

- materials or unskilled Workmanship or of a quality inferior to that contracted for, whether during construction or reconstruction prior to the expiry of the Defect Liability period.
- a) Responsibility for damages and loss of all construction materials etc., at the site until handing over to the corporation.
 - p) Removal of Rubbish: Removal of Rubbish & debris & cleaning of any dirt before handing over all completion of works.
 - q) Cleaning site and Works: Removal by the Contractor off the site, of any tools, plats & materials and sweeping building, washing floors, cleaning joineries & removal of splashes of asphalt leaving the whole site neat and tidy.
 - r) Completion: Completing the Work to the satisfaction of the Engineer on or before stipulated the date of completion.
 - s) Difficult position: Accessibility or otherwise to site, easy or difficult position in Works.
 - t) Errors: Rectification of all defects during construction & defect liability period to the satisfaction of Engineer.
 - u) Curved Works etc: Works of any quantity, size or shape whether level, inclined, curved, battered etc.
 - v) Maker's Instruction: Compliance with maker's instructions in the case of proprietary articles, factory made good or pre-cast items.
 - w) Waste: All waste laps, seams, and joints (rough or fair cutting) straight / raking, circular and making good.
 - x) Artificial Lights: To include all lighting/Kerosene or electric power as the case may be when the need arises for use of lighting while carrying out Works.
 - y) Construction of approaches to the site of Work: Making arrangements for proper access to Works in the form of stairs, ladders, lifts etc. as ordered by the Engineer for proper supervisions, testing and or inspection of Works including material during construction & defect liability period.

55.5 Interim Payment: For details of payment and mode of the same, of the 'Financial bid' should be referred to, which shall supersede all other modes mentioned anywhere else in the entire document.

55.6 Modification of Interim Certificate: An interim certificate given relating to Work done or material delivered may be modified or corrected by any subsequent interim certificate or by the final certificate. No certificate of the Engineer supporting an interim payment shall of itself be conclusive evidence that any Work or materials to which it relates is/are in accordance with the contract.

55.7 Income Tax: The Contractor shall pay Indian Income Tax on all payments made to him under the Contract, other than reimbursements made to him by the Development Authority to cover payment by Contractor of minor custom duties etc., or any other payment which the Contractor may make on the Development Authority's behalf. Under the provisions of Sec. 194-C of the Indian Income Tax Act, the Development Authority is required to deduct Tax with surcharge at source at prevailing rates from the gross amount of each bill submitted. Any expatriate site staff or staff not normally residents of India, employed by the Contractor shall pay personal Income Tax on all money earned and paid in India. The Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

55.8 Payment of Taxes: The contractor shall pay all the taxes directly to respective organizations & to the Government. The Development Authority shall not take any responsibility for any kind of tax payment to the Government or semi Government bodies at any point of time.

The prices quoted by the Contractor shall include all customs duties, import duties, excise duties, business taxes, income and other taxes that may be levied in accordance to the laws and regulation in-force on the Contractor's Equipment, materials, supplies (permanent, temporary and consumables) to be used on or furnished under the contract and on the services to be

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performed under the contract. Nothing in the contract shall relieve the contractor from his responsibility to pay any tax that may be levied or on profits made by him in respect of the contract.

The contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

All Charges on account of Octroi, terminal or Sales Tax and other duties on material obtained for the Works from any source including the tax applicable as per Assam Sales Tax Act on the transfer of property in the goods involved in the execution of Works contract (re-enacted) Act, 1991 etc. shall be borne by the Contractor. Under the provisions of the Assam VAT Act, 2005/ Assam Sales Tax Act, the Development Authority is required to deduct Turnover Tax at source at the rates prevailing at the time of payments.

The contractor shall submit form - 31 or such other forms as are prescribed under the said act which is required to be produced by the principle employer in the events of any notice by the Sales Tax Department within one month of issue of letter of acceptance.

55.9 Deduction of Contract Sales Tax / Turnover tax. The Contractors are required to produce their registration for contract sales tax/turnover tax to the department before releasing the bill for the Work executed by them, failing which, no payment shall be released.

55.10 Provisional Sums

- (1) "Provisional sum" means a sum included in the contract and so designated in the Bill of Quantities for the execution of Work or supply of goods, materials or services or for contingencies, which sum may be used, in whole or in part, or not at all, at the direction and discretion of the Engineer. The contract price shall include only such amounts in respect of the Work, supply or service to which such provisional sum relate as the Engineer shall approve or determine in accordance with this clause.
- (2) In respect of every provisional sum the Engineer shall have power to order to execute the Work, including goods, materials or services to be supplied by the Contractor. The contract price shall include the value of such Work executed or such goods, material or services supplied determined in accordance of provision of this tender.
- (3) The Contractor shall produce all quotations, invoices, vouchers and accounts or receipts in connection with expenditure in respect of provisional sums

55.11 Rates for Excess in Items: No claim shall be entertained for quantities of work executed being either more or less than those entered in the tender or estimate in form of extra rate.

55.12 Rates for Extra Items: No extra rates for extra item shall be allowed. Extra works cannot be taken up without written order of the Engineer.

55.13 Overpayment and Underpayment: Whenever any claim for the payment of a sum to the Development Authority rises out of or under this contract against the Contractor the same may be deducted by the Development Authority from any sum then due or which at any time thereafter may become due to the Contractor under this contract and failing that under any contract with the Development Authority or from any other sum due to the Contractor from the Development Authority (which may be available with the Development Authority) or from his security deposit/retention money, or he shall pay the claim on demand.

The Development Authority reserves the right to carry out post payment audit and technical examination of the final bill including all supporting voucher, abstracts etc. The Development Authority further reserves the right to enforce recovery of any over payment when detected.

If as a result of such audit and technical examination any overpayment is discovered in respect of any Work done by the Contractor or alleged to have been done by him under the Contract, it shall be recovered by the Development Authority from the Contractor by any or all of the

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methods prescribed above or if underpayment is discovered the amount shall be duly paid to the Contractor by the Development Authority.

Provided that the aforesaid right of the Development Authority to adjust overpayment against amount due to the Contractor under any other contract with Development Authority shall not extend beyond the period of two years from the date of payment of the final bill or in case the final bill is a "Minus" bill, from the date of the amount payable by the Contractor under the "Minus" bill is communicated to the Contractor.

Any amount due to the Contractor under this contract for underpayment may be adjusted against amount then due or which may at any time thereafter become due before payment is to the Contractor, from him to Development Authority on any other contract or account whatsoever.

55.14 Payment of Final Bill: Final joint measurement along with the representatives of the Contractor should be taken, recorded and signed by the Contractors. Contractor should submit the final bill within 1 month of physical completion of the Work.

If the Contractor fails to submit the final bill within 1 month, the Development Authority staff will prepare the final bill based on the joint measurement within next 3 months.

Engineer's decision shall be final in respect of claims for defect and pending claims against Contractors.

No further claims should be made by the Contractor after submission of the final bill and these shall be deemed to have been waived and extinguished. Payment of those items of the bills in respect of which there is no dispute and of items in dispute, for quantities and rates as approved by the Chief Executive officer shall be made within a reasonable period as may be necessary for the purpose of verification etc.

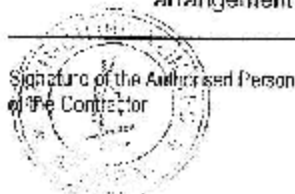
After payment of the final bill as aforesaid has been made, the Contractor may, if he so desires, reconsider his position in respect of a disputed portion of the final bill and if he fails to do so within 84 days, his disputed claim shall be dealt with as provided in the contract.

55.15 Receipts to be signed in Firm's Name by any One of the Partners: Every receipt for money which may become payable or for any security which may become transferable to the Contractor under these present shall, if signed in the partnership name by any one of the partners, be a good and sufficient discharge to the Chief Executive officer and Development Authority in respect of the money or security purporting to be acknowledged thereby, and in the event of death of any of the partners during the tendency of this contract, it is hereby expressly agreed that every receipt by any one of the surviving partners shall, if so signed as aforesaid, be good and sufficient discharge as aforesaid provided that nothing in this clause contained shall be deemed to prejudice or affect any claim which the Chief Executive Officer or the Development Authority may hereafter have against the legal representatives of any partners so dying or in respect of any breach of any of the conditions thereof, provided also that nothing in this clause contained shall be deemed prejudice or affect the respective rights or obligations of the Contractor and of the legal representative of any deceased Contractors interest.

55.16 No Payment on Account of Price Variation of Labour, Material and POL Component: No material price variation, wages, escalation on individual item on account whatsoever and compensation for 'Force Majeure' etc. shall payable under this contract.

56. REMEDIES AND POWERS

- 1) **Default of contractor** - If the Contractor shall become bankrupt, or have a receiving order made against him, or shall present his petition in bankruptcy, or shall made an arrangement with or assignment in favour of his creditors, or shall go to carry out the



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Contract under a committee of inspection of his creditors or, being a corporation, shall go into liquidation (other than a voluntary liquidation for the purpose of amalgamation or reconstruction), or if the Contractor shall assign the Contract, without the consent in writing of the Employer first obtained, or shall have an execution levied on his goods, or if the Engineer shall certify in goods, or if the Engineer shall certify in writing to the Employer that in his opinion the Contractor:

- a) has abandoned the Contract, or
- b) without reasonable excuse has failed to commence the Works or has suspended the progress of the Works for twenty eight days after receiving from the Engineer written notice to proceed, or
- c) has failed to remove materials from the Site or to pull down and replace work for twenty eight days after receiving from the Engineer written notice that the said materials or work had been condemned and/or rejected by the Engineer under these conditions, or
- d) despite previous warnings by the Engineer, in writing, is not executing the Works in accordance with the Contract, or is persistently or flagrantly neglecting to carry out his obligation under the Contract, or
- e) has, to the detriment of good workmanship, or in defiance of the Engineer's instructions to the contrary, sublet any part of the Contract.

Then the Employer may, after giving fourteen days notice in writing to the Contractor, enter upon the Site and the Works and expel the Contractor therefore without thereby voiding the Contract, or releasing the Contractor from any of his obligations or liabilities under the Contract, or affecting the rights and powers conferred on the Employer or the Engineer by the Contract, and may himself complete the Works or may employ any other contractor or agency to complete the Works. The Employer or such other contractor may use for such completion so much of the Constructional Plant, Temporary Works and materials, which have been deemed to be reserved exclusively for the execution of the Works, under the provisions of the Contract, as he or they may think proper and the Employer may, at any time, sell any of the said Constructional Plant, Temporary Works used and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

- 2) **Valuation at date of forfeiture** – The Engineer shall, as soon as may be practicable after any such entry and expulsion by the Employer, fix and determine expert, or by or after reference to the parties, or after such investigation or enquiries as he may think fit to make or institute and shall certify what amount, if any, had, at the time of such entry and expulsion been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract and the value of any of the said unused or partially used materials, and Constructional Plant and any Temporary Works.
- 3) **Payment after forfeiture** – If the Employer shall enter and expel the Contractor any money on account of the Contract until the expiration of the Period of Maintenance and thereafter until the costs of execution and maintenance, damages for delay in completion, if any and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer. The Contractor shall then be entitled to receive only such sums or sums, if any, as the Engineer may certify would have been payable to him upon due completion by him after deducting the said amount. If such amount shall exceed the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall, upon demand, pay to the Employer the amount of such excess and it shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

57. URGENT REPAIRS

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If, by reason of any accident, or failure, or other event occurring to or in connection with the Works, or any part thereof, either during the execution of the Works, or during the period of Maintenance, any remedial or other work or repair shall, in the opinion of the Engineer or the Engineer's Representative, be urgently necessary for the safety of the Works and the Contractor in unable or unwilling at once to do such work or repair, the Employer may employ and pay other persons to carry out such work or repair as the Engineer or the Engineer's Representative may consider necessary. If the work or repair so done by the Employer is work which in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all expenses properly incurred by the Employer in so doing shall be recoverable from the Contractor by the Employer, or may be deducted by the Employer from any sums due or which may become due to the Contractor. Provided always that the Engineer or the Engineer's Representative, as the case may be, shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

58. SPECIAL RISKS

Notwithstanding anything in the Contract contained:

- 1) **No liability for war, etc., Risks** - The Contractor shall be under no liability whatsoever whether by way of identity or otherwise for or in respect of destruction of or damage to the Works, same to work condemned under the provision of Clause 37 hereof prior to the occurrence of any special risk hereinafter mentioned, or to property whether of the Employer or third parties, or for or in respect of injury or loss of life which is the consequence of any special risk as hereinafter defined. The employer shall indemnify and save harmless to Contractor against all claims, proceedings, damages, costs, charges and expenses whatsoever arising there out or in connection therewith.
- 2) **Damage to works, etc., by special risks** - If the Works or any materials on or near or in transit to the Site, or any other property of the Contractor used or intended to be used for the purposes of the Works, shall sustain destruction or damage by reason or any of the said special risks the Contractor shall be entitled to payment for:
 - a) Any permanent work and for any materials so destroyed or damaged and so far as may be required by the Engineer, or as may be necessary for the completion of the Works, or the basis of cost plus such profit as the Engineer may certify to be reasonable;
 - b) Replacing or making good any such destruction or damage to the Works;
 - c) Replacing or making good such materials or other property of the Contractor used or intended to be used for the purposes of the Works.
- 3) **Projectile missile etc.** - Destruction, damage, injury or loss of life caused by the explosion or impact whenever and wherever occurring of any mine, bomb, shell, grenade, or other projectile, missile, ammunition, or explosive of war, shall be deemed to be a consequence of the said special risks.
- 4) **Increase cost arising from special risks** - The Employer shall repay to the Contractor any increased cost of or incidental to the execution of the Works, other than such as may be attributable to the cost of reconstructing work condemned under the provisions of Clause 37 hereof, prior to the occurrence of any special risk, which is howsoever attributable to or consequent on or the result of or in any way whatsoever connected with the said special risks, subject however to the provisions in this Clause hereinafter contained in regard to outbreak of war, but the Contractor shall as soon as any such increase of cost shall come to his knowledge forthwith notify the Engineer thereof in writing.

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- 5) **Special Risks** – The special risks are war, (whether war be declared or not), invasion, act of foreign enemies, the nuclear and pressure waves risk described in Clause 18(ii) hereof, or in so far as it relates to the country in which the works are being or are to be executed or maintained, rebellion, revolution, insurrection, military or usurped power, civil war, or unless solely restricted to the employees of the Contractor or of his Sub-Contractor and arising from the conduct of the Works, riot, commotion or disorder.
- 6) **Outbreak of War** – If, during the currency of the Contract, there shall be an outbreak of war, whether war is declared or not, in any part of the world which, whether financially or otherwise, materially affects the execution of the works, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, continue to use his best endeavours to complete the execution of the Works. Provided always that the Employer shall be entitled at any time after such outbreak of war to terminate the Contract by giving written notice to the Contractor and upon such notice being given, this Contract shall, except as to the rights of the parties under this Clause and provision of other clauses hereof, terminate but without prejudice to the rights of either party in respect of any antecedent breach thereof.
- 7) **Removal of plant of termination** – If the Contract shall be terminated under the provisions of the last preceding sub-clause, the Contractor shall, with all reasonable dispatch, remove from the Site all constructional Plant and shall give similar facilities to his Sub-Contractors to do so.
- 8) **Payment if Contract terminated** – If the Contract shall be terminated as aforesaid, the Contractor shall be paid by the Employer, in so far as such amounts or items shall not have already been covered by payments on account made to the Contractor, for all work executed prior to the date of termination at the rates and prices provided in the Contract and in addition:
- The amounts payable in respect of any preliminary items, so far as the work carried out or performed, and a proper proportion as certified by the Engineer of any such items, the work or service comprised in which has been partially carried out or performed.
 - The cost of materials or goods reasonably ordered for the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery such materials or goods becoming the property of the Employer upon such payments being made by him.
 - A sum to be certified by the Engineer, being the amount of any expenditure reasonably incurred by the Contractor in the expectation of completing the whole of the Works in so far as such expenditure shall not have been covered by the payments in this sub-clause before mentioned.
 - Any additional sum payable under the provisions of Sub-Clauses of this Clause

Provided always that against any payments due from the Employer under this sub-clause, the Employer shall be entitled to be credited with any outstanding balances due from the contractor for advances in respect of Constructional Plant and materials and any other sums which at the date of termination were recoverable by the Employer from the Contractor under the terms of the Contract and provided that if the termination be made in exercise of provision of this tender, no payment shall be released under provision of relevant clauses of this tender.

59. FRUSTRATION

Payment in event of Frustration – If, a war, or other circumstances outside the control of both parties, arises after the Contract is made so that either party is prevented from fulfilling his contractual obligations, or under the law governing the Contract, the parties are released from further performance, then the sum payable by the Employer to the Contractor in respect of the

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work executed shall be the same as would have been payable hereof if the Contract had been terminated under the provisions of this tender.

60. TERMINATION OF CONTRACT AND SETTLEMENT OF DISPUTES:

Cancellation of Contract in Full or in Part:

If the Contractor:

- (a) At any time makes default in proceeding with the Work with due diligence and continues to do so after notice in writing of fourteen days from the Engineer; or
- (b) Commits default in complying with any of the terms and conditions of contract and does not remedy it within fourteen days after a notice in writing is given to him in that behalf by the Engineer, or
- (c) Fails to complete the Works or items with individual dates of completion, on or before the date(s) of completion, and does not complete them within the period specified in a notice given in writing in that behalf by the Engineer, or
- (d) Shall offer or give or agree to give to any person in Development Authority's Service or to any other person on his behalf any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forbore to do any act in relation to the obtaining or execution of this or any other contract for the Development Authority, or
- (e) Shall obtain a contract with the Development Authority as a result of ring tendering or other non-bona-fide methods of competitive tendering or
- (f) being an individual or a firm, any partner thereof, shall at any time be adjudged insolvent or have a receiving order or order for administration of his estate made against him or shall take any proceedings for liquidation or composition (other than voluntary liquidation for the purpose of amalgamation or reconstruction) under any insolvency act for the time being in force or make any conveyance of assignment of his effects or composition or arrangement for the benefit of his creditors or purport so to do, or if any application be made under any Insolvency Act for the time being in force for the sequestration of his estate or if a trust deed be executed by him for his creditors, or
- (g) Being a company, shall pass a resolution or the court shall make an order for the liquidation of his affairs, or a receiver or a manager on behalf of the debenture holders shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint a receiver or a Manager, or
- (h) Shall suffer an execution being levied on his goods and allow it to be continued for a period of 21 days,
- (i) Assigns, transfers, sublets (engagement of labour on a piece Work basis or labour with materials not to be incorporated in the Work, shall not be deemed to be sub-letting) or attempts to assign, transfer or sub-let the entire Works, or any portion thereof without the prior written approval of the Chief Executive officer; the Chief Executive Officer may, without prejudice to any other right or remedy which shall have accrued or shall accrue thereafter to the Development Authority by written notice cancel the contract as a whole or only such items of Work in default from the contract.

(j) In the case of abandonment of the work owing to serious illness or death of the Contractor, or

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- (k) Leaving the job incomplete,

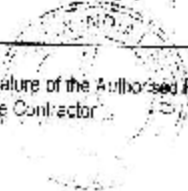
then the contract will be terminated by forfeiting the entire work done by the contractor and the performance security deposit paid by the contractor shall be forfeited.

Action When Whole of Security Deposit is to be forfeited: In the cases mentioned in this document, the Engineer on behalf of the Development Authority shall have power to adopt any of the following forces, as he may deem best suited to the interest of the Development Authority.

- (a) To rescind the contract (for which rescission notice in writing to the Contractor under the hand of Engineer shall be conclusive evidence) and in that case the security deposit of the Contractor shall stand forfeited and be absolutely at the disposal of Development Authority
- (b) To carry out Work or any part of the departmentally debiting the Contractor with the cost of the Work, expenditure incurred on tools and plant and charges on additional supervisory staff including the cost of Work charge establishment employed for getting the unexecuted part of the Work completed and crediting him with the value of the Work done departmentally in all respects in the same manner and at the same rates as if it had been carried out by the Contractor under the terms of his contract. The certificate of the Engineer as to the costs and other allied expenses so incurred and as to the value of the Work so done departmentally and shall be final and conclusive against the Contractor.
- (c) To order that the Work of the Contractor be measured up and to take such part thereof as shall be on executed out of his hands, and to give it to another Contractor to complete, in which case all expenses incurred on advertisement for fixing a new contracting agency, additional supervisory staff including the cost of Work charge establishment and a cost of Work executed by the new contract agency will be debited to the Contractor and the value of the Work done or executed through a new Contractor shall be credited to the Contractor in all respects and in the same manner and at the same rates as if it had been carried out by the Contractor under the terms of this contract. The certificate of the Engineer as to all the cost of the Work and other expenses incurred as aforesaid for or in getting the unexecuted Work done by the new Contractor and as to the value of the Work so done shall be final and conclusive against the Contractor.

In case the contract shall be rescinded under clause (a) above the Contractor shall not be entitled to recover or be paid, any sum for any Work therefore actually performed by him under this contract unless and until the Engineer shall have certified in writing the performance of the such Work and the amount payable to him in respect thereof and he shall only be entitled to be paid the amount so certified in the event of either of the courses referred to in clauses (b) or (c) being adopted and the cost of the executed departmentally or through a new Contractor and other allied expenses exceeding the value of the such Work credited to the Contractor the amount of excess shall be deducted from any money due to the Contractor, by Development Authority under the Contractor otherwise howsoever or from his security deposit or the sale proceeds thereof provided, however, that Contractor shall have no claim against Development Authority even if the certified value of Work done departmentally or through a new Contractor exceed the certified cost of such Work and allied expenses, provided always that which ever of the three courses mentioned in clauses (a), (b) or (c) is adopted by the Engineer, the Contractor shall have no claim to compensation for any loss sustained by him by reason his having purchased or procured any materials, or entered into any engagements, or made any

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advance on account of or with a view to the execution of the Work or the performance of the contract.

Action When the Progress of any Particular Portion of the Work is Unsatisfactory: If the progress of any particular portion of the Work is unsatisfactory the conditions mentioned in Clause 60, be entitled to take action under clause after giving the Contractor 14 days notice in writing. The Contractor will have no claim for compensation, for any loss sustained by him owing to such action.

Contractor Remains Liable to Pay Compensation if Action not Taken Under Clause 60: In any case in which any of the powers conferred upon the Engineer by Clauses 60 hereof shall have become exercisable and the same shall not have been exercised the non exercise thereof shall not constitute a waiver of any of the conditions thereof and such powers shall not withstanding be exercisable in the event of any future case of default by the Contractor for which under any clause hereof he is declared liable to pay compensation amounting to the whole of his security deposit and the liability of the Contractor for past and future compensation shall remain unaffected.

Power to take possession of or require removal or sell Contractors plant: In the event of Engineer taking action under Sub Clauses (a) or (c) of Clause 60, he may if he so desires, take possession of all any tools and plant, materials and store in or upon the Work of the site thereof or belonging to the Contractor, or procured by him and intended to be uses for the execution of the Work or any part thereof paying or allowing for the same in account at the contract rates or in the case of contract rates not being applicable at current market rates to be certified by the Engineer whose certificate thereof shall be final. In the alternative the Engineer may after giving notice in writing to the Contractor or his clerk of the Work foreman or other authorised agent requires him to remove such tools and plant, material, or stores from the premises within a time to be specified in such notice and in the event of the Contractor failing to comply with any such requisition, the Engineer may remove them at the Contractor's expenses or sell them by auctions or private sale on account of the Contractor and at this risk in all respect and the certificate of the Engineer as to the expenses of any such removal and the amount of the proceeds and expensed on any such sale shall be final and conclusive against the Contractor.

No Interest for Delayed Payments Due to Disputes etc.: It is agreed that the Development Authority or its Engineer or Officer shall not be liable to pay any interest or damage with respect to any moneys or balance which may be in its or its Engineer's or officer's hands owing to any dispute or difference or claim or misunderstanding between the Development Authority or its Engineer or Officer on the one hand and the Contractor on the other, or with respect to any delay on the part of the Corporation/ Development Authority or its Engineer or Officers in making periodical or final payments or in any other respect whatever. Payment to the Contractor of the amount due under each of the interim payment certificate issued by the Engineer shall be made by the Development Authority within 45 (Forty Five) days if such certificate being delivered. If the Development Authority makes late payment, the Contractor is to be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at 6% per annum. It is a term under this contract that payment of interest in excess of 6% is barred on any amount payable to the Contractor on any account. It is distinctly understood and agreed between the parties hereto that payment for Work already executed by the Contractor is not a condition precedent under this contract for the execution of the remaining Work.

Jurisdiction: In case of any claim, dispute or difference arising in respect of a contract, the cause of action thereof shall be deemed to have arisen in Guwahati and all legal proceedings in respect of any such claim, dispute or difference shall be instituted in a competent court in the City of Guwahati only.

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Finality of Decision and Non-Arbitrability:

SETTLEMENT OF DISPUTES

If a dispute/ disputes of any kind whatsoever arises between the Contractor and Engineers representative the same shall be referred to the Engineer for his decision with detailed justification. Such reference shall be stated that it is in pursuance to this clause for review and giving decisions by the Engineers. The Engineer shall give his decision within 14 days of receipt of notice. If either party is not satisfied with the decision of the Engineer or the Engineer fails to give the decision within the period of 14 days from the date of receipt of notice under this clause, such a dispute may be referred to Arbitration as per provisions of this tender.

Arbitration: Except where, otherwise provided for in this contract, all questions and disputes relating to the meaning of instruction bear in before mentioned or as to any other question, claim, right, matter of handing whatsoever, if any arising out of or relating to this contract, specification, estimates, instructions, orders or these conditions or otherwise concerning the works, or the execution or failure to execute the same where arising during the progress of the work or after completion or abandonment thereof of any matter directly or indirectly connected with this agreement shall be referred to the sole Arbitration of the Chief Executive Officer and if the Chief Executive Officer is unable or unwilling to act as such, then the matter in dispute shall be referred to sole Arbitration or such other person appointed by the Chief Executive officer who is willing to act as such Arbitrator. In case, the Arbitrator so appointed is unable to act for any reasons, the Chief Executive Officer in the event of such inability shall appoint another person to act as Arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the state at which it was left by his predecessors. It is also a term of this contract that no person other than a person appointed by the Chief Executive Officer as aforesaid should act as an Arbitrator. As aforesaid the provisions of the arbitration and conciliation Act 1996 or any statutory modification or Re enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause.

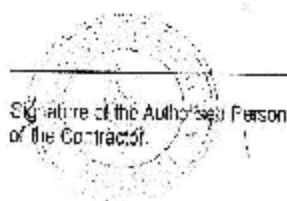
Laws Governing the Contract: This contract shall be governed by the Indian Laws for the time being in force.

61. NOTICES

- (1) **Contractor's local office and service of notices to contractor** - The Contractor shall have a local office at or near the Site of Work. Full address thereof shall be intimated by the Contractor or his authorized Agent to the Employer as well as to the Engineer. All Certificates notice or written orders to be given by the Employer or by the Engineer to the Contractor under the terms of the Contract, shall be deemed to have been served by sending by post to or delivering the same to the Contractor's local office.
- (2) **Service of notice to employer** - All Notice to be given to the employer under the terms of the Contract, shall be served by sending by Registered post or delivering the same to the address given below:

Chief Executive Officer
 Guwahati Metropolitan Development Authority
 Bhangagarh, Guwahati - 781005

Signature of the Authorized Person
 of the Contractor.



- (3) **Change in Address** – The Employer, the Engineer or the Contractor may change a nominated address to another address by prior written notice to the other two and in that event shall resume receiving of communication 28 days after delivery of such notice.

62. PRICE ADJUSTMENT

- (1) The prices to be paid to the contractor for the whole work shall remain firm during the stipulated contract period or extension thereof and no price adjustment shall be allowed except statutory price escalation for Steel & pig iron. The tenderer should quote his price absorbing price escalation of all other items that may occur during the contract period or extension thereof.
- (2) The statutory changes in price in the form of Taxes, duties etc. shall however be taken into account. For this purpose the taxes and duties prevailing on the last date of submission of the technical bid (or revised price bid, if applicable) shall be taken as the base. Such taxes and duties for different bought out items shall be specified by the contractor, failing which the assessment of the Employer shall be final and binding. Changes in price of Petrol, Diesel, Lubricants, Electricity, etc. shall not be considered.

63. MISCELLANEOUS

Dangerous materials : Explosive, chemicals, combustible articles and items and similar materials intended for the Works shall be conveyed, stored and used by the Contractor and his sub-contractors in accordance with all laws, decrees, instruments, orders and regulations imposed by the Government or any of its instrumentalists. Observance of all safety provisions shall be the obligation of the Contractor and nothing herein shall release him from full responsibility for damage or injury to persons or properties resulting from his use of these dangerous materials.

64. CONTRACT CONFIDENTIAL

Except with the prior written approval of the Employer and to subject the such conditions as may be prescribed, the Contractor and/or any member of his organization shall not in any case communicate to any person or entity and information connected with the performance of the Services or in carrying out the Works not make public any information for the purpose of publication or advertisement. All matters related to the Contract shall be treated by the Contractor as private and confidential.

65. CONTRACTOR TO PROVIDE FACILITIES

The Contractor shall provide such labour, materials and other facilities that the Engineer or his Representative may require to assist them in carrying out normal tests and checks on materials and workmanship and in measurement of works.

66. INTERFERENCE WITH EXISTING FACILITIES

The Contractor shall carry out the works in such a way as to the minimum extent of interference to the use of existing facilities of any kind.

67. ACTS OF INFLUENCE

Neither the Contractor nor any of his Agents, Representatives, Employees or members of his organization shall commit any act which may influence the judgment or decision of the Employer or the Engineer or any their agents, representatives, employees or members of their respective organization. Any breach of this provision shall constitute a breach of Contract on the part of the Contractor and apart from penal measures against the Contractor according to the law the land, the Employer shall have the Authority to take action for the Contractor's default in terms of this tender document.

68. INDIVIDUALS NOT PERSONALLY RESPONSIBLE

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of the Contractor



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Chief Executive Officer
Guwahati Metropolitan Development Authority

No personal liability shall be imposed on the members or the Employer or on the Engineer or their duly authorized representatives, agents or employees for acts performed or discharged in the exercise of their authorized duties or responsibilities or in carrying out their obligations by virtue of the provisions or scope of work contained in the Contract, it being understood that they are acting solely as agents and representatives of the Employer in good faith.

69. CONTRACT EMBODIES WHOLE ARRANGEMENT

The Contract becomes effective immediately on issue of the letter of acceptance to the successful Tenderer.

The Contract (with annexure if any) as subsequently executed embodies the whole arrangement between the parties entering into the Contract. All previous correspondence, negotiations, representation, explanations statements, promises or guarantees (whether oral or written) as are not included in the Contract as executed, shall normally be excluded in the interpretation of the Contract.

70. COMPLETION DRAWING

Completion drawing including detailed construction drawing shall have to be submitted in original with 6 (six) copies of prints of each. The original drawings shall be drawn on thick polyester film approved by the Engineer. Scale and size of drawings shall also be as specified by the Engineer. Soft copy of drawing copied in CD/DVD should be submitted in addition. No extra payment will be made for it.

The Completion drawings are to be got approved by the Employer and shall have to be submitted before the issue of certificate of final acceptance as.

ADDITIONAL CONDITIONS - I

A. ENGINEER'S DECISION

1.0 Except where otherwise specifically stated the Engineer will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

2.0 DELEGATION

2.1 The Engineer may delegate any of his duties and responsibilities to other people and may cancel any delegation after notifying the Contractor.

3.0 COMMUNICATIONS

3.1 Communications between parties, which are referred to in the conditions, are effective only when in writing. A notice is effective when it is delivered (in terms of Indian Contract Act).

4.0 OTHER CONTRACTORS

4.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities and the Employer between the dates given in the schedule of Other Contractors. The contractor shall as referred to in the contract data also to provide facilities and services for them as described in the Schedule. The employer may modify the Schedule of Other Contractors and shall notify the Contractor of any such modification.

5.0 PERSONNEL

5.1 The Contractor shall employ the key personnel named in the schedule of Key Personnel as referred to in the contract data to carry out the functions stated in the Schedule or other personnel approved by the Engineer. The Engineer will approve proposed replacement of key personnel only if their qualifications, abilities and relevant experience are substantially equal to or better than those of the personnel listed in the Schedule.

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of the Contractor

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5.2 If the Engineer asks the Contractor to remove a person who is a member of Contractor's staff or his work force and stating the reasons the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

6.0 EMPLOYER'S AND CONTRACTOR'S RISKS

6.1 The Employer carries the risks, which the contract states are Employer's risks and the contractor carries the risks which this contract states are contractor's risks.

7.0 EMPLOYER'S RISKS

7.1 The Employer is responsible for the expected risks which are (a) in so far as they directly affect the execution of the works in Employer's country, the risks of war, hostilities, invasion, act of foreign enemies, rebellion, revolution, insurrection or military or usurped power, civil war, riot, commotion or disorder (unless restricted to the Contractor's employees) and contamination from any nuclear fuel or nuclear waste or radioactive toxic explosive, or (b) Damage to constructed works of the project fall or past due to earthquake, flood, cyclone & other natural calamities will fall under employer's risk.

8.0 CONTRACTOR'S RISK

All risks of loss of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the contract other than the expected risks as above are the responsibility of the contractor.

9.0 SITE INVESTIGATION REPORTS

9.1 The contractor, in preparing the bid, shall rely on any site investigation reports referred to in the contract Data, supplemented by any information available to the bidder and shall carry out additional survey & soil investigations of located sites of construction.

10.0 QUERIES ABOUT THE CONTRACT DATA

10.1 The engineer will clarify queries on the Contract Data.

11.0 CONTRACTOR TO CONSTRUCT THE WORKS

11.1 The contractor shall construct and install the works in accordance with the specification and Approved Drawings.

11.2 The contractor shall commence execution of the works on the start date and shall carry out the works in accordance with the program submitted by the contractor as updated with the approval of the engineer and complete them by intended completion date.

12.0 APPROVAL BY THE ENGINEER

12.1 The Contractor shall submit specification and drawings showing the proposed work to the engineer, who is to approve them if they comply with the Contract specifications and drawings.

12.2 The contractor shall be responsible for design of temporary works.

12.3 The engineer's approval shall not alter the contractor's responsibility for his design of the temporary works.

12.4 All drawings prepared by the contractor for the execution of the temporary or permanent works, are subject to prior approval by the engineer before their use.



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13.0 SAFETY

13.1 The contractor shall be responsible for the safety of all activities on the site.

14.0 DISCOVERIES

14.1 Anything of historical or other interest or of significant value unexpectedly discovered on the site will be the property of the employer. The contractor is to notify the engineer of such discoveries and carry out the engineer's instructions for dealing with them.

15.0 ACCESS TO THE SITE

The contractor shall allow the engineer and any person authorized by the engineer access to the site to any place where work in connection with the contracts is being carried out or is intended to be carried out. The contractor shall carry out all instructions of the engineer which comply with the applicable work where the site is located.

16.0 INSTRUCTIONS

The contractor shall carry out all instructions of the Engineer which comply with the applicable laws where the site is located.

17.0 The unsettled disputes are to be settled by arbitrator appointed by the employer in Guwahati from amongst retired Guwahati High Court Judges. Arbitration cost shall be borne between the parties on 50-50 basis.

B. TIME CONTROL

1.0 PROGRAM

1.1 Within the time started in the contract data the contractor shall submit to the engineer for approval a program showing the general methods, arrangements, order and timing for all the activities in the works.

1.2 An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work including any changes to the sequence of the activities.

1.3 The Contractor shall submit to the Engineer, for approval, an updated program within this period; the engineer may withhold this amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue program has been submitted.

1.4 The Engineer's approval of the program shall not change the contractor's obligations. The contractor may revise the program and submit it to the Engineer again at any time. A revised program is to show the effect of variations.

2.0 DELAYS ORDERED BY THE ENGINEER

2.1 The Engineer may instruct the Contractor to delay the Start or Progress of any activity within the works. Delay in progress in work by the contractor will attract delay fine. Delay which may be out of control of the contractor shall be considered for Condonation by the employer. No compensation will be allowed for delayed start or progress of any activity ordered by the Engineer.

3.0 MANAGEMENT MEETINGS

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Chief Executive Officer
Guwahati Metropolitan Development Authority

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Chief Executive Officer
Guwahati Metropolitan Dev. Authority

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- 3.1 The Engineer or the Contractor may require the contractor to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- 3.2 The Engineer shall record the business of managements meetings and is to provide copies of his record to those attending the meeting and to the Employer. The responsibility of the parties for actions to be taken is to be decided by the Engineer either at the management meeting or after the management meeting and shall be communicated in writing to all who attended the meeting.
- 4.0 **EARLY WARNING**
- 4.1 The contractor is to warn the Engineer at the earliest opportunity of specific likely future events of circumstances which may adversely affect the quality of the work, in the contract price or delay the execution of works.
- 4.2 The contractor shall cooperate with the Engineer in making and considering proposals for how the affect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Engineer.



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of the Contractor

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C. QUALITY CONTROL

1.0 IDENTIFYING DEFECTS

1.1 The Engineer shall check the Contractor's work and notify the Contractor of any defects that are found. It shall not absolve the contractor's responsibility in searching and identifying any defects.

1.2 Apart from checking the work by Engineer it is subjected to the Third Party inspection by the Agency as fixed by the Development Authority for inspection and 0.25% of the cost of the works (both material and labour) shall be recovered from the Contractor's bill towards Third Party inspection if found necessary by the employer.

2.0 TESTS

2.1 If the Engineer instructs the Contractor to carry out a test not specified in the specification to check whether any work has a defect and the test shows that it does. The Contractor shall pay for the test and for samples.

3.0 CORRECTION OF DEFECTS

3.1 The Engineer may also give notice to the contractor of any defects appeared later on before the end of the defects liability period, defined in the contract data. The defects liability period shall be extended as long as Defect remains to be corrected.

3.2 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Engineer's notice.

4.0 UNCORRECTED DEFECTS

4.1 If the Contractor has not corrected a defect within the time specified in the Engineer's notice, the Engineer will assess the cost of having the defect corrected at contractor's risk and cost

D. COST CONTROL

1.0 BILL OF QUANTITIES

1.1 The bill of quantities shall contain items for the design, construction, installation, testing and commissioning work to be done by the contractor.

2.0 CASH FLOW FORECASTS

When the program is updated the contractor is to provide the engineer with an updated cash flow forecast.

3.0 PAYMENT CERTIFICATES

3.1 The Contractor shall submit to the engineer monthly statements of the estimated value of the work completed less the cumulative amount certified previously.

3.2 The Engineer shall check the Contractor's monthly statement within seven days and certify the amount to be paid to the Contractor.

3.3 The Value of work executed shall be determined by the Engineer.

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3.4 The value of the work executed shall comprise the value of the quantities of the items in the bill of quantities completed.

3.5 The Engineer may exclude any item billed or reduce the proportion of any item require to statutory other deduction.

4.0 PAYMENTS

4.1 The payments shall be adjusted for deductions for advance payments and retention. The employer shall pay the Contractor the amounts certified by the Engineer subject to statutory other deduction. After certification by the engineer payment can be arranged within 28 days but it shall not be construed for any compensation in case of any delay beyond 28 days.

5.0 TAX

5.1 The rates quoted by the contractor shall be deemed to be inclusive of all the sales and other taxes on all materials that the contractor will have to purchase for performance of the contract.

5.2 Any central or state sales and other taxes on completed items of work of this contract, as may be levied shall also be borne by the contractor and will not be reimbursable separately.

6.0 CURRENCIES

6.1 All payments will be made in Indian Rupees.

7.0 RETENTION

7.1 The Employer shall retain from each payment due to the contractor the proportion stated in the contract Data until completion of the whole of the works.

7.2 On completion of whole of the work half the total amount retained is repaid to the Contractor and half when the Defects Liability Period has passed and the Engineer has certified that all defects notified by the Engineer to the Contractor before the end of this period have been corrected.

8.0 COST OF REPAIRS

8.1 Loss or damage to the works or materials to be incorporated in the works between the start Date and the end of the Defects correction periods shall be replaced/ remedied by the contractor at the Contractor's cost if the loss or damage arises from the contractor's acts or commission's.

E. WORK COMPLETION & DEFECT LIABILITY

Clearance of Site on Completion: Upon the issue of any Taking over certificate the Contractor shall clear away and remove from that part of the site to which such Taking-over Certificate relates all Contractor's equipment, surplus materials, rubbish and temporary Works of every kind, and leave such part of the site and Works clean and in a Workman like condition to the satisfaction of the Engineer. If the Contractor does not clear the site within 15 days all material will be confiscated and no compensation shall be paid and the site will be cleared at risk and cost of the Contractor.

Submissions of Final Completion Drawings: On completion of the Work, the Contractors shall furnish free of cost final completion drawings in 6 bound sets showing all the details checked and signed by the Engineer within 2 months of completion of Works. The payment of final bill shall be made to the Contractors after receipt of above sets. In case the Contractor


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fails to submit the completion drawings, compensation at the rate of Rs. 5000/- per drawing shall be recovered from the final bills.

Completion Certificate:

(1) As soon as Work is completed, the Contractor shall give notice of such completion to the Engineer and within 28 (Twenty-eight) days of receipt of such notice the Engineer shall inspect the Works and shall furnish the Contractor with a certificate of completion indicating (a) the date of completion (b) the defects to be rectified by the Contractor, and/or (c) items for which payment shall be made at reduced rates.

When separate periods of completion have been specified for items or groups of items, the Engineer shall issue separate completion certificates for such items or groups of items. No certificate of completion shall be issued, nor the Works be considered to be complete till the Contractor shall have removed from the premises on which the Works has been executed, all scaffolding, sheds and surplus materials, except such as required for rectification of defects, rubbish and all huts and sanitary arrangements required for his Workers on the site in connection with the execution of Works as shall have been erected by the Contractor or the Workmen and cleaned all dirt from all parts of building(s) in, upon or about which the Work has been executed or at which he may have had possession for the purpose of execution thereof and cleaned floors, gutters and drains, closed doors and sashes, oiled and fastenings, labelled the keys clearly and handed them over to the Engineer or his representative and made the whole premises fit for immediate occupation or use to the satisfaction of the Engineer. If the Contractor shall fail to comply with any of the requirements of this Condition as aforesaid, on or before the date of completion of Works, the Engineer may at the expense of the Contractor fulfil such requirements and dispose of all the surplus material and rubbish etc. as he thinks fit and the Contractor shall have no claims in respect of any such material except for any sum actually realized by the sale thereof less the cost of fulfilling the requirements and any other amount that may be due from the Contractor. If the expense of fulfilling such requirement is more than the amount realized on such disposal as aforesaid, the Contractor shall forthwith on demand pay such excess.

The Contractor's notice of completion as aforesaid shall be accompanied with final completion drawings (as-built drawings) in six bound sets failing which the notice shall be deemed to have not been issued at all.

(2) If at any time before completion of the entire Work, items or groups of items for which separate periods of completion have been specified, have been completed, the Engineer with the consent of the Contractor takes possession of any part or parts of the same (any such part or parts being hereinafter in this condition referred to as "the relevant part") then notwithstanding anything expressed or implied elsewhere in this contract.

- (a) Within 28 days (Twenty-eight) days of date of completion of such items or group of items or possession of the relevant part the Engineer shall issue a completion certificate for the relevant part provided the Contractor fulfils his obligation for the relevant part as in sub-paragraph (1) above
- (b) The defects liability period in respect of such items and relevant part shall be deemed to have commenced from the certified date of completion of such items or relevant part as the case may be.
- (c) For the purpose of ascertaining compensation for delay in respect of any period during which the Works are not completed the relevant part shall be deemed to form a separate item or group, with date of completion as given in the contract or as extended under this tender and actual date of completion as certified by the Engineer under this condition.

(3) If any part of the Work shall have been substantially completed and shall have satisfactorily passed any final test that may be prescribed under the contract, the Engineer may issue a certificate of completion in respect of that part of the Works before completion of the whole