. This Guarantee shall not be discharged by any change in the constitution or composition of the Supplier, and this Guarantee shall not be affected or discharged by the liquidation, winding-up, bankruptcy, reorganisation, dissolution or insolvency of the Supplier or any of them or any other circumstances whatsoever.

12. This Guarantee shall be in addition to and not in substitution or in derogation of any other security held by the Purchaser to secure the obligations of the Supplier under the Contract.

13. NOTWITHSTANDING anything herein above contained, the liability of the BANK under this Guarantee shall be restricted to \_\_\_\_\_(*insert an amount equal to \_\_\_ percent (\_\_\_%) of the Contract Value*) and this Guarantee shall be valid and enforceable and expire on \_\_\_\_\_(*pl. specify date*) or unless a suit or action to enforce a claim under this Guarantee is filed against the Bank on or before the date of expiry.

14. On termination of this Guarantee, all rights under the said Guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities hereunder.

15. The Bank undertakes not to revoke this Guarantee during its validity except with the prior written consent of the Purchaser and agrees that any change in the constitution of the Bank or the Supplier shall not discharge our liability hereunder.

16. Purchaser may assign this Guarantee to any Person or body whether natural, incorporated or otherwise under intimation to the Bank. The Bank shall be discharged of its obligations hereunder by performance in accordance with the terms hereof to such assignee without verifying the validity / legality / enforceability of the assignment.

17. This Guarantee shall be governed by the laws of India. Any suit, action, or other proceeding arising out of, connected with, or related to this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of the courts of \_\_\_\_\_ (*pl. specify the city*), India.

Dated this ..... day of ..... 20XX at .....

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(Signature)

.....

(Name)

.....

(Designation with Bank Stamp)

Attorney as per

Power of Attorney No.....

Date.....

ANNEXURE - C

**(To be executed on a Non-Judicial Stamp Paper of appropriate value)**

**FORMAT OF PERFORMANCE BANK GUARANTEE**

This Guarantee made at \_\_\_\_\_ this [\_\_\_] day of [\_\_\_\_\_] 20XX

1. WHEREAS M/s. \_\_\_\_\_ (*Pl specify the name of the Company*), a Company within the meaning of the Companies Act, 1956 having its Registered Office at \_\_\_\_\_ hereinafter referred to as the "Purchaser", (which expression shall unless repugnant to the context or meaning thereof include its successors, administrators, executors and assigns).

2. AND WHEREAS the Purchaser has entered into a *contract for* \_\_\_\_\_ (*Please specify the nature of contract here*) *vide Contract No.* \_\_\_\_\_ *dated* \_\_\_\_\_ (hereinafter referred to as the "Contract") with M/s. \_\_\_\_\_, (hereinafter referred to as "the Supplier", which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include their successors and assigns) for providing Goods and/or services on the terms and conditions as more particularly detailed therein.

3. AND WHEREAS as per Clause \_\_\_\_ of *Special conditions of Contract/GCC*, the Supplier is obliged to provide to the Purchaser an unconditional bank guarantee for an amount equivalent to \_\_\_\_\_ percent (\_\_\_%) of the total Contract Value for the timely completion and faithful and successful execution of the Contract from [\_\_\_\_\_] *pl. specify the name of Bank*) having its head/registered office at [\_\_\_\_\_] through its branch in \_\_\_\_\_ (*pl. specify the name of Branch through which B.G is issued*) hereinafter referred to as "the Bank", (which expression shall unless it be repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns).

4. NOW THEREFORE, in consideration inter alia of the Purchaser granting the Suppliers the Contract, the Bank hereby unconditionally and irrevocably guarantees and undertakes, on a written demand, to immediately pay to the Purchaser any amount so demanded (by way of one or more claims) not exceeding in the aggregate [Rs. ].....(*in words*) without any demur, reservation, contest or protest and/or without reference to the Supplier and without the Purchaser needing to provide or show to the Bank ,grounds or reasons or give any justification for such demand for the sum/s demanded.

