



सत्यमेव जयते

Government of Gujarat

Department of Science and Technology

Government of Gujarat



Department of Science
and Technology
Government of Gujarat

Volume II: Construction Contract

**CONSTRUCTION CONTRACT
OF
RESIDENTIAL FACILITIES AT GUJARAT BIOTECHNOLOGY UNIVERSITY**

**By and between
GUJARAT BIOTECHNOLOGU UNIVERSITY
(As Authority)**

AND

॥ विसानं ब्रह्म ॥



**GUJARAT
BIOTECHNOLOGY
UNIVERSITY**

Gujarat Biotechnology University
GIFT Urban Extension Area, GIFT city road
Gandhinagar- 382355

Draft Only

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT ("Contract" or "Agreement") is entered into at [●] on this [●] day of [●] ("Effective Date"),

By and between:

Gujarat Biotechnology University, represented by **Registrar**, and having its office at **GIFT UDA, GIFT City road, Gandhinagar- 382355, Gujarat, India**, hereinafter referred to as "**GBU**" or "**Authority**" (which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the **First Part**;

AND

{[insert name of single entity being a company/ trust/ society/ firm/sole-proprietorship¹], a [●] incorporated/ registered under the provisions of the [insert name of relevant statute] and having its registered office at [●], (hereinafter referred to as the "**Developer**" or "**Contractor**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes) of the **OTHER PART**.}²

For the purpose of this Contract, both the "Authority" and "Developer" are collectively referred to as the "**Parties**" and individually as a "**Party**".

WHEREAS:

- (A) The Authority has resolved to develop Residential Facilities at its Site at Gandhinagar ("Project") in accordance with the terms and conditions set forth in this Contract.
- (B) The Authority had accordingly invited proposals by its Request for Proposal dated [●] (the "**Request for Proposal**" or "**RFP**") for selection of Developer for construction and development of Residential Facilities at its Site situated in Gandhinagar.
- (C) After evaluation of the bids received, the Authority had accepted the bid of the [●] ("**Selected Bidder**") and issued its Letter of Award No. dated [●] (hereinafter called the "**LOA**") to the Selected Bidder requiring, inter alia, the execution of this Contract and same was acknowledged by the Selected Bidder vide its letter dated [●].
- (D) The Selected Bidder has requested the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Developer including the obligation to enter into this Contract pursuant to the LOA for executing the Project.
- (E) The Authority has agreed to the said request of the Selected Bidder, and has accordingly agreed to enter into this Contract with the Developer for execution of the Project, subject to and on the terms and conditions set forth hereinafter.

¹Specify nature of entity

² In case the Selected Bidder being a single entity executes the contract with the Authority.

NOW THEREFORE, in consideration of the premises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1. Definitions

1.2. The words and expressions beginning with capital letters and defined in this Contract) shall, unless the context otherwise requires, have the meaning ascribed to them in Schedule 1 (Definitions) **Interpretation**

1.2.1 In this Contract, unless the context otherwise requires,

- a) Reference to the singular shall include reference to the plural and vice-versa and a reference to any gender shall include a reference to the other genders, except where the context otherwise requires.
- b) The headings in this Contract are included for ease of reference, and shall not affect the meaning or the interpretation of this Contract.
- c) The Schedules to this Contract form an integral part of this Contract and will be of full force and effect. The provisions of this Contract and the Schedules hereto shall be interpreted harmoniously.
- d) The preamble and the recitals shall form an integral part of this Contract and shall be interpreted harmoniously.
- e) Unless the context otherwise requires, a reference to any clause, recital, schedule shall be to a Clause, Recital, Schedule of this Contract respectively, except where the context otherwise requires.
- f) Reference to any law or regulation having force of law includes a reference to that law or regulation, as amended, modified, supplemented, extended or re-enacted from time to time.
- g) Reference to time shall, except where the context otherwise requires, be construed as a reference to Indian Standard Time. Any reference to calendar shall be construed as reference to the Gregorian calendar.
- h) The words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases.
- i) Unless the context otherwise requires, any period of time referred to shall be deemed to expire at the end of the last date of such period.
- j) In case of any discrepancy between words and figures, the words shall prevail over the figures.
- k) Whenever provision is made for the giving of notice, approval or consent by any Person, unless otherwise specified, such notice, approval or consent shall be in writing and the words "notify" and "approve" shall be construed accordingly.
- l) Provisions including the word "agree", "agreed", "agreement" require the agreement to be recorded in writing.
- m) The terms "written" or "in writing" mean hand-written, type-written, printed or electronically made, and resulting in a permanent record.

- n) Any reference to a document is to that document as amended, varied or novated from time to time otherwise than in breach of this Contract or that document.

1.2.2 Unless expressly provided otherwise in this Contract, any documentation required to be provided or furnished by the Developer to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3. Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4. Priority of Documents

1.4.1 This Contract, and all other agreements and documents forming part of or referred to in this Contract are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Contract, the priority of this Contract and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) the Contract; and

(b) all other agreements and documents forming part hereof or referred to herein.

i.e, the Contract at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Contract, the following shall apply:

(a) between two or more Clauses of this Contract, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Contract and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings /Specifications and Bill of Quantities, the former shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

1.4.3 In the event that clause 1.4.1 and clause 1.4.2 are unable to resolve the discrepancies, the most restrictive provision(s) among the alternatives shall prevail.

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ARTICLE 2

SCOPE OF THE PROJECT AND VARIATION OF WORK

2.1 SCOPE OF PROJECT

Under this Contract, the Scope of the Project (the "**Scope of Project**") shall mean and include:

- a) construction and development of the Project on the Site set forth in **Schedule 2** in accordance and conformity with the Technical Specifications and Standards set forth in **Schedule 3**) and the provisions of this Contract;
- b) procurement and installation of Works including all [trees, plants, shrubs, models, artifacts, equipment, instruments, support systems and as required for the project] as planned for the Project and as set forth in **Schedule 2** and in conformity with the Technical Specifications and Standards set forth in **Schedule 3** and the provisions of this Contract; and
- c) performance and fulfilment of all other obligations of the Developer in accordance with the provisions of this Contract and matters incidental thereto or necessary for the performance of any or all of the obligations of the Developer under this Contract.

2.2 Unless otherwise expressly mentioned in this Contract, the execution of relevant Scope of Project by the Developer shall be strictly according to the applicable Technical Specifications and Standards, and/or other directions/requirements of the Authority.

2.3 Any Works not found to be as per the relevant Technical Specifications and Standards and/or directions/requirements of the Authority shall be rejected, and the Developer shall have to redo, rectify or remedy the same at its own cost and responsibility. In case of failure of the Developer to rectify such defects, the Authority shall get the Works rectified at the risk and cost of the Developer.

2.4 The Developer shall not subcontract the whole or substantially the whole of its relevant Scope of Project and obligations under this Contract without the prior written approval of the Authority. No such assignment or subcontract shall relieve the Developer from any of its obligations under this Contract, and the Developer shall be liable for its entire Scope of Project as if none of it has been assigned or subcontracted to any third party and the entire Scope of Project has been executed by the Developer itself/ themselves.

2.5 VARIATION

The term "Variation" as used under this clause means the alteration or modification of the design, quality or quantity of work as shown upon the drawings, scope of works, specification or included in the Bill of quantities (schedule 10) and desired by or referred to in the schedule of quantities and includes the addition, omission or substitution of any work, the alteration of the kind of standard or any of the materials or goods to be used in the work, and removal from the site of any works materials or goods executed or brought thereon by the Developer for the purpose of work other than

work materials or goods which are not in accordance with this contract. For avoidance of doubt, it is clarified that variation shall include the following but not limited to:

(a) New items of works i.e., items completely new and in addition to the items of Contract. These are known as extra or additional items.

(b) Substituted items i.e., items which substitute the existing one or are taken up in lieu of those already provided in the Contract. There can be slight modifications of technical modifications or partially omitting items of work in the Contract.

(c) Deviation in quantities of items, i.e., where there is increase or decrease in the quantities initially contracted as per the Contract. In other words, the nomenclature of work remains the same, but the quantities vary with those provided in the agreement

It is further clarified that description of items mentioned in the BOQ is an integral part of Technical Specifications and Standards in Schedule 3 & Scope of Works in Schedule 2.

The detailed estimates have been prepared based on approved plans and drawings so that variations during execution of work are kept to the minimum. However, if some change has to be made, the same may be done with the approval of competent authorities.

Developer is required to execute additional work of any kind necessary for the completion of the works and no such variation shall in any way validate or invalidate the contract, but the value, if any, of all such variations shall be taken into account in ascertaining the amount of the Contract Price.

2.5.1 Right to vary the Work

During the Contract, the Authority as well as the Developer shall have a right to seek variation in the Work ("**Variation**") by way of a written proposal at any time prior to issuing of the Works Completion Certificate. Provided however, the Variation shall not exceed 10% (ten percent) of the Contract Price ("**Variation Limit**"). Any such variation shall be made in accordance with the provisions of this Article 2.

2.5.2 Authority's right to vary the Work

- i. The Authority may give a proposal for Variation to the Developer at any time prior to issuing of the Works Completion Certificate and may issue any such directions which are not necessarily stipulated herein if it deems necessary for the fulfilment of the Project requirements. The Developer shall execute and be bound by each Variation (as applicable to it) proposed by the Authority unless the Developer promptly gives notice to the Authority stating (with supporting particulars) that:
 - (a) it cannot readily execute the Variation, or
 - (b) the Variation will reduce the safety or suitability of the Project.

Upon receiving this notice, the Authority may cancel, confirm or vary the proposal for Variation.

- ii. Once the Developer agrees and becomes bound by the Variation proposed by the Authority, it shall respond to the Authority in writing as soon as practicable, and submit:
 - (a) a description of the proposed design of the Variation to be performed and a programme for its execution;
 - (b) a proposal for any necessary modifications to the Programme Schedule set out in Schedule 4 (Programme Schedule) and to the Construction Period; and
 - (c) a proposal for adjustment to the Contract Price in terms of the Clause 2.5.4.
- iii. The Authority shall, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments, and the Developer and the Authority shall mutually agree to the terms and conditions of the Variation, including the change in Works, terms relating to increase in Contract Price (taking into account reasonable profit for the Developer), the schedule of payments and extension of Contract (if applicable). It is clarified that the Developer shall not execute any services or works forming part of the proposed Variation unless the Parties have agreed to the change in Works, terms relating to increase in Contract Price (taking into account reasonable profit for the Developer), the schedule of payments and extension of Contract (if applicable) resulting from such proposed Variation.

2.5.3 Developer's right to vary the Scope of Works

Developer may give a proposal for Variation by way of value engineering which (in the Developer's opinion) will, if adopted, (i) accelerate Completion, (ii) reduce the cost to the Authority of executing, maintaining or operating the Project, (iii) improve the efficiency or value to the Authority of the completed Project, or (iv) otherwise be of benefit to the Authority. The proposal for Variation by the Developer shall include:

- (a) a description of the proposed design of the Variation to be performed and a programme for its execution;
- (b) the Developer's proposal for any necessary modifications to the Programme Schedule set out in Schedule 4 (Programme Schedule); and
- (c) the Developer's proposal for adjustment to the Contract Price in terms of the Clause 2.5.4.

The Authority shall, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments, and the Parties shall mutually agree to the terms and conditions of the Variation. The proposal for Variation by the Developer shall not be applicable or binding on the Authority unless the Authority expressly agrees to the

terms and conditions of such Variation, and the Developer shall not proceed with any services or works as part of the proposed Variation unless expressly instructed by the Authority in writing.

Upon instructing or approving a Variation, the Developer and the Authority shall agree and determine adjustments to the Contract Price and the schedule of payments. These adjustments shall include reasonable profit, and shall take account of the Developer's submissions under this Clause.

2.5.4 Determination of the Contract Price in case of Variation

In the event of the Variation of the Work in terms of the Clause 2.5.2 and 2.5.3 above for categories (a) and (b) as per clause 2.5, the adjustment in the Contract Price shall be determined in the following manner:

- (a) If rate for varied item of Work is specified in the Bill of Quantities, the Developer shall carry out the varied item of Work ("**Varied Work**") at the rate adjusted with the mark- up quoted by the Developer for any variations.
- (b) If the rate for any Varied Work is not specified in the Bill of Quantities, the rate for the such item of the Varied Work shall be derived from the rate for the nearest similar item specified in the Bill of Quantitates and the decision of the Authority as to the nearest comparable item shall be final and binding on the Developer..
- (c) If the rates of any Varied Work is not included in the Bill of Quantities, such item of Work shall be carried out as per the Gujarat Government approved schedule of rates applicable for the year in which the tender was received. In the eventif item is unavailable therein, Work shall be carried out as per the Delhi Schedule of Rates applicable for the year in which the tender was received..
- (d) If the rate for any Varied Work cannot be determined in the manner specified in (a) to (c) above, then the Developer will be paid at such fair and reasonable rates as worked out by the Authority on the basis of rate analysis and/or material and labour required to execute the item and allowing 12 percent (twelve percent) towards overhead charges and Developer's profit.
- (e) The decision of the Authority shall be final and binding in this regard.