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5. The decision of the Purchaser to invoke this Guarantee and as to whether the Supplier has not performed its obligations under the Contract shall be binding on the Bank. The Bank acknowledges that any such demand by the Purchaser of the amounts payable by the Bank to the Purchaser shall be final, binding and conclusive evidence in respect of the amounts payable by the Supplier to the Purchaser. Any such demand made by the Purchaser on the Bank shall be conclusive and binding, notwithstanding any difference between the Purchaser and the Supplier or any Dispute raised, invoked, threatened or pending before any court, tribunal, arbitrator or any other authority.

6. The Bank also agrees that the Purchaser at its option shall be entitled to enforce this Guarantee against the Bank as a principal debtor without proceeding against the Supplier notwithstanding any other security or other guarantee that the Purchaser may have in relation to the Supplier's liabilities.

7. The Bank hereby waives the necessity for the Purchaser first demanding the aforesaid amounts or any part thereof from the Supplier before making payment to the Purchaser and further also waives any right the Bank may have of first requiring the Purchaser to use its legal remedies against the Supplier, before presenting any written demand to the Bank for payment under this Guarantee.

8. The Bank's obligations under this Guarantee shall not be reduced by reason of any partial performance of the Contract. The Bank's obligations shall not be reduced by any failure by the Purchaser to timely pay or perform any of its obligations under the Contract.

9. The Bank further unconditionally and unequivocally agrees with the Purchaser that the Purchaser shall be at liberty, without the Bank's consent and without affecting in any manner its rights and the Bank's obligation under this Guarantee, from time to time, to

- (i) vary and/or modify any of the terms and conditions of the Contract;
- (ii) Forebear or enforce any of the rights exercisable by the Purchaser against the Supplier under the terms and conditions of the Contract; or
- (iii) Extend and/or postpone the time for performance of the obligations of the Supplier under the Contract;

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the Purchaser or any indulgence shown by the Purchaser to the Supplier or any other

reason whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

10. This Guarantee shall be a continuing bank guarantee and shall not be discharged by any change in the constitution or composition of the Supplier, and this Guarantee shall not be affected or discharged by the liquidation, winding-up, bankruptcy, reorganisation, dissolution or insolvency of the Supplier or any of them or any other circumstances whatsoever.

11. This Guarantee shall be in addition to and not in substitution or in derogation of any other security held by the Purchaser to secure the performance of the obligations of the Supplier under the Contract.

12. NOTWITHSTANDING anything herein above contained, the liability of the BANK under this Guarantee shall be restricted to \_\_\_\_\_(insert an amount equal to \_\_\_ percent (\_\_\_%) of the Contract Value) and this Guarantee shall be valid and enforceable and expire on \_\_\_\_\_(pl. specify date) or unless a suit or action to enforce a claim under this Guarantee is filed against the Bank on or before the date of expiry.

13. On termination of this Guarantee, all rights under the said Guarantee shall be forfeited and the Bank shall be relieved and discharged from all liabilities hereunder.

14. The Bank undertakes not to revoke this Guarantee during its validity except with the prior written consent of the Purchaser and agrees that any change in the constitution of the Bank or the Supplier shall not discharge its liability hereunder.

15. Purchaser may assign this Guarantee to any Person or body whether natural, incorporated or otherwise under intimation to the Bank. The Bank shall be discharged of its obligations hereunder by performance in accordance with the terms hereof to such assignee without verifying the validity / legality / enforceability of the assignment.

16. This Guarantee shall be governed by the laws of India. Any suit, action, or other proceeding arising out of, connected with, or related to this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of the courts of \_\_\_\_\_ (pl. specify the city ) , India.

Dated this ..... day of ..... 20XX at .....

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(Signature)

.....

(Name)

.....

(Designation with Bank Stamp)

Attorney as per

Power of Attorney No.....

Date.....

ANNEXURE- D

NO DEMAND CERTIFICATE FORMAT

NO DEMAND CERTIFICATE BY VENDOR

(To be issued on letterhead of Vendor)

To ,

\_\_\_\_\_

\_\_\_\_\_ Limited,

(Name and address of the Purchaser)

Name of the Package

Contract No.

Date of Contract

Name of the Vendor

Name of the Project

We,

M/s

\_\_\_\_\_ (Vendor) do

hereby acknowledge and confirm that we have claimed Rs. \_\_\_\_\_

(Rs.

\_\_\_\_\_ )

towards full and final settlement of our claims from \_\_\_\_\_ Limited, in respect of the aforesaid WO/PO/Contract No. [ ] Dated [ ] including all amendments, if any, to the said Contract, to our entire satisfaction and we further confirm that we have no claim whatsoever pending with \_\_\_\_\_ Limited under or in respect of the said Contract.

Notwithstanding any protest, note or objection recorded or raised by us in any correspondence, documents, measurement books and / or final bills etc.

- (a) we confirm that \_\_\_\_\_ Limited stands fully discharged of all its obligations,
- (b) we shall make no claim of any nature on \_\_\_\_\_ Limited or any of its affiliates or personnel, and
- (c) we waive all our rights to lodge any claim or protest in future, in respect of the said Contract.

We have paid in full all applicable duties, levies, taxes and statutory and other amounts payable by us in connection with the above-mentioned Contract and amounts payable to or in relation to third parties engaged by us including our Vendors, suppliers, employees and

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labour. No payment in this regard is pending or unpaid and we have no (and shall have no) claim against \_\_\_\_\_ Limited in this regard.

No refund has been received/ is envisaged to be received or reasonably believed to be receivable on account of taxes, duties or any other payment made by us in respect of the Contract. In case any refund corresponding to any amount paid or reimbursed by ----- Limited is received in the future, the same will be passed on to -----Limited promptly and without any demand from them in this regard.

We are issuing this "NO DEMAND CERTIFICATE" in favor of \_\_\_\_\_ Limited with full knowledge of its contents and with our free consent without any influence, misrepresentation, coercion etc.

Date  
Place

Signature  
Name  
Designation  
(Company Seal)

Annexure – E  
FORMAT FOR LETTER OF INDEMNITY

(Notes Preferably shall be obtained on Stamp paper of appropriate value as applicable at  
the place of execution)

Place \_\_\_\_\_

Date \_\_\_\_\_

To,

Name and address (Preferably Mumbai) of Purchaser

Dear Sirs,

WO/PO/Contract No. \_\_\_\_\_ Dated \_/\_\_\_/\_\_\_

For \_\_\_\_\_

**Settlement of Dues**

In consideration of your awarding the subject Work Order/Purchase Order/Contract to us and in further consideration of your having agreed to pay our final bill towards settlement of the dues in respect of the subject Purchase Order/Contract, inter alia, on our assurances and representations that

- (a) We have paid in full all amounts payable by us including but not limited to duties, levies, taxes, cess, octroi, royalties, statutory payments, amounts payable to or in relation to third parties engaged by us including our Vendors, suppliers, employees and labour, and
- (b) we have fully complied with all requirements under applicable laws in connection with the subject Purchase Order/Work Order/Contract,

We \_\_\_\_\_,

unconditionally and irrevocably agree and undertake, to pay and/or settle entirely at our own cost and indemnify, defend and hold harmless you, your affiliates and your/your affiliates' personnel, directors and representatives, (hereinafter collectively referred to as "Indemnified Parties") from and against any and all liabilities, judgments, damages, losses, claims, costs

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and expenses, claimed, suffered or incurred or, likely to be claimed, suffered or incurred at any time by or against the Indemnified Parties or any of them as a result of, or arising out of, or in any way related to any failure or delay in payment of any of the amounts or compliances by us as aforesaid for any reason whatsoever.

Any notice(s) or Communication(s) by you shall be sufficient proof that the Indemnified Parties have suffered or incurred loss, damages, liabilities etc. as aforesaid and we shall upon receipt of such notice(s) or Communication(s) immediately, without any delay or demur or contest, make payment to you of the entire amount demanded under the said notice(s) or Communication(s).

This letter of indemnity shall be in addition to and not in derogation of any other indemnity/ guarantee and/or security which we may have executed in your favor or your rights and entitlements under the contract.

This letter shall be governed by and construed and interpreted to accordance with the laws of India, and shall be subject to the exclusive jurisdiction of the courts of law at Mumbai.

Yours faithfully,

For M/s Name of Vendor/Supplier

Authorized Signatory