In the event of the Variation in quantities of items as per schedule-10 (categories (c) as per clause 2.5), the adjustment in the Contract Price shall be determined in the following manner:

- i. The Developer shall be paid only for the actual amount of work done no other extra claim shall be entertained in this regard.

ii. Unless otherwise stipulated, the accepted variation in the quantity of each contract item would be up to 10% of the quantity initially contracted. The Developer shall be bound to carry out the service at the agreed rates and shall not be entitled to any claim or compensation whatsoever up to the limit of 10% variation in the quantity of the individual item of services.

iii. If the Authority decides to increase or decrease the variation beyond 10% of contracted quantity, the rates and acceptability shall be determined in the following manner:-

a) the Developer will be paid for the quantity in excess of 10% at the estimated rate/rate entered in the Road and Building Department, Govt of Gujarat S. O. R/rate entered in CPWD/Delhi S. O. R. of the year during which the excess in quantity is first executed or tender rate, whichever is less.

b) The decision of the Authority shall be final and binding in this regard.

2.5.5 For the avoidance of doubt, Variation shall include:

- (a) change in Technical Specifications and Standards of any item of Works;
- (b) omission/ addition of any item of Work not implied from the Scope of the Project defined in Clause 2.1;

2.5.6 No Variation shall be executed unless the Authority and Developer have mutually agreed to change in Scope of Project in accordance with Clause 2.5.2 and 2.5.3 above save and except any change in Scope of Project which is necessary for meeting any emergency i.e., a condition or situation that is likely to endanger the safety or security of the individuals connected to the Project, including users thereof, or which poses an immediate threat of material damage to the Works or any of the Project Assets. For the avoidance of doubt, it is clarified that in such a situation of Emergency the Authority shall not be required to issue a proposal for change in Scope of Project to the Developer and the Developer shall be required to execute the Variation upon mere intimation by the Authority and without waiting for any mutual agreement between the Parties on any proposed Variation.

2.5.7 Provided that no order in writing shall be required for increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause but is the result of the quantities exceeding or being less than those stated in the Scope of Works. Such increase and decrease of quantities to be recorded in the measurement sheet and duly certified by Authority's Representative as per clause 2.6.

2.6 Measurement and Modifications

(i) **Quantities in Contract:** The quantities set out in the contract (Schedule-10, BOQ) are the estimated quantities of the Works, and they shall not be taken as the actual and correct quantities of the Works to be executed by the Developer to fulfil his obligations under the Contract. Payment shall be made for the actual quantities deployed/ delivered; however, payments shall not be made for quantities over and above those indicated in the Contract unless extra quantity has been approved in a

written order by the Authority or Authority's representatives.

(ii) Measurements:

- a. The Measurement Sheets or Measurement Books (called MS hereinafter) is the initial record of works accounts and is the basis of all accounts of quantities of work done by the Developer. The payment for all works done and for all materials received through a contract shall be made on the basis of detailed measurements recorded in MS. MS shall be maintained very carefully and accurately as these may have to be required for all billing purposes.
- b. The Authority and/or Authority's representative and/or DTA shall take joint measurements of the work as it progresses and record them directly in the MS.
- c. It shall be ensured that the method of measurements is in accordance with the Contract. Any point of disagreement/dispute with the agency pertaining to mode of measurements shall be promptly referred to the Authority
- d. Extra/deviated items, as claimed by the Developer, shall not be recorded in MS until they are approved by the Authority.
- e. The items or measurement shall be authenticated / signed after the procurement or installation or execution, as the case may be, by concerned parties.
- f. Work at different levels/facilities/floors shall be kept scrupulously separate. Location notes should be made opposite the respective dimension entries on MS.
- g. Checking of measurements shall be as under. It shall not be brief and should reveal errors, accidental or deliberate, by the staff. It should also serve as a process of instructions to junior staff.
- h. The initial record of measurements will be done by the Authority's representative and/ or DTA along with Developer's authorized representatives.
- i. All measurements should be recorded neatly and directly in the MS at the site of work. Measurement Sheets should be shared fortnightly with the DTA and Authority.

(iii) Measurements for inadmissible items: In case of items which are claimed by the Developer but are not admissible, measurements should be taken for record purposes only and without prejudice so that in case it is subsequently decided to advise the Developer, there should be no difficulty in determining the quantities of such items. A suitable reason should however be made against such measurements to ensure that payments are not made in the ordinary way.

ARTICLE 3

CONDITIONS PRECEDENT

3.1 Conditions Precedent

- 3.1.1 Save and except as expressly provided in Article 3 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Contract shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 3.1 (the "**Conditions Precedent**").
- 3.1.2 The Developer may, at any time upon fulfilling its Conditions Precedent specified in Clause 3.1.3, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 3.1.2 within a period of 15 (fifteen) days of the notice, or such longer period not exceeding 30 (thirty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- a) procured for the Developer the Right of Way to the Site in accordance with the provisions of Clause 7.2.
- 3.1.3 The Conditions Precedent required to be satisfied by the Developer within a period of 15 (fifteen) days from the Effective Date or such longer period not exceeding 30 (thirty) days as may be agreed in writing by the Authority, as the case may be, shall be deemed to have been fulfilled when the Developer shall have:
- (a) procured all the required Approvals to start the work unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Approvals are in full force and effect;
 - (b) provided to the Authority, the Performance Security as per clause 5.1 of this Contract.
- 3.1.4 Upon request in writing by any of the Parties, the other Party may, in its discretion, waive any of the Conditions Precedent set forth in this Article 3 or permit additional time to meet any of the Conditions Precedent set forth in this Article 3; and no such waiver shall affect or impair any right, power or remedy that the Authority may otherwise have.
- 3.1.5 The date on which the Conditions Precedent are satisfied by the Authority and the Developer shall be the "**Appointed Date**" for the Contract.

3.2 Damages for delay by the Developer

In the event that (i) the Developer does not procure fulfilment or waiver any or all of the Conditions Precedent set forth in Clause 3.1.3 within a period prescribed under said clause, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 3.1.2 or other breach of this Contract by the Authority or due to Force

Majeure, the Developer shall pay to the Authority, Damages of an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% of the Performance Security. Provided that in case the Performance Security has not been furnished, the Authority shall be entitled to encash an equivalent amount towards the aforesaid Damages from the Bid Security.

3.3 Termination of Contrat in case of failure to achieve Appointed Date

If the Damages specified in Clause 3.2 is reached to its maximum limit, then the Authority shall have the right to immediately terminate this Contract through a written notice to the Developer. In case of Authority's Default to satisfy Conditions Precedent as per clause 3.1.2., the Developer shall have right to terminate this Contract by giving 15 (fifteen) days written notice to Authority. Upon such termination, this Contract shall cease to be effective and binding on the Parties and except as provided in this Contract, neither Party shall have any further liability to each other.

In the event that this Contract is terminated by the Developer due to Authority's failure to satisfy Conditions Precedent then the Authority shall, within 7 (seven) days from the date of such termination, return the Bid Security (if not replaced by Performance Security), or the Performance Security (if furnished by then replacing Bid Security), as the case may be.

However, where the limit on the Developer's liability in Clause 3.2 has been reached or exceeded and the Developer has failed to pay the amount of Damages due and payable by it to the Authority in accordance with Clause 3.2 within 7 (seven) days from the date of the termination notice issued by the Authority under this Clause 3.3, then notwithstanding the Termination of this Contract in accordance with this Clause 3.3, the Authority shall be entitled to encash the Bid Security or Performance Security, as the case may be and appropriate proceeds thereof as Damages.

ARTICLE 4

TERM OF THE CONTRACT

4.1 TERM OF THE CONTRACT

- 4.1.1 Subject to the terms and conditions contained hereinafter, this Contract shall come into force on and from the Appointed Date and shall end on 5th anniversary of Completion Date or on expiry of Defect Liability Period as per the terms of the Contract, whichever is later (“**Term**” and/or “**Contract Period**”). The term shall be divided as Construction Period and Defect Liability Period.
- 4.1.2 Unless otherwise terminated in accordance with the terms of this Contract, this Contract shall remain valid for the Developer till the expiry of the relevant Defect Liability Period as applicable to the Developer.
- 4.1.3 The expiry or termination of this Contract shall not affect any accrued rights, obligations and liabilities of the Parties from the Appointed Date, including but not limited to those specifically provided in this Contract nor shall it affect any continuing obligations which this Contract provides either expressly or by necessary implication, which are to survive its expiry or termination.

ARTICLE 5

PERFORMANCE SECURITY

- 5.1 The Developer shall, for the performance of its obligations hereunder, provide to the Authority, an irrevocable and unconditional performance bank guarantee for a sum equivalent to Rs. [●] (5% (Five) of the Contract Price) as per the format specified in Part A of Schedule 8 ("**Performance Security**"). The Developer shall maintain and keep in force the Performance Security valid for a period of 3 (three) months after completion of Contract Period specified in Clause 4.1.1. Till the time the Performance Security is provided by the Developer pursuant to this clause 5.1 and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Developer.
- 5.2 The Performance Security shall be in a form and manner as may be prescribed by or approved by the Authority and shall be subject to provisions of Clauses 3.2. and 3.3. All costs associated with obtaining, providing and maintaining the relevant Performance Security shall be borne solely by the Developer. The Developer shall at least 30 (thirty) days before the expiry of the Performance Security replace the Performance Security with another Performance Security or extend the validity of the existing Performance Security which shall remain valid and in force till the same is released. If the Developer fails to renew or extend the validity of its Performance Security, when required, then the Authority may encash the same in full and hold the proceeds as cash security.
- 5.3 Intentionally Left blank
- 5.4 If the Contract Price increases for any reason whatsoever pursuant to the terms of this Contract, in that case, the Authority shall give notice and require Developer to revise Performance Security, to ensure that they remain at a value not less than the percentages specified in Clause 5.1 and the Developer shall comply with the same within 7(seven) days of receipt of notice.
- 5.5 Intentionally Left blank
- 5.6 **Appropriation of Performance Security**
- 5.6.1 The Authority shall have the absolute and unqualified right to encash and draw down the amount of Performance Security, as the case may be, in terms of this Article 5, including but not limited to:
- i. at any time if the Developer has failed to observe any of the terms, conditions or provisions of this Contract or perform any of its obligations under this Contract.; or
 - ii. upon occurrence of a Developer's event of default described in Clause 16.1.1; or

- iii. at any time if the Developer has failed to mobilize the Developer's Personnel, machinery and requisite infrastructure for undertaking the Works in terms of this Contract to the satisfaction of Authority; or
- iv. on or after the date which is [30 (thirty) days] prior to the scheduled expiration of such Performance Security if on such date the Authority is not yet obliged under this Contract to release such Performance Security but the Developer has not provided replacement Performance Security conforming to the terms of this Contract.

5.6.2 Upon such encashment and appropriation from the Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate the Contract in accordance with Article 16 Developer shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the default mentioned in Clause 5.5.1, and in the event of the Developer not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Contract in accordance with Article 16.

5.7 Release of Performance Security

The Authority shall release the Performance Security within 90 (ninety) days of the expiry of the Defects Liability Period or the extended Defects Liability Period, as the case may be, under this Contract. Notwithstanding the aforesaid, the Parties agree that the Authority shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period or the extended Defects Liability Period, as the case may be, have been rectified.

5.8 The Developer agrees and acknowledges, and shall ensure that the Performance Security shall be assignable by the Authority.

5.9 Retention Money

- i. For works carried out on monthly basis, effective payment shall be made in accordance with the provisions of Schedule 6 (the "**Retention Money**").
- ii. Upon occurrence of a Developer's Default during the Term, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Developer's Default.
- iii. The Retention Money shall remain in force and effect for a period of 3 (three) months from issuance of Provisional Certificate or Works Completion Certificate whichever is earlier, subject to adjustment as provided in this Clause 5.9. However, the Authority shall have right to retain balance Retention Money, up to satisfactory

completion of Works as per the Authority, for a maximum period of 6 (six) months from the date of Provisional Certificate or Works Completion Certificate, whichever is earlier.

- iv.** The Parties agree that in the event of termination of this Contract, the Retention Money specified in this Clause 5.9 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Article 16.

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ARTICLE 6

REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Developer

The Developer hereby represents and warrants to the other Party as follows:

6.1.1 Due Organisation

It is a company/trust/society/firm/sole proprietorship³ duly organised, validly existing and in good standing under the Applicable Laws of the jurisdiction where it is incorporated and has all requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in India and in any other jurisdiction in which its performance of the Contract makes such qualification necessary.

6.1.2 Due Authorization; Binding Obligation

It has full power and authority to execute and deliver the Contract and to perform its obligations hereunder, and the execution, delivery and performance of the Contract by it have been duly authorized by all necessary action on its part. This Contract has been duly executed and delivered by it and is such Party's legal, valid and binding obligation enforceable in accordance with its terms.

6.1.3 No Insolvency

It is not in liquidation or subject to an administration order and no administrator, administrative receiver or receiver has been appointed over the whole or a substantial part of its property, assets or undertaking, and no equivalent or analogous event has occurred.

6.1.4 Non-Contravention

The execution, delivery and performance of the Contract by it and the consummation of the transactions contemplated hereby do not and will not contravene the certificate of incorporation, constitutional documents, or by-laws of such Party, and do not and will not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which such Party is a party or by which it or any of its properties is bound or affected.

³ Mention relevant nature of entity

6.1.5 Commercial Interest

The execution and performance of the Contract by it is in its commercial interest and to its corporate benefit and it has assessed and satisfied itself as to the existence of such corporate benefit.

6.1.6 Regulatory Approvals

All Approvals including governmental or other authorisations, approvals, orders or consents required (if any) in connection with the execution, delivery and performance of the Contract by it have been obtained (or will be obtained in a timely manner) to allow Completion of the Works during the Term.

6.1.7 Compliance with Applicable Laws

It has not contravened any Applicable Laws or conditions of any Approvals granted to it, as on the Effective Date, which contravention would have an adverse effect on the Project or any license, registration, permission, consent or approval held by it in relation to the Project. Further, it has not violated any intellectual property right related laws, rules and regulations, nor does any infringement of any intellectual property rights of any third party exist.

6.2 Representations and Warranties of the Authority

The Authority represents, warrants and covenants to the Developer that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Contract and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Contract, exercise its rights and perform its obligations, under this Contract;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Contract;
- (c) it has the financial standing and capacity to perform its obligations under this Contract;
- (d) this Contract constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Contract; and
- (f) it has good, legal and valid right and title to the Site, and has the power and authority to handover the Site to the Developer for the development of the

Project in accordance with the terms of this Contract.

6.3 **Continuing Representations**

Each representation and warranty given by the Parties in this Article 6 (Representations and Warranties) and elsewhere in the Contract shall be deemed repeated on a continuing basis throughout the term of the Contract.

6.4 **Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Contract.

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ARTICLE 7

OBLIGATION OF THE AUTHORITY

7. OBLIGATIONS OF THE AUTHORITY

7.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Contract or arising hereunder.

7.2 The Authority shall be responsible by itself or through its representative for the correctness of the Scope of the Project, Technical Specifications and Standards and the criteria for Testing of the completed Works.

7.3 Approvals

The Authority shall provide all required assistance and support to the Developer that may be required under law or otherwise for obtaining all Approvals which are required for the Authority to develop, construct, own and operate the Project. It is agreed and acknowledged by the Parties that the responsibility of obtaining all required Approvals shall be with the Developer, who shall obtain such Approvals in the name of the Authority including but not limited to NoC, building construction permission and building use permission. However, the Authority shall borne the statutory fees required for such approvals. It is further clarified that, the cost towards the liaising, documentation and etc. shall be borne by the Developer. It is also acknowledged by the Developer that the Authority shall not in any way be responsible for the timely procurement of the Approvals so long as the Authority has provided its assistance as and when required by the Developer.

7.4 Procurement of Right of Way

7.4.1 The Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Developer, commencing from the Appointed Date, licence rights in respect of the Site (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in the Schedule 2 hereto on an "as is where is" basis, free of any encumbrances, to undertake the Project, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Term, for the purposes permitted under this Contract, and for no other purpose whatsoever.

The Authority will provide single-point electricity and water connection. Developer shall be responsible for making their own arrangement for drawing water and electricity from the single interconnection point provided by the Authority. In case of non-availability, the Developer shall have to make the arrangement for drawing water and electricity with necessary approval from authority. The application for electricity and water (if applicable) must be obtained in the name of the Authority. However, water

and electricity meters shall be installed and maintained by the Developer on its own cost. The electricity and water charges during the entire term of contract shall be borne by the Developer. In case water or electricity charges are paid by the Authority, then based on the utilization amount of the respective utility, the Developer shall be required to reimburse the relevant amount to the Authority by the way of pro-rata adjustment of the utilization amount from monthly payments, and the Developer hereby unconditionally agrees to the same. Reimbursement shall be at the utilization rate as notified by the Authority in writing. Site illumination shall be responsibility of the Developer.

It is further clarified that all liaisoning and coordination with the concerned departments(if required) to obtain the connection will be the responsibility of the Developer.

All equipment like switches, power backup machines, DG or anything else required for the operation shall be procured and maintained by the Developer on its own cost and with prior approval from the Authority. The same shall be placed/ stored within the Project Site.

- 7.4.2 The Authority shall provide space for accommodating all the equipment and components required for the Works throughout the term. The location and the area of the same shall be mutually decided by the Authority and the Developer. . In case, the Developer required additional space from the approved space allotted by the Authority then Developer shall make their own arrangement at their own cost and Authority is not liable to provide any additional space.
- 7.4.3 **Labor Colony:** - For Construction Period, the Authority shall provide space for the labor of the Developer for residing in campus. The Developer shall make their own arrangement for the labor. The area and location of the space shall be mutually decided between the Authority and Developer and decision of the Authority shall be final in this regard. In case, the Developer requires additional space from the approved space allotted by the Authority then Developer shall make their own arrangement at their own cost and Authority is not liable to provide any additional space. Developer shall be responsible for the development, safety, housekeeping, and security of the allotted space and shall be liable for damages in case of non-compliance towards the safety, housekeeping, and security of the allotted space. If Authority intends to develop the allocated space for the new development of the facilities or any other purposes, then Authority reserves the right to ask the Developer to vacate the allotted space and Developer needs to develop the labor colony to new location which shall be allotted by the Authority at no extra cost to the Authority. The Developer shall be responsible for obtaining and maintaining the statutory license as per local municipal laws for the development and maintenance of the labor colony. The Developer shall also shall

ensure that all the labor residing and working in campus shall have necessary police verification.

For Labor Colony, the Developer shall be responsible for making their own arrangements for drawing water and electricity from single point of connection provided by the authority in any place in the campus on chargeable basis.

7.5 **Authority's Representative**

- 7.5.1 The Authority shall appoint a duly authorised representative ("**Authority's Representative**") to act on its behalf under this Contract. The Authority's Representative shall be such person whose name, address, contact number and designation have been provided in Schedule 5 (Authority's Representative).

The Authority's Representative shall carry out the duties assigned to them, and shall exercise the authority delegated to them, by the Authority. Unless and until the Authority notifies the Developer otherwise by written notice, the Authority's Representative shall be deemed to have the full authority of the Authority under this Contract, except in respect of termination by the Authority under Clause 16.1 (Termination for Developer's Default).

If the Authority wishes to replace any person appointed as Authority's Representative, the Authority shall, within 2 (two) days of such replacement, give Developer notice of the substituted Authorized Representative's name, address, duties and authority, and of the date of appointment.

However, it is acknowledged by the Developer that any action, omission or failure to take action on part of the Authority's Representative under this Clause 7.5 shall not in any way relieve the Developer from its obligations under this Contract.

- 7.5.2 The Authority at its own cost and expense, has appointed a Design and Technical Agency ("**DTA**") to be the independent consultant under this Contract to monitor the Project during the Term. The DTA shall discharge its duties and functions substantially in accordance with Article 13 and the terms of reference set forth in Schedule 9. The Design and Technical Agency for the Project is M/s Suresh Goel and Associates.
- 7.5.3 The Authority may also engage or appoint its engineer(s) or its official(s) to observe and monitor the Project during the Term of the Contract.

7.6 **Other Authority's Personnel**

The Authority or the Authority's Representative may, from time to time, assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer and/or independent inspectors appointed to inspect and/or test items of equipment and/or materials. The assignment,

delegation or revocation shall not take effect until a copy each of such assignment, delegation or revocation has been received by the Developer. Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority.

7.7 Delegated Persons

The Authority's Representative and assistants, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Developer to the extent defined by the delegation and disclosed to the Developer in writing. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the Authority.

7.8 Payments

The Authority shall make payments to the Developer in accordance with Article 10 (Contract Price and Payment) in consideration of the Developer performing the Scope of Project and other obligations under this Contract for the Project.

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ARTICLE 8 OBLIGATIONS OF THE DEVELOPER

8. OBLIGATIONS OF THE DEVELOPER

8.1 General Obligations of the Developer

8.1.1 Performance of Scope of Project

The Developer hereby acknowledges and agrees that it shall perform the Works forming part of the Scope of Project in accordance with this Contract, Schedule 2 (Scope of Works), Schedule 3 (Technical Specifications and Standards), Schedule 10 (Bill of Quantities) and Applicable Laws.

8.1.2 Site Data

The Developer shall be responsible for obtaining all necessary information as to risks, contingencies and other circumstances which may influence or affect the Developer and its performance of Scope of Project. The Developer is deemed to have inspected and examined the Site, its surroundings, and other available information, and to satisfy themselves about the Scope of Project under this Contract, including, without limitation:

- (a) the form and nature of the Site, including sub-surface conditions, local conditions etc.;
- (b) the hydrological and climatic conditions;
- (c) the extent and nature of services and goods necessary for the execution and Completion of the Works and the remedying of any defect;
- (d) the Applicable Laws, procedures and labour practices of the state in which the Project shall be located; and
- (e) the Developer's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.
- (f) The Developer needs to ensure he has studied all existing and proposed design, all relevant data, all documents, and any other details with required to complete the project. In case of any clarification required in any of details, Developer is required to ask the same in pre-bid conference prior to execution of this Contract.

The Developer shall be responsible for verifying and interpreting all such data and the Authority shall have no responsibility for the accuracy, sufficiency or completeness of any such data.

8.1.2A Approvals for the Project

The Developer shall in addition to its obligations elsewhere set out in this Contract:

- i. Make or cause to be made, necessary applications to the relevant Governmental Instrumentality with such particulars and details as may be required for obtaining the required Approvals and obtain and keep in force and effect such Approvals in conformity with the Applicable Laws as are required to perform its obligations under this Contract; and procure as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Works.
- ii. The Authority will reimburse the Developer for the statutory costs incurred in obtaining the necessary Approvals like BU Certificate, Fire NOC, Lift NOC, Electrical and Equipment NOC if any, Fitness certificate for rides if any etc. However, all expenses related to liaison and coordination with relevant authorities for seeking Approvals shall be the responsibility of the Developer. The Developer is required to seek Approvals, regardless of whether such requirement is explicitly mentioned in the BOQ.
- iii. The Developer shall submit to the Authority, copies of all such Approvals required to be obtained by the Developer and have been obtained by them.

8.1.3 Compliance with Applicable Laws

The Developer is expected to know all the Applicable Laws related to its Scope of Project and its obligations under this Contract, and shall undertake the Project in accordance with the Applicable Laws. The Developer shall comply with the terms and conditions of all Approvals in the performance of its obligations under this Contract.

The Developer shall submit to the Authority, copies of all such Approvals required to be obtained by the Developer and have been obtained by them.

8.1.4 Conduct

The Developer shall at all times during the progress of the Contract use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the labour of its Subcontractors.

8.1.5 Labour and Other Statutory Compliance

The Developer shall in respect of employees/workers employed by it either directly or through any of its Subcontractors for execution of the Scope of Project, comply with all Applicable Laws including relevant labour laws for such employment.

The Developer shall provide and maintain such accommodation and amenities, as it may consider necessary for all its staff and labour, employed / engaged for the purpose of or in connection with the Contract, including all fencing, water supply (both for drinking and other purposes), electricity supply, sanitation, cookhouses, fire prevention and firefighting equipment, and other requirements in connection with such accommodation or amenities in compliance with the Good Industry Practice.

8.1.6 Obligations relating to Developer's Personnel

The Developer shall ensure and procure that the personnel engaged by it or by its Sub-contractors for performance of its obligations under this Agreement are at all times appropriately qualified, skilled and experienced in their respective functions in conformity with Applicable Laws and Good Industry Practice.

The Authority's engineer may, for reasons to be specified in writing, direct the Developer to remove any member of the Developer's or Sub-contractor's personnel from the Project provided that any such direction issued by the Authority's engineer shall specify the reasons for the removal of such person.

The Developer shall, on receiving a direction from the Authority's engineer under the provisions of the above stated clause, ensure and procure the removal of such person or persons from the Project with immediate effect. The Developer shall further ensure that such persons have no further connection with the Project.

8.1.7 Obligations relating to Developer's care of the Works

The Developer shall bear full risk in and take full responsibility for the care of Works, and of Materials, goods and equipment for incorporation therein, on and from the Appointed Date and until the date of Provisional Certificate, with respect to the Works completed prior to the issuance of the Provisional Certificate, and/or Completion Certificate, with respect to the Works referred to in the Punch List, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Authority.

8.1.8 Co-operation

The Developer shall, as specified in this Contract or as instructed by the Authority, allow appropriate opportunities for carrying out work to:

- (a) the Authority's personnel;
- (b) any other Developers employed by the Authority; and
- (c) the personnel of any legally constituted public authorities who may be employed in the execution on or near the Site of any work not included in the Contract.

If, under the Contract, the Authority is required to give the Developer possession of any foundation, structure, plant or means of access in accordance with Developer's Documents, the Developer shall submit such documents to the Authority in the time and manner stated in the Authority's requirements.

8.1.9 Quality Assurance

The Developer shall ensure quality assurance and demonstrate compliance with the requirements of the Contract in accordance with the terms contained in this Contract. The Authority shall be entitled to inspect any aspect to ensure compliance of this provision.

Compliance with this quality assurance provision shall not relieve the Developer of any of its duties, obligations or responsibilities under the Contract.

The Developer shall, within 30 (thirty) days of the Appointed Date, submit to the Authority its Quality Assurance Plan (“QAP”) which shall include the following:

- (a) organisation, duties and responsibilities, procedures, inspections and documentation;
- (b) quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications and Standards and Good Industry Practice; and
- (c) internal quality audit system.

The Authority/DTA shall convey its comments to the Developer within a reasonable time stating the modifications, if any, required, and the Developer shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 8.1.8.

8.1.10 Training

The Developer shall carry out the training of the Authority’s Personnel as applicable regarding the operation of the Project including training in relation to Fire, electrical and mechanical items in the project within 2 (two) months after the completion of construction activity. During this period, personnel of the Authority would work side by side with the Developer and Developer’s Personnel.

The minimum personnel to be deployed by the Developer during the Term are as specified in the Programme Schedule submitted and approved by the Authority. It is further clarified that Developer shall be responsible for the complete development of the Project within the Term, including deployment of any additional personnel as required..

8.2 Other Obligations of the Developer

8.2.1 The Developer shall, during the Term of this Contract, perform its Scope of Project and all other obligations under this Contract consistent with the requirements set forth in this Contract and Applicable Laws, and the terms and conditions of the applicable Approvals. The details and particulars of the Scope of Project to be performed by the Developer under this Contract are specified in Schedule 2 (Scope of works).

8.2.2 The Developer agrees to perform the Scope of Project and do all other things required/considered prudent so to do, in relation thereto, in accordance with the parameters set forth in Clauses 8.1 and 8.2. As part of its obligations under this Contract, the Developer will procure and pay for, in its own name as an independent Developer and not as an agent of the Authority, all materials, equipment, supplies, manufacturing, fabrication, services necessary in connection with performance of the Scope of Project in accordance with this Contract. All employees, representatives or Subcontractors (if any) engaged by the Developer in connection with the performance

of its Scope of Project and obligations under this Contract will be under the complete control of the Developer and will not be deemed to be employees of the Authority, and nothing contained in this Contract or in any sub-contract awarded by the Developer will be construed to create any contractual relationship between any such employees, representatives or Subcontractor and the Authority.

8.2.3 The Developer shall be solely responsible for all means, methods, techniques, sequences and procedures in connection with the performance of the Scope of Project and obligations under the provisions of this Contract. Without limiting the generality of the foregoing, the Developer shall perform the Scope of Project:

- (a) in a continuous manner in accordance with the Programme Schedule;
- (b) in its entirety, in compliance with Applicable Laws and the applicable Technical Specifications and Standards, by using methods which are acceptable as per Good Industry Practice; and
- (c) by ensuring that all design and engineering is based on the design criteria set out in the Technical Specifications and Standards (or as may be agreed with the Authority). Failing any reference in the Technical Specifications and Standards or such agreement, the design criteria specified by the Authority shall be binding on the Developer.

8.2.4 The Developer shall also perform all works and services, not specifically stated in this Contract, but which:

- (a) can be reasonably inferred from this Contract as being required for the Project;
- (b) can be reasonably inferred in accordance with Good Industry Practice, that the performance or causing the performance of such works or service, was contemplated as part of this Contract; or
- (c) are necessary to enable the Developer to fulfil its obligations under this Contract,

in each case, as if such works and services were expressly mentioned in this Contract and the same shall be considered a part of its Scope of Project and shall be performed by the Developer, without any additional cost to the Authority.

8.2.5 The Developer shall carry out and complete its Scope of Project in relation to its design and engineering obligations, in accordance with the Technical Specifications and Standards, Good Industry Practice, design criteria, functional specifications, , Applicable Laws and other engineering requirements and information provided by the Authority. The Developer shall be responsible for developing such additional information, as may be required to perform the pre-engineering survey and engineering of the Project. The Developer shall prepare the engineering documents, specifications and other supporting documents set out in its Scope of Project and submit the same to the Authority/DTA.

- 8.2.6 Except as otherwise expressly provided in this Contract, the Developer agrees and acknowledges that it shall perform all its obligations and responsibilities under this Contract at its own risk, cost, and expense.
- 8.2.7 In the absence of any standard specification in relation to any part of its Scope of Project, the instructions/directions of the Authority/Authority's Representative regarding all technical matters, shall be binding on the Developer provided such instructions/directions are necessary to meet the functional requirements specified in the Technical Specification and Standards.
- 8.2.8 The Developer shall at all times take all precautions to maintain the health and safety of the Developer's Personnel, health and safety infrastructure and all necessary welfare and hygiene requirements in terms of the Applicable Laws and Good Industry Practice during the Term.
- 8.2.9 Care shall be taken by the Developer during execution of the work to avoid damage to the existing structures around the Site. The Developer shall be responsible for repairing all such damages and restoring the same to the original state at its cost. Developer shall also remove all unwanted and waste materials arising out of the installation from the site of work from time to time.
- 8.2.10 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archeological interest found on the Site shall be placed under the care and authority of the Authority. The Developer shall take reasonable precautions to prevent Developer's Personnel or other persons from removing or damaging any of these findings.
- The Developer shall, upon discovery of any such finding, promptly give notice to the Authority, who shall issue instructions for dealing with it. If the Developer suffers delay and/or incurs cost from complying with the instructions, the Developer shall give a further notice to the Authority and shall be entitled subject to Clause 18.2 [Developer's claim] to:
- (a) an extension of time for any such delay, if completion is or will be delayed; and
 - (b) payment of any such cost, which shall be added to the Contract Price.

After receiving this further notice, the Authority shall accordingly decide.

8.2.11 Obligations relating to information

Without prejudice to the provisions of Applicable Laws and this Contract, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Developer shall provide such information to the Developer forthwith and in the manner and form required by the Authority.

After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Developer's activities under or pursuant to

this Contract which the Authority proposes to publish, the Developer shall provide such comments to the Authority in the manner and form required by the Authority.

8.2.12 Ethics and Corrupt Practices

The Developer acknowledges that the Authority and the Authority's Personnel have a longstanding reputation for honesty and integrity in their business dealings and for their policies promoting lawful and ethical behavior. The Authority is committed to upholding that reputation. The Authority's Personnel are prohibited from accepting bribes or kickbacks in any form and further, are prohibited from accepting goods or services provided by a Subcontractor, supplier or vendor for the personal benefit of the Authority's Personnel, his or her relatives, or any entity in which the Authority's Personnel or his or her relatives has a personal interest. This prohibition includes, but is not limited to the work performed on an Authority's Personnel's residence and applies regardless of whether the beneficiary of the goods or services pays for them. Therefore, if the Developer offers or provides a bribe or a kickback to any Authority's Personnel, or offers or provides goods and services to any Authority's Personnel, his or her relatives, or any entity in which the Authority's Personnel or his relatives has a financial interest, the Developer will be considered to be in material breach of the Contract.

The Developer shall ensure that it does not give or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

- (a) for doing or forbearing to do any action in relation to the Contract; or
- (b) for showing or forbearing to show favour or disfavor to any person in relation to the Contract,

and shall ensure that none of the Developer's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this clause.

The Developer undertakes to inform the Authority of any action by any entity or person associated with the Site or the Works that the Developer believes violates any Applicable Laws, rule or regulation or any clause of this Contract.

The Developer's violation of any of the foregoing shall be considered as a Developer's default, and the Authority shall be entitled to its rights and remedies under the provisions of this Contract and Applicable Laws.

The Developer represents and warrants that the Developer and, to the best knowledge of the Developer after due inquiry, the Developer's Personnel are in compliance in all respects with all Applicable Laws in relation to the construction and performance of the Works.

The Developer represents and warrants, and undertakes to the Authority that the Developer (nor any of their directors, officers, agents or employees), nor to the best of knowledge of the Developer after due inquiry, none of the Developer's Personnel, is aware of, or has taken any action while acting on behalf of the Developer or its Subcontractors or vendors, directly and indirectly, that would result in a violation by

such persons of any legislation in any jurisdiction dealing with bribery or corruption, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any domestic or foreign official, public authority, political party or official thereof or any candidate for any political office, in contravention of any legislation in any jurisdiction dealing with bribery or corruption.

The Developer represents and warrants, and undertakes to the Authority that the Developer and Developer's Personnel have, to the best of knowledge of the Developer after due inquiry, conducted their businesses in compliance with Applicable Laws and have instituted and maintained policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

The Developer represents and warrants, and undertakes to the Authority that the Developer (nor any of their directors, officers, agents or employees) have not, and to the best of knowledge of the Developer after due inquiry, no director, employee, agent or any other person authorized, acting on behalf of the Developer has, directly or indirectly:

- (a) used any corporate funds (i) to offer or make any political contribution or gift for any purpose relating to any political activity that would be unlawful under Applicable Law, (ii) offered or made any payment to any governmental official that would be unlawful under Applicable Law;
- (b) made any payoff, influence payment, bribe, rebate, kickback or payment to any governmental official (whether in the form of property or services, or in any other form), that would be unlawful under Applicable Law;
- (c) committed, offered or attempted to take any of the actions described in subsections (a) and (b) hereinabove.

The provisions of this Clause shall be incorporated into any subcontract the Developer enters into with the Subcontractor, in connection with the performance of the Work.

8.2.13 Unforeseeable difficulties

Except as otherwise specified in the Agreement:

- (a) the Developer accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- (b) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (c) the Construction Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

For the purposes of this Clause, unforeseeable difficulties include physical conditions like man-made or natural physical conditions including sub-surface and hydrological conditions which the Developer encounters at the Site during execution of the Works.

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ARTICLE 9

SUBCONTRACTORS

- 9.1 The Developer shall not subcontract the whole or substantially the whole of its relevant Scope of Project and obligations under this Contract without the prior written approval of the Authority. The Developer shall be responsible for the proper performance by the Subcontractor(s) and also be liable for the acts or defaults of its Subcontractor(s), its agents or employees, as if they were the acts or defaults of the Developer. The Developer shall give the Authority not less than [21(twenty one)] days' notice of:
- (a) the intended appointment of a Subcontractor, with detailed particulars which shall include its scope and other relevant experience; and
 - (b) the intended commencement of Subcontractor's work.

The Authority shall review the above notice and relevant documents mentioned in this Clause 9.1 within a period of 14 days from receipt. The Authority will then either approve or reject the proposed Subcontractor to be appointed by the Developer. The decision of the Authority shall be final in this matter.

- 9.2 The labour required during Term may be hired through third party entities or subcontracted without requiring any prior approval of the Authority.
- 9.3 The Developer shall pay and satisfy, or cause to be paid and satisfied, all undisputed invoices and claims issued in accordance with the subcontracts of any Subcontractor in so far as they relate to the Scope of Project. The Developer shall ensure that Subcontractors comply with the terms and conditions of, the Approvals and requirements of Applicable Laws.

ARTICLE 10
CONTRACT PRICE AND PAYMENT

10. CONTRACT PRICE AND PAYMENT

10.1 Contract Price

The consideration for the Developer for executing the Scope of Project set out in Schedule 2 (Scope of Works) of this Contract and performing its obligations under this Contract shall be the Contract Price as specified in Schedule 6 (Contract Price and Payment) of the Contract. The Contract Price shall be **excluding applicable Goods and Service Tax (GST)** but inclusive of all other applicable taxes and duties under the Applicable Laws for undertaking the Project. The Contract Price will be paid in a manner provided in Schedule 6 (Contract Price and Payment). The Contract Price is not subject to any adjustment or escalation except in consequence of situations expressly specified in this Contract. All payments of the Contract Price shall be made by the Authority to the Developer in INR. Subject to adjustments as provided under this Contract, the Authority shall pay amounts under each Invoice directly to such bank account(s) of the Developer, as may be instructed by the Developer to the Authority.

10.1.1 The Developer shall be deemed to have satisfied themselves as to the correctness and sufficiency of its Contract Price after taking into consideration all unforeseeable difficulties and costs involved in executing its Scope of Project and obligations under this Contract. Unless otherwise stated in this Contract, the Contract Price cover respectively all of the Developer's obligations under this Contract and all things necessary for the proper design, execution and Completion of the Works during the Term and the remedying of any defects during the Defect Liability Period.

10.1.2 No payment by the Authority to the Developer shall be deemed to constitute acceptance by the Authority of the Works or any part(s) thereof and shall not relieve the Developer of any of its obligations under this Contract.

10.2 Terms and procedure of payment of Contract Price

10.2.1 The Developer will raise Invoice for its Scope of Project to the DTA on successful completion of Works as provided in Schedule 6 (Contract Price and Payment) of this Contract. The Invoices shall be accompanied with relevant supporting documents evidencing achievement of Works and any other documents required by the Authority/DTA in this regard. For avoidance of doubt, it is clarified that the Developer shall, be required to submit the supporting documents to estimate the completion of Works and the value of the completed Works (in value terms) as per Schedule 6, from the Bill of Quantities in Schedule 10. The same shall be technically verified by the DTA in line with the terms of contract and submitted to the Authority with necessary recommendations. The pro-forma of the Invoice and the documents and details to accompany it, shall be mutually discussed and agreed to by the Parties, provided that the Developer shall at all times ensure that invoices are raised in accordance with the

relevant provisions of Applicable Laws, so as to enable the Authority to avail credit of the taxes indicated in the said invoice.

- 10.2.2 In the event the Authority raises any objection to the invoices raised by the Developer, such matter shall be mutually discussed and settled in an amicable manner. Notwithstanding any such objection or dispute, the Authority shall make payment of the undisputed amount under the invoice to the Developer within 45 (Forty-five) days after receipt by the Authority of such invoice, and the disputed amount shall be paid immediately after the settlement. Further, the Authority has the right to withhold the whole or part of any payment claimed by the Developer under the invoice (including the disputed amount under the invoice) which, in the opinion of the Authority, is necessary for protection of the Authority from loss on account of claims against the Developer or failure by the Developer to make due payment to the Authority, its Subcontractors or employees or not having paid taxes, dues, fees, charges etc.

For the avoidance of doubt, it is clarified that if an invoice is not accompanied by the supporting documents or if the invoice amount is disputed or withheld for any reason by the Authority in accordance with the terms of this Contract, then such amounts of the invoice shall not be due and payable by the Authority, until the dispute is resolved or the supporting documents have been provided by the Developer, as the case may be. Further, the withholding or non-payment of any amounts by the Authority pursuant to this Clause 10.2.2 shall not constitute or be considered as Authority's Default under Clause 16.3.1 of this Contract.

- 10.2.3 Other than amounts properly withheld pursuant to Clause 10.2.2, the Authority shall pay all undisputed payments within 45 (Forty-five) days of receipt of the invoices along with required supporting documents, if any ("**Payment Due Date**") from the Developer. If the Authority fails to pay any amount due and payable to the Developer by the relevant Payment Due Date, then the Developer may by giving the Authority a written notice require the Authority to make payment of the amounts due within an additional period of 30 (thirty) days calculated from the Payment Due Date. In the event the Authority fails to pay the outstanding amount beyond this additional period of 30 (thirty) days, then the Authority shall be liable to pay to the Developer interest on the unpaid sum starting from the end of such additional period, at a rate equal to the Base Rate plus 2 (two) percent, in each case compounded monthly until the date of actual payment of such outstanding dues. A Developer's entitlement to such interest shall arise automatically without requirement of any notice and shall be without prejudice to any other right or remedy.

- 10.2.4 The submission of an invoice by the Developer shall be deemed to be a confirmation by the Developer that it has no additional claims, except as may already have been submitted in writing, for anything that has occurred up to and including the last day of the period covered by such invoice.

- 10.2.5 Each Party shall be responsible for respective taxes in relation to its obligations and Scope of Project under this Contract. The Authority shall withhold from payments to be made to the Developer, and pay to the relevant Government Instrumentality, any and

all taxes, cess and levies required to be withheld pursuant to Applicable Laws and the Contract Price shall be deemed to include such taxes, levies or cess. A certificate for such tax deducted at source would be provided by the Authority to the Developer immediately on deposit of such taxes with the relevant Government Instrumentality.

10.3A No Payment in case of wrong execution of work

In case Developer executes Works in violation to the terms of the Part A (Works) of Schedule 2, Schedule 3- Technical Specifications including drawings and other terms and conditions of the Contract, then the Authority has right to withhold payments of said Works and the Developer shall be required to rectify said Works at its own risk and cost to ensure that it shall be in adherence to terms. In case, the Authority has already made payment of such defective Works, then it shall have right to offset the said payment against subsequent amount payable by the Authority to Developer.

10.3 Taxes and Duties

- 10.3.1 In case the Developer desires income tax deduction as well as works contract tax at source at a lower rate, under any legislation, double taxation treaty and/ or any advance ruling, then the Developer shall be responsible for obtaining the necessary authorization from the concerned tax authority authorising the deduction of tax at source at a lower rate/value and shall provide Authority with the original copy of such authorisation.
- 10.3.2 The Developer shall be fully responsible for meeting all tax obligations that legally vest upon the Developer and shall keep the Authority fully indemnified in this regard.
- 10.3.3 If the Authority is eligible for deemed export benefits, such benefits, to the extent applicable, would be passed on by the Developer to the Authority. The Developer will inform the Authority of the conditions required to be met/documents required to be submitted by the Authority in order to avail such benefits within reasonable timelines. Any rejection/ delay in availing such benefit, due to any default of the Developer, would be to the Developer's account and the Authority would be eligible for reimbursement of deemed export benefits.
- 10.3.4 The Authority shall deduct tax and issue the relevant certificates for tax deduction at source in accordance with Applicable Laws, from the payments made by the Authority to the Developer.
- 10.3.5 All the Parties to this Project shall obtain a tax registration number with the Indian tax authorities i.e. Permanent Account Number (PAN). In case any Party does not furnish its PAN, the payer shall deduct tax at source as provided in the Income Tax Act, 1961, or in the relevant Finance Act, or at such higher rate as may be required by Section 206AA of Indian Income Tax Act, 1961, from time to time.
- 10.3.6 Under this Contract, the Developer shall furnish the requisite documents and declarations which may be required by the Authority at the time of withholding tax on payments to be made.

10.4 Final Payment Statement

(i) Within 30 (thirty) days after receiving the Works Completion Certificate under Clause 11.6, the Developer shall submit to the Authority and DTA for consideration 6 (six) copies of a Final Payment Statement (the “**Final Payment Statement**”) for Works, with supporting documents showing in detail, in the form prescribed by the DTA:

- a) the amounts received from the Authority against each claim; and
- b) any further sums which the Developer considers due to it from the Authority.

If the DTA disagrees with or cannot verify any part of the Final Payment Statement, the Developer shall submit such further information as the DTA may reasonably require. The DTA shall deliver to the Authority:

- i. an Interim Payment Certificate for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Article 18; or
- ii. a Final Payment Certificate in accordance with Clause 10.6 if there are no disputed items.

(ii) If the DTA does not prescribe the form referred to in Clause 10.4 (i) within 15 (fifteen) days of the date of issue of the Works Completion Certificate, the Developer shall submit the statement in such form as it deems fit.

10.5 Discharge

Upon submission of the Final Payment Statement for Works under Clause 10.4, the Developer shall give to the Authority, with a copy to the DTA, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Developer in respect of this Developer for all the Works arising out of this Contract, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to Clause 10.6.

10.6 Final Payment Certificate

Within 30 (thirty) days after receipt of the Final Payment Statement for Works under Clause 10.4, and the written discharge under Clause 10.5, and there being no disputed items of claim, the DTA shall deliver to the Authority, with a copy to the Developer, a final payment certificate (the “**Final Payment Certificate**”) stating the amount which, in the opinion of the DTA, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the DTA shall ascertain from the Authority all amounts previously paid by the Authority and for all sums to which the Authority is entitled, the balance, if any, due from the Authority to the Developer or from the Developer to the Authority, as the case may be.

10.7 Intentionally Deleted.

10.8 Correction of Interim Payment Certificates

The DTA may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the DTA.

10.9 Change in Law

Change in Law means the occurrence of any of the following after the Effective Date :

- (a) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Applicable Laws (other than levy of additional/new taxes or change in the rate of applicable taxes), including rules and regulations framed pursuant to such Applicable Laws;
- (b) any change in the interpretation or application of any Applicable Laws (other than tax Laws) by any Governmental Instrumentality or any competent court of law having the legal power to interpret or apply such Applicable Laws;
- (c) the imposition of a requirement for obtaining any consents, clearances and permits which was not required earlier under Applicable Laws;
- (d) any change required in the terms and conditions of the Contract prescribed for obtaining any consents, clearances and permits or the inclusion of any new terms or conditions for obtaining such consents, clearances and permits; or

However, notwithstanding anything contained in this Contract, Change in Law shall not cover any change on account of any change in rate of taxes (including tax applied on the income of a Developer) or change in tax as per Applicable Laws.

10.9.1 If as a result of Change in Law, the Developer suffers any additional costs in the execution of the Works or in relation to the performance of its other obligations under this Contractor, the Contractor shall, within 7 (seven) days from the date it becomes reasonably aware of such addition in cost, notify the Authority with a copy to the Authority Representative of such additional cost due to Change in Law. The Developer shall also provide documentary proof of any increase in its costs for establishing the impact of Change in Law.

10.9.2 If as a result of Change in Law, the Developer benefits from any reduction in costs for the execution of this Contract or in accordance with the provisions of this Contract, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in cost, notify the other Party with a copy to the Authority's Representative of such reduction in cost due to Change in Law.

10.9.3 The Authority's Representative shall, within 15 (fifteen) days from the date of receipt of the notice from the Developer or the Authority, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.

ARTICLE 11
EXECUTION & COMPLETION OF WORKS

11. EXECUTION AND COMPLETION OF WORKS

11.1 Execution of Works

11.1.1 Commencement of Works

The execution of the Works by the Developer shall be deemed to have been commenced from the Appointed Date.

11.1.2 Programme Schedule

- i. The Developer, in consultation with the Authority, shall prepare and submit to the Authority a consolidated programme schedule for the Works ("**Programme Schedule**") within 15 (Fifteen) days from the Appointed Date. The Programme Schedule submitted by the Developer under this Contract shall be a base line programme and the Developer shall be responsible to execute its Scope of Project in accordance with the Programme Schedule. Unless otherwise stated in this Contract, the Programme Schedule shall include:
 - a. Project Construction Plan in MS Project with level-4 scheduling which include but not limited to mobilization plan, procurement plan, design drawing deliverables, content approvals and execution of construction works.
 - b. The sequence and timeframe in which the Developer will carry out the Works forming part of its scope, including the anticipated timing of each major stage of the Works;
 - c. Sequence and timeframe in which the Developer shall do the procurement of materials, vendor etc.
 - d. The sequence and timing of inspections and tests of the completed Works specified in this Contract;
 - e. Skilled and technical manpower deployment plan
 - f. Labor deployment plan
 - g. Site logistics plan including machinery deployment
 - h. Labor colony construction and operations plan
 - i. Monthly cashflow plan
 - j. a supporting report on the progress of the Works which shall also include a general description of the methods which the Developer intend to adopt for the execution of each major stage of the Works forming part of its scope.
 - k. Detailed Project Milestones along with the time of completion for each sub activity, clearly specifying the estimated time for their completion.
- ii. The Authority and the Authority's Representative shall review the Programme Schedule within 21 (twenty-one) days of receipt and may either approve it or provide feedback for potential changes. The Developer shall incorporate the suggested changes from the Authority and resubmit the revised Programme Schedule for further approval, as

required. This process will continue until the Authority grants final approval to the Programme Schedule. After approval of the Authority, the timelines for completion of respective milestones shall become unconditionally binding and any delay in completion of the same that is not caused due to Force Majeure or Authority's Default, shall be liable for payment of Liquidated Damages for such delay as per Clause 11.7.

- iii. The Authority and the Authority's Representative shall be entitled to rely upon the Programme Schedule when planning its activities under this Contract. However, it is hereby clarified that the Developer shall be solely responsible for ensuring that the Works are carried out in accordance with the Programme Schedule and are completed during the Term or as mentioned otherwise.
- iv. Without prejudice to anything contained herein, in case the Authority shall have reasonably determined that the rate of progress of Works is such that Completion of the Project is not likely to be achieved by the Completion Date, it may notify the same to the Developer, and the Developer shall, within 15 (fifteen) days of such notice, by a communication inform the Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Completion Date.
- v. With the consent of the Authority, the Developer may revise the Programme Schedule from time to time considering the actual progress of the Works. However, if the Authority, within 21 (twenty-one) days after receiving a revised program schedule from the Developer, fails to give notice to the Developer stating its objection to the revised program schedule or highlighting the extent to which the revised program schedule does not comply with the terms of this Contract, the Developer can proceed in accordance with the revised program schedule, subject to its other obligations under this Contract.
- vi. The Developer shall promptly give notice to the Authority of specific probable future events or circumstances which may adversely affect or delay the execution of the Works. In this event, or if the Authority gives notice to the Developer that a programme fails (to the extent stated) to comply with this Contract or to be consistent with actual progress, the Developer shall submit a revised program schedule to the Authority in accordance with this clause.

11.1.3 Developer's equipment and material

- i. The Developer shall be responsible for all materials and equipment required for the execution of its Scope of Project as per the Programme Schedule. If and when such materials and equipment are brought on to the Site shall be deemed to be exclusively intended for the execution of the Works.
- ii. The Developer shall ensure proper safety of all workmen, material and equipment belonging to it or to the Authority or to others working at the Site. The Developer shall also be responsible for provision of all safety notices and safety equipment required both by the Applicable Laws and the Authority. The Developer shall also provide necessary barriers, warning signals and other safety measures while laying conduits, cables etc. or wherever necessary so as to avoid accident.
- iii. All equipment used in construction and erection by the Developer shall meet Indian/International standards and where such standards do not exist, the Developer

shall ensure the equipment to be absolutely safe. All equipment shall be strictly operated and maintained by the Developer in accordance with the manufacturer's operation manual and safety instructions.

- iv. The Developer shall dispatch materials to Site in consultation with the DTA. Suitable lockable storage accommodation shall be made by Developer at their own cost. Watch and ward shall be the responsibility of Developer. The programme of dispatch of material shall be framed keeping in view the construction progress. Safe custody of all machinery and equipment supplied by the Developer shall be the responsibility of the Developer till the Term of this Contract.

11.1.3A Staff and Labour

- i. Engagement of Staff and Labour
 - a) The Developer shall make its own arrangements for the engagement of all personnel and labour, local or otherwise, and for their payment, feeding and transport.
 - b) The Developer has verified/ shall verify the identity and address of all its employees and officials related to the Works by collecting necessary documentary proof.
 - c) The Developer shall seek a self-declaration from its employees that they have not been convicted of any criminal offence by any court and if any criminal proceedings/charge-sheets have been pending/filed against them. The Contractor shall not employ persons with criminal track record on the project. In cases where it comes to notice later that the employee concerned has concealed any such fact in his self-declaration or commits a criminal offence during the course of his employment, the Contractor shall remove such person from the project.
 - d) The employees and personnel of the Developer shall work under the supervision, control and direction of the Developer and the Developer shall be solely responsible for all negotiations with its employees and personnel relating to their salaries and benefits, and shall be responsible for assessments and monitoring of performance and for all disciplinary matters. All employees / personnel, executives engaged by the Developer shall be in sole employment of the Developer and the Developer shall be solely responsible for their salaries, wages, statutory payments, etc and under no circumstances the personnel shall be deemed to be the employees of the Authority. Under no circumstances the Authority shall be liable for any payment or claim or compensation of any nature to the employees and personnel of the Developer.

- ii. Returns of Labour

The Developer shall deliver to the Authority a detailed return in such form and at such intervals as the Authority may prescribe, showing the details including names, payment details and terms of appointment of the several classes of labour employed by the Developer from time to time for the Works. The Developer shall, in its returns certify that all dues of the workers or labour have been fully paid.

- iii. Labour Laws

- a) The Developer shall obtain all relevant labour registrations and comply with all relevant labour laws applying to its employees, and shall duly pay them and afford to them all their legal rights.

- b) The Developer shall make all deductions of tax at source and all contributions to the Payment of Gratuity, Provident Fund (including Employees' contribution) and Employees' State Insurance Scheme as may be required by Applicable Laws and deposit the aforesaid contributed amount with the appropriate authority/(s).
 - c) The Developer shall require all personnel engaged in the Works to obey all Applicable Laws and regulations. The Developer shall permit Authority to witness labour payments for the Contractors direct labour, or the Subcontractors labour. The Developer shall ensure that all its Subcontractors strictly comply with all labour laws.
 - d) The Authority shall not be liable for any delay/default of the Developer in compliance of the labour laws.
- iv. **Facilities for Staff and Labour**
- In accordance with the terms of this Contract, the Developer shall provide and maintain all necessary accommodation and welfare facilities for personnel engaged for the Works. The Developer shall not permit any personnel engaged for the Works to maintain any temporary or permanent living quarters within the structures forming part of the Works.
- v. **Health And Safety**
- a) The Developer shall at all times take all reasonable precautions to maintain the health and safety of the Developer's Personnel. In collaboration with local health authorities, the Developer shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Developer's and Authority's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
 - b) The Developer shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the Term, the Developer shall provide whatever is required by this person to exercise this responsibility and authority. The Developer shall send, to the Authority, details of any accident as soon as practicable after its occurrence. The Developer shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Authority may reasonably required.

11.1.4 Suspension of Works by the Authority

- (i) The Authority may at any time, instruct the Developer to suspend progress of part or all of the Works for any reason other than reasons attributable to the Developer. During such suspension, the Developer shall protect, store and secure such part or the Project against any deterioration, loss or damage.
- (ii) If the Developer suffers delay and/or incur costs from complying with the Authority's instructions of suspension, it may give a notice to the Authority in this regard as Developer's Claim.
- (iii) After receiving the notice, the Authority shall proceed to agree or determine any matter, the Authority shall consult the Developer in an endeavour to reach an agreement. If the agreement is not achieved, the Authority shall make a fair determination in accordance

with this Contract, taking due regard of all relevant circumstances. The Authority shall give notice to the Developer of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Developer give notice, to the Authority, of its dissatisfaction with a determination within 14 (fourteen) days of receiving it. Either Party may then refer the dispute to dispute resolution in accordance with Article 18 (Claims, Dispute Resolution and Governing Law) of this Contract.

- (iv) If the suspension of any part of the Works by the Authority continues for more than 21 (twenty one) days, the Developer may request the Authority's permission to proceed for execution in such Works. However, if the Authority does not give permission within 15 (fifteen) days after being requested to do so, the Developer may, by giving a notice to the Authority, treat the suspension as a Variation in scope by the Authority treating such Works as being omitted from the scope of Works. If the suspension affects the whole of the Works or entire Scope of Project of the Developer for a period of more than 180 (one hundred and eighty) days, the Developer may give a notice of termination of this Contract in accordance with Clause 16.3.2.

11.1.5 Suspension of Works by Developer

- (i) If the Authority fails to make any undisputed payments due to the Developer within the period stipulated for such payment under this Contract for reasons other than those attributable to the Developer's default or any Force Majeure event, the Developer may after giving not less than 60 (sixty) days' notice to the Authority, suspend performance of its Scope of Project or reduce the rate of execution of its Scope of Project unless and until the Developer has received such payment.
- (ii) If the Developer subsequently receives such payment before giving a notice of termination, the Developer shall resume normal working as soon as is reasonably practicable.

11.1.6 Monitoring of Works

The Authority or the DTA appointed by it, shall be entitled to monitor the progress of the Works during the Term as required by the Authority. The Developer shall afford every reasonable assistance to the Authority/ DTA for doing so. However, the DTA shall not be authorized to relieve the Developer, in any way, of its duties or obligations under this Contract.

11.1.7 Progress Report

The Developer shall send daily progress reports to the Authority/ its representatives, covering the planned activities for the day, labour schedule, material and equipment schedule etc. The Developer, shall also submit monthly progress reports to the Authority showing the progress of the Works under this Contract. The monthly progress reports shall be prepared by the Developer and submitted to the Authority no later than 7 (seven) days after the close of every month; in 4 (three) copies. Each monthly progress report shall include:

- (a) charts and detailed descriptions of progress, including each stage of Completion of the Works;
- (b) photographs showing the status of progress on the Site;
- (c) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- (d) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the Completion in accordance with this Contract, and the measures being (or to be) adopted to overcome delays; and
- (e) any other information as the Authority may require to satisfy itself about the timely Completion of the Works.
- (f) details of work subcontracted and the performance of Sub-contractors.
- (g) records of manpower and Developer's equipment on the Site.
- (h) details of any unresolved disputes or claims, in relation to the Project.
- (i) status of various Approvals and compliance of conditions therein.
- (j) declaration towards compliance with Applicable Laws including but not limited to environmental and labour legislations.
- (k) details of various insurances required to be taken by the Developer; and
- (l) The Developer in consultation with Authority shall make proper arrangements to carry Videography and photography of all major activities, day to day progress, hindrances etc. as per requirement of the employer without charging any additional cost to them and shall submit the same to Authority as directed.

11.1.8 Developer's Documents

- i. Developer shall prepare and maintain a set of documents (referred to as "**Developer's Documents**") relating to the execution of its Scope of Project. The Developer's Documents shall comprise of the following:
 - (a) the Technical Specifications and Standards of the Works being performed by them and Test Reports;
 - (b) documents required to satisfy the terms and conditions of all regulatory Approvals under Applicable Laws pertaining to the execution of Works being performed by them;
 - (c) an up-to-date, complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the Works as executed As-Built Documents ("**As-Built Documents**");
 - (d) Staff training documents; and
 - (e) any other documents as may be specified by the Authority.
- ii. The Developer shall submit a copy of its Developer's Documents to the Authority from time to time for review. Unless otherwise stated in this Contract, each review period of the Developer's Document by the Authority shall not exceed [21 (twenty one)] days, calculated from the date on which the Authority receives a Developer's Document.

- iii. The Authority may, within the review period, give notice to the Developer that the Developer's Documents fails (to the extent stated) to comply with this Contract. If the Developer's Document so fails to comply, it shall be rectified, and resubmitted for review by the Authority at the Developer's cost.
- iv. For each part of the Works, and except to the extent that the Parties otherwise agree:
 - a. execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Developer's Documents which are relevant to its design and execution;
 - b. execution of such part of the Works shall be in accordance with the Developer's Documents, as submitted for review; and
 - c. if the Developer wishes to modify any design or document which has previously been submitted for review, the Developer shall immediately give notice to the Authority. Thereafter, the Developer shall submit revised documents to the Authority in accordance with the above procedure. If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Developer's Documents, they and the Works shall be corrected at the Developer's cost, notwithstanding any consent or approval, by the Authority.

11.2 **Completion of Works**

Unless there is an extension of time granted by the Authority to the Developer under the terms of this Contract for Completion of its Works, the Developer shall, acting in a co-ordinated manner, ensure that its Works are completed and are performed in a manner such that the entire Project is completed by on or before 18 (Eighteen) months from the Appointed Date ("**Completion Date**"). However, without prejudice to the generality of the foregoing, the overall responsibility of ensuring Completion of the Project on or before the mentioned timeline will solely rest with the Developer.

For avoidance of doubt, it is clarified that the entire or any section of the Works would be considered as complete when the execution of such Works under this Contract is complete in all respect and accepted by the Authority for the purpose of issuing the Works Completion Certificate in respect of those Works.

11.3 **Extension in Completion Date**

- 11.3.1 There shall be no extension in the Construction Completion Date unless such an extension:
 - (a) has been expressly agreed by the Authority under a Variation or a Developer's Claim; and
 - (b) is required due to a delay, impediment or prevention caused by or attributable to the Authority, the Authority's Personnel, or the Authority's other Developers on the Site.
 - (c) is required due to the occurrence of a Force Majeure Event.

- (d) any other cause or delay which entitles the Developer to time extension in accordance with the provisions of this Contract.

11.3.2 If the Developer considers itself to be entitled to an extension for its Scope of Project due to reasons specified in Clause 11.3.1 above, Developer shall give notice to that effect to the Authority as a Developer's Claim. When determining each extension of time, the Authority shall review previous determinations and may accept the notice for extension on such terms and conditions as it may deem fit. If such extension in the Project is granted for the Works of the Developer, the Completion Date for the Project shall be extended accordingly.

It is further clarified that, the Developer shall, no later than 30 (thirty) days from the occurrence of an event or circumstance specified in Clause 11.3.1, inform the Authority by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for extension in time in accordance with the provisions of this Contract. Provided that the period of 30 (thirty) days shall be calculated from the date on which the Developer became aware, or should have become aware, of the occurrence of such an event or circumstance.

11.3.3 When any of the cases above have occurred because of the demands, the Developer shall have to assess and justify the extension of time required to satisfy such demand or requirement of extension in the Completion Date .

11.3.4 The Authority shall, on receipt of a claim in accordance with the provisions of Clause 11.3.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority requires any clarifications to examine the claim, the Authority shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Developer shall, on the receipt of the communication of the Authority requesting for clarification, furnish the same to the Authority within 10 (ten) days thereof. The Authority shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Developer its determination of time extension. For the avoidance of doubt, the Parties agree that the Authority shall, in accordance with the provisions of this Contract, notify the Developer of the aforesaid time extension no later than 45 (forty-five) days from the date of receipt of the Developer's claim for time extension. In this process, the Developer shall assist the Authority in every required manner to support the reasonability and necessity of such extension.

In the event of the failure of the Developer to issue to the Authority a notice in accordance with the aforementioned timelines, the Developer shall not be entitled to any extension in time and shall forfeit its right to any such claims in future. For the avoidance of doubt, in the event of failure of the Developer to issue notice as specified in this Clause 11.3.2, the Authority shall be discharged from all liability in connection therewith.

11.4 Tests

The Authority and its Representatives or DTA may require the Developer to carry out or cause to be carried out tests to check if its Works have been completed as per the terms of this Contract and more specifically in a manner and applying the criterion as set out in the Technical Specifications and Standards. The Authority, or its designated representatives, shall be entitled to attend the tests and/or inspections conducted pursuant to this Clause 11.4.1. However, it is clarified that inspection of the Works or the presence of Authority or its designated representatives during any tests and/or inspection, shall in no way relieve the Developer of its obligations under this Contract.

- 11.4.1 In accordance with the instructions of Authority and its representatives, the Developer shall, with due diligence, carry out or cause to be carried out majority of tests as per Good Industry Practice norms inter alia with full-fledged laboratory at site and balance tests shall be done from a lab that is accredited to National Accreditation Board for Testing and Calibration Laboratories (NABL). It is also necessary to carry out testing of all components, elements as per the frequency norms prescribed in Technical Specifications or as per the relevant Indian Standards. All tests shall be at Developer's own cost.
- 11.4.2 If the Project (or any part of the Project) fails to pass any tests required for the Project (or any part of the Project), then the Authority may reject the Works or part thereof by giving notice to the Developer giving reasons and require the Developer to promptly make good the defects (at no extra cost to the Authority) so as to ensure that the rejected item(s) of the Works are in compliance with the Technical Specifications and the requirements of the Applicable Laws. The Developer shall carry out remedial measures and furnish a report to Authority in this behalf. The Developer shall carry out or cause to be carried out tests to determine that such remedial measures have brought the Works or part thereof into compliance with the Technical Specifications, and the procedure shall be repeated until such Works or part thereof conform to the Technical Specifications. For the avoidance of doubt, the cost of such tests and remedial measures shall be solely borne by the Developer.
- 11.4.3 If the defects in the Works deprive the Authority of substantially the whole benefit of the Works or major part of the Works, then the Authority may terminate this Contract as a whole or in respect of such part of the Works which cannot be put to the intended use, and without prejudice to any other right under this Contract, the Authority shall be entitled to recover from the Developer all sums paid for the Works or for such part, as the case may be, plus the financing costs, if any and the costs of dismantling the same, clearing the Site and the returning the plant and materials to the Developer.

11.4.4 Rejection

If, as a result of an inspection, measurement or testing, any plant, materials, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Contract, the Authority and its representatives shall reject the plant, materials, design or workmanship by giving notice to the Developer, with reasons. The

Developer shall then promptly make good the defect and ensure that the rejected item complies with the requirements of this Contract.

If the Authority and its representatives requires the plant, materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Authority to incur any additional costs, such cost shall be recoverable by the Authority from the Developer; and may be deducted by the Authority from any monies due to be paid to the Developer.

11.4.5 Remedial Work

- (i) Notwithstanding any previous test or certification, the Authority and its representatives may instruct the Developer to:
 - a. remove from the Site and replace any plant or materials which are not in accordance with the provisions of this Contract.
 - b. remove and re-execute any work which is not in accordance with the provisions of this Contract and the Technical Specifications
- (ii) If the Developer fails to comply with the instructions issued by the Authority and its representatives under Clause 11.4.5(i), within the time specified in the Authority and its representatives notice or as mutually agreed, the Authority have the work executed by another agency. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages in accordance with the provisions of this Contract, be recoverable from the Developer and may be deducted by the Authority from any monies due to be paid to the Developer.

11.5 Provisional Certificate

- i. If the undertaking of Works is complete in accordance with terms of this Contract and the tests are successful and Developer certifies in writing that Residential facility can be safely and reliably placed in operation, even though certain works or things forming part thereof which do not affect the use and safety of the Works are outstanding and are to be completed (the “**Punch List**”), the Authority may, at the request of the Developer, issue a provisional completion certificate, specifying the details of the Punch List which the Developer shall be required to complete before issuance of a Works Completion Certificate (the “**Provisional Certificate**”).
- ii. The Developer undertakes to complete such outstanding items of works, within a period of 180 (one hundred and eighty) days of the date of Provisional Certificate, and those parts of the Works in respect of which time extension has been granted, within the extended period thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all Works for which time extension has been granted and shall also include any minor outstanding items of work forming part of the completed sections if such works do not materially affect the use of the completed sections for their intended purpose. The Parties further agree that Provisional Certificate shall not be issued if the completed Works cannot be safely and reliably placed in service of the users thereof.

- iii. Upon issue of Provisional Certificate, the provisions of Defects Liability Period shall apply to the completed parts of the Works and the property and ownership of all such completed Works shall vest in the Authority.
- iv. If the Authority determines that the Project or any completed part thereof does not conform to the provisions of this Contract and cannot be safely and reliably placed in operation, it shall withhold issuance of the Provisional Certificate until the defects or deficiencies are rectified by the Developer and tests are successful.

11.6 Works Completion Certificate

(i) Upon successful Completion of all Works, including the items of Punch List, the Developer shall request Authority/DTA to issue completion certificate (“**Works Completion Certificate**”). Before making such request, the Developer shall clear all plants, equipment, surplus materials, wreckage, rubbish, and temporary work from the Site.

(ii) The Authority shall, within 30 (thirty) days after receiving the Developer’s notice and after being satisfied that the entire Works has been completed as per the terms of this Contract and more specifically in a manner and applying the criterion as set out in the Technical Specifications and after determining that tests are successful, and the Site has been cleared of all plants, equipment, surplus materials, wreckage, rubbish, and temporary work by the Developer:

- (a) issue Works Completion Certificates to the Developer for its Works as specified under the Scope of Project, stating the date on which its Works was completed in accordance with this Contract, except for any minor outstanding works and defects which will not substantially affect the use of the Project or part thereof for its intended purpose;
- (b) reject the application, giving reasons and specifying the Works required to be done to enable it to issue Works Completion Certificates. The Developer shall then complete the Works before applying further for Works Completion Certificate.
- (c) If the Authority fails either to issue Works Completion Certificates or to reject the Contactor’s application within the period of 30 (thirty) days, and if the Completion of the Works is substantially completed in accordance with the terms of this Contract, Works Completion Certificates shall be deemed to have been issued on the last day of that period.
- (d) After the Works Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

11.7 Delay/ Liquidated Damages

11.7.1 If the Developer fails to ensure or undertake the Works due to reasons other than Force Majeure or due to a delay, impediment or prevention caused by or attributable solely to the Authority, then the Developer shall pay to the Authority a sum equivalent to 0.1% (Zero point One percent) for each day of delay up to a maximum of 10% (Ten Percent) of delay reckoned from the Completion Date or for each interim Project Milestone as defined in Clause 11.1.2 , as the case may be, and until such Completion Date is

achieved; provided that if the period for any or Completion Date is extended in accordance with the provisions of this Contract, the Completion Date shall be deemed to be modified accordingly, and the provisions of this Contract shall apply as if Completion Date has been amended as above, For the avoidance of doubt, it shall be considered as liquidated damages for such delay and not as penalty, without prejudice to the Authority's other rights under the Contract or Applicable Laws.

The Authority shall notify the Developer of its decision to impose Damages in pursuance with the provisions of this Clause 11.7.1. Provided that no deduction on account of Damages shall be effected by the Authority without notifying the Developer of its decision to impose the Damages, and taking into consideration the representation, if any, made by the Developer within 7 (seven) days of such notice. The Parties expressly agree that the total amount of Damages under Clause 11.7.1 shall not exceed 10% (ten percent) of the Contract Price. If the damages exceed 10% (ten percent) of the Contract Price, the Developer shall be deemed to be in default of this Contract having no cure and the Authority shall be entitled to terminate this Contract.

11.7.2 The payment of such damages by the Developer shall not relieve the Developer from its obligations to complete the Project or from any other obligation and liabilities under the Contract.

11.7.3 If the Developer fails to pay the amount of liquidated damages within the said period of 7 (seven) days of its demand, the Authority shall be entitled to recover the said amount of the liquidated damages by invoking the Performance Security. If the then Performance Security is for an amount which is less than the amount of the liquidated damages payable by the Developer to the Authority under this Clause 11.7.3, the Developer shall be liable to forthwith pay the balance amount. For avoidance of doubt it is clarified that this clause will survive the termination or expiry of this Contract.

11.7.4 The Developer shall comply with the Programme Schedule prepared by the Developer (and which has been approved by the Authority), and perform its Works in such manner that the Developer is able to ensure Completion of the Works on or before the Construction Completion Date (as may be extended under Clause 11.3).

11.7.5 Other Liquidated Damages for the Term shall be as follows:

In the case of inadequate safety measures, poor housekeeping practices and low quality of Works during the Construction Period, the following provisions for damages shall apply:

Sr. No	Description	Liquidated Damages (in Rs.)
1	Absence of project supervisor, MEP supervisor, accident prevention officer, Technicians (plumber, electrician), per day	Up to Rs. 2000/- per day

2	Non-Rectification/compliance of safety and Quality observations raised by the Authority and Authority representative in scheduled time	Upto INR 2000 per instance per day
3	Absence of all manpower other than mentioned in Sr. 1, per day	Up to Rs 1000/- per day
4	Improper Uniform/ Card	Up to Rs.200 per instance per person per day
5	Non submission of reports (Weekly, monthly or as scheduled)	Upto INR 2000 per instance per day
6	Improper housekeeping, cleaning, unhygienic conditions at site / labour colony/ or any other space provided to CMA	Upto INR 2000 per instance
7	Delay in obtaining and maintaining the statutory approvals, licenses, insurance	Statutory penalty + Upto INR 20,000 per day per approval/ license/insurance
8	Delay in submission of Programme Schedule	Upto INR 10,000 per day
9	Non removal of Garbage from the site	Up to Rs. 2,000/- per instance
10	Non-deployment of Machinery in full working condition.	0-3 Days: NIL 4-7 Days: Up to Rs.1,000 per equipment per day 7-14 Days: Up to Rs.5,000 per equipment per day Then after: Up to Rs.10,000 per equipment per day
8	Unsafe Construction and violation of Safety Standards	Up to Rs. 2000/- per instance

Note: All Liquidated Damages' amounts, mentioned above or in the Agreement, are at the sole discretion of the Authority and are exclusive of applicable taxes.

11.8 Defect Liability Period:

- i. The Scope of Project shall be subject to a cumulative Defect Liability Period (DLP) of 60 (Sixty) months from the Completion Date. The Defect Liability Period of 60 (Sixty) months shall be inclusive of any guarantee/warranty provided by the manufacture/supplier of the Works, equipment. During the Defect Liability Period, the Developer shall, at its own cost and responsibility, rectify all defects in the Works performed by them in accordance with the Contract. The Authority shall notify the Developer, in writing, regarding the Defects at the Project. The Developer, within the time notified by the Authority as per Good Industry Practice, shall repair or rectify the Defect or deficiency.
- ii. The Developer agrees that in the event of failure of any particular part of any equipment and/or the equipment, for more than three times during the DLP, it shall not be repaired but the complete part and/or equipment shall be replaced by the Developer. However, during the DLP, the Developer shall be liable for complete replacement of any equipment only once. In case it is found that the above mentioned failure is due to some connected part of the equipment, that part shall also be rectified or replaced by the Developer to avoid such failure. For electrical motors during the DLP, if some important part of motor like starter winding shaft bearing squirrel cage, motor etc. becomes defective the Developer shall replace the same at its own cost and no repairs shall be allowed. Until such time the defects are not remedied, Defect Liability Period shall be deemed to be extended. Any materials or Works with Defects identified as above and replaced or repaired during the Defects Liability Period or the extended Defects Liability Period, as the case may be, would be further warranted for a period of twelve (12) months from the date of completion of such repair or replacement. The Developer shall upon termination or expiry of this Contract, or upon expiry of the Defects Liability Period, assign any outstanding benefit in respect of any subcontract or any warranty from any Subcontractor, to the Authority or to such other person as the Authority may direct.
- iii. The Developer shall repair defects or deficiencies within the time limit mentioned below or as stated by Authority,

No	Nature of defect or deficiency	Time limit for rectification
1	Breach or blockade of the pavement/ walkways/ Within the museum and the utilities building	4 hours
2	Damage to or silting of culverts and side drain during and immediately preceding the rainy season.	4 hours
3	Damages/defects in retaining wall, weep holes, apron stone pitching/culverts, cover slabs etc.	7 days
4	Any failure of the exterior lighting (including street lighting) and telecom	4 days
5	Any failure/defect of escalators and elevators	24 hours

6	Defects in electrical/mechanical/HVAC	24 hours
7	Cracks/gaps	2 days
8	Damages in joineries/flooring, walls etc.	2 days
9	Damages to septic tank, STP	24 hours
10	Damages to tube wells & pumps including water tank	24 hours
11	Damages to CCTV and security system	24 hours
12	Damages to electrical substation/transformer	24 hours
13	Damages to DG set	24 hours
14	Damages to indoor and outdoor furniture	7 days
15	Projectors	5days (repair) 30 days (replacement)
16	Server/ Network/ Wi-Fi system/ entertainment system, computer system	5days (repair) 30 days (replacement)
17	All other Minor repairs not mentioned above	2 days
18	All other Major repairs/replacement not mentioned above	15 days

The developer agrees, that in the event that the Developer fails to repair or rectify such Defect or deficiency within the aforementioned period, the Authority at its discretion, may undertake to get the same repaired, rectified or remedied at the Developer's cost so as to make the Project conform to the Technical Specifications and Standards and the provisions of this Contract. All costs consequent thereon shall, after due consultation with the Authority and the Developer, be determined by the Authority. The cost so determined, and an additional amount equal to 50% (fifty per cent) of such cost as Damages, shall be recoverable by the Authority from the Developer and may be deducted by the Authority from Performance Security or subsequent bills/invoices or retention money of the Developer.

11.8 Steps before end of the Term of the Contract

The Developer shall, 4 months prior to the expiry of Term of the Contract:

- (i) initiate steps for transfer and/or delivery of all Developer's Documents and the property and ownership in all materials, plant and works and the Project including but not limited to intellectual properties in relation to Works and, Approvals etc. to the Authority in a manner which shall be whole, free from any encumbrances; and
- (ii) provide requisite training to the Authority's Personnel's, share all available know how, documents, services manuals, guidance notes and processes etc. regarding equipments installed in Project to the satisfaction of the Authority free of cost.
- (iii) Assist Authority on the on-boarding of operation and maintenance agency, if any.

11.9 Environmental Compliance Report

The Developer shall if applicable prepare and submit “Environmental Compliance Report of Stipulated Conditions of Environmental Clearance” for every six months duration of the Term and as directed by the Authority, at no additional cost. The scope of the report shall include but not be limited to:

1. Furnish brief description of the Project
2. Furnish compliance of various stipulated conditions of environmental clearance as required by Ministry of Environment, Forest and Climate Change (MoEF)
3. Test, monitor and report Ambient Air Quality, Ambient Noice, ground water quality, soil quality/conditions etc as per MoEF requirement. All tests as required shall be conducted by MoEF approved/empanneled laboratories and/or NABL laboratories as applicable.
4. Submit a detailed report in format as approved by the Authority.

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ARTICLE 12

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ARTICLE 13

DESIGN AND TECHNICAL AGENCY

13.1 Appointment of Design and Technical Agency (DTA)

The Authority has appointed a consulting engineering agency as the Design and Technical Agency (DTA) for the Project. The DTA shall also provide services of an independent consultant under this Contract. The term of the DTA shall be till end of Contract Period.

13.2 Duties and Functions

DTA's broad scope of work shall include design of the facilities and Supervision of the work throughout the execution at site during the term. The DTA shall discharge its duties and functions substantially in accordance with terms of reference set forth in Schedule 9.

The Developer shall provide full assistance and cooperation to the DTA, on a best effort basis, for performance of its obligations hereunder.

It is further clarified that for all the technical submissions prepared by the Developer, a signoff/consent/instruction will be issued by the Authority at its discretion only after the review, recommendation /approval by the DTA. Any observations and/or shortcomings in the submission has to be duly evaluated, examined and/or addressed by the Developer.

Technical submissions would among other include the following:

- a) QAP and Health Safety and Environment Plan
- b) Manufacturer shop drawings
- c) All finishing items including but not limited to acoustics, lighting and electrical fixtures, interiors, furniture, external glazing, floor finish, colors, textures, dry theming, mock-up of wall finish etc.
- d) As-built documents

13.3 Remuneration

The Authority shall appoint the DTA at its own cost and expense and the DTA shall be paid directly by the Authority.

13.4 Dispute Resolution

If either Party disputes any advice, instruction, decision, direction of the DTA, or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the dispute resolution procedure set forth in Article 18.

ARTICLE 14

INSURANCE

- 14.1 During the entire Term of the Contract, the Developer shall independently, obtain following insurance cover to secure Scope of Project under this Contract:
- (a) at its sole cost and expense, obtain, maintain and keep in full force and effect during the Term of this Contract including but not limited to insurance for Works and Developer's equipments, against injury to persons including labour, workmen and damage to property, third party insurance etc.;
 - (b) require all its Subcontractors to obtain, maintain and keep in full force and effect throughout the time during which they are engaged to perform any Works required to be performed by it including but not limited to insurance for Works performed by them and Subcontractors equipments, against injury to persons and damage to property, third party insurance etc;
 - (c) obtain, maintain and keep applicable insurance policies in accordance with the Applicable Laws, circulars issued by the Government of Gujarat and Good Industry Practice. For avoidance of doubt all applicable insurances for the Works shall be obtained by the Developer or in the name of the Developer; and
 - (d) obtain and keep in force all the necessary insurances required for the operations of the facility (from local statutory bodies) and for its employees/Subcontractors in terms of the Applicable Laws, circulars issued by the Government of Gujarat and Good Industry Practice.

If the Developer shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Developer by invoking its Performance Security and/or deducting the amount paid towards such premia from the Payment due to the Developer by the Authority, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Developer.

- 14.2 Subject to the provisions of Force Majeure, the Developer shall, in accordance with the provisions of this Contract, be liable to bear the cost of any loss or damage that does not fall within the scope of this Article 14 or cannot be recovered from the insurers.

14.2A The Developer shall fully indemnify, hold harmless and defend the Authority from and against any and all losses, damages, costs, charges and/or claims with respect to:

- (a) the death of or injury to any person; or
 - (b) the loss of or damage to any property,
- that may arise out of or in consequence of any breach by the Developer of this Contract during the execution of the Works or the remedying of any defects therein.

14.3 Proof of Insurance

No later than 15 (fifteen) days from the Effective Date, Developer shall provide to the Authority all certificates, documents and other proofs evidencing that the insurance which the Developer is obliged to procure under this Contract have been procured and are in full force and effect.

14.4 Deductibles

Any and all deductibles and all losses or damages in excess of the insured limits in the insurance policies required under this Contract shall be to the account of the Developer, unless otherwise expressly stated in this Contract.

14.4 Insurance Policy Cancellation

In case of cancellation of any insurance policy required to be carried by this Contract, or the insolvency, bankruptcy or failure of any such insurance company that has issued a policy hereunder, the Developer shall promptly notify the Authority and obtain new insurance policies in the amounts and coverage required hereby.

14.5 Alteration to the Policy Terms

The Developer shall not make or agree to any material alteration to the terms of any insurance policies without the prior approval of the Authority.

14.6 Insurance policies not to limit Developer's liability

The insurance policies required to be maintained by the Developer shall in no way affect, nor are they intended as a limitation of its obligation under the Contract.

14.7 Failure to obtain insurance

If the Developer fails to take out and/or maintain in effect the applicable insurances required under this Contract, the Authority may take out and maintain in effect any such insurances and may from time to time deduct from any amount due to the Developer under the Contract towards the premium of such insurances, or may otherwise recover such amount as a debt due from the Developer and the Contract Price shall be adjusted accordingly.

14.8 Loss Payee

The Developer shall ensure that all such insurance policies obtained for the Project in terms of this Contract shall be endorsed in the name of the Authority, or any other person designated by the Authority, is named as the first loss payee in all insurance contracts effected by the Developer pursuant to this Article14.

14.9 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Developer pursuant to this Article 14 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

14.10 Developer's waiver

The Developer hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Developer may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Developer pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

ARTICLE 15

FORCE MAJEURE

15.1 Affected Party

15.1.1 Each of the Parties shall not be liable for its failure to comply with any of its obligations under this Contract to the extent, and for the period, that such failure results from a Force Majeure Event. A Party claiming a Force Majeure Event ("**Affected Party**") shall make all reasonable diligent efforts, including all reasonable expenditures, necessary to avoid, cure, mitigate or remedy the effects of a Force Majeure Event.

15.1.2 Any event of Force Majeure shall be deemed to be an event of Force Majeure affecting the Parties only if the Force Majeure event affects their ability to perform obligations as per the terms of the Contract.

15.2 Force Majeure

15.2.1 A '**Force Majeure/Force Majeure Event**' means any event or circumstance or combination of events and circumstances including those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Contract, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Good Industry Practices:

- (a) Natural Force Majeure Events: Act of God including, but not limited to drought, fire and explosion (to the extent originating from a source external to the Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last hundred (100) years.
- (b) Non-Natural Force Majeure Events:
 - (i) Direct Non-Natural Force Majeure Events
 - (A) Nationalization or compulsory acquisition by any Indian Government Instrumentality of any material assets or rights of the Authority; or
 - (B) the unlawful, unreasonable or discriminatory revocation of or refusal to renew, any consents, clearances and permits required by the Authority to perform its obligations under any related agreement or any unlawful, unreasonable or discriminatory refusal to grant any other consents, clearances and permits required for the development of the Project, provided that a competent court of law declares the revocation or refusal to be unlawful, unreasonable and discriminatory and strikes the same down; or
 - (C) any other unlawful, unreasonable or discriminatory action on the part of an Indian Government Instrumentality which is directed against the Project, provided that a competent court of law declares the action to

be unlawful, unreasonable and discriminatory and strikes the same down.

(ii) Indirect Non - Natural Force Majeure Events

- (A) act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, lockdown on account of pandemic, terrorist or military action; or
- (B) radioactive contamination or ionising radiation originating from a source in India or resulting from any other Indirect Non Natural Force Majeure Event mentioned above, excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Site by the Affected Party or those employed or engaged by the Affected Party; or
- (C) industry wide or State-wide strikes and labour disturbances, having a national/state wide impact in India.

15.3 Force Majeure Exclusions

15.3.1 Force Majeure shall not include: (a) any event or circumstance which is within the reasonable control of the Parties, and (b) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- (i) Unavailability, late delivery, or changes in cost of the machinery, equipment, materials, spare parts etc. required for the Works or the Project;
- (ii) Delay in the performance of any Subcontractor appointed by the Developer or its agents;
- (iii) Non-performance resulting from normal wear and tear typically experienced in transmission materials and equipment;
- (iv) Strikes or labour disturbance at the facilities of the Affected Party;
- (v) Insufficiency of finances or funds or the Contract becoming onerous to perform; and
- (vi) Non-performance caused by, or connected with the Affected Party's:
 - (A) negligent or intentional acts, errors or omissions;
 - (B) failure to comply with an Applicable Law; or
 - (C) breach of, or default under this Contract.

15.4 Notification of Force Majeure

15.4.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than 7 (seven) days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of

communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than 1 (one) day after such reinstatement.

Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Contract. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure.

15.4.2 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Contract, as soon as practicable after becoming aware of each of these cessations.

15.5 Consequences of Force Majeure

15.5.1 Except as expressly provided in this Contract, no Party shall be in breach of its obligations pursuant to this Contract or otherwise liable to the other Party for any hindrance or delay in performance or non-performance of any such obligations if and to the extent that such hindrance, delay or non-performance is due to a Force Majeure Event.

15.5.2 If the Developer is prevented from performing any of its obligations under the Contract by Force Majeure of which notice has been given under Clause 15.4 (Notification of Force Majeure) and Completion of the Works is or will be delayed as a result, the Developer shall be entitled to an extension of time (but not reimbursement of any associated cost) for any such delay under Clause 11.3.

15.6 Force Majeure affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause or such additional or broader force majeure events or circumstances shall not excuse the Developer's non-performance or entitle the Developer to any relief under this Clause.

15.7 Optional Termination

If the execution of the Scope of Project by Developer is prevented for a continuous period of 180 days by reason of Force Majeure of which notice has been given under Clause 15.4 (Notification of Force Majeure) (or for multiple periods which totals more than 180 days due to the same notified Force Majeure), then the Authority may give to the Developer a notice of termination of this Contract. If a termination notice is issued by the Authority pursuant to this Clause 15.7, the termination shall take effect 7 (seven) days after the notice is given. Upon such termination, the Authority will be required to

release the Performance Security provided by the Developer, it being specified that the release will only be granted when all amounts payable by the Developer under this Contract to the Authority have been irrevocably paid in full. Upon such termination, the Authority shall pay to the Developer the amounts payable by the Authority for any Works already carried out by the Developer in terms of the Contract.

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ARTICLE 16

TERMINATION OF THE CONTRACT

16.1 Termination for Developer's default

16.1.1 In addition to the other termination events specified in this Contract, the Authority shall have the right to terminate this Contract in relation to the Scope of Project of the Developer, if unless the default has occurred as a result of any breach of this Contract by the Authority or due to Force Majeure, the Developer:

- (a) fails to submit or replenish the Performance Security in accordance with the terms of this Contract or does not comply with any notice of the Authority to make good any failure under the Contract with the date specified in such notice;
- (b) abandons any Works or services forming part of its Scope of Project or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;
- (c) without reasonable excuse fails to proceed with any Works or services forming part of its Scope of Project in accordance with the terms of the Contract;
- (d) the Developer does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Programme Schedule and in accordance with the terms of Contract;
- (e) the Completion Date does not occur within the specified period or any extension thereof;
- (f) failure to complete the Punch List items within the periods stipulated therefore in Clause 11.5;
- (g) the Developer fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Contract or as directed by the Authority;
- (h) subcontracts the whole of the Works forming part of its Scope of Project, assigns or purports to assign its obligations under the Contract without the required agreement or consent of the Authority or in contravention of the terms of this Contract;
- (i) is in material breach of any of its obligations under this Contract;
- (j) the Developer has failed to fulfil any obligation, for which failure termination has been specified in this Contract;
- (k) any representation or warranty of the Developer herein contained which is, as of the date hereof, found to be materially false or the Developer is at any time hereafter found to be in breach thereof;
- (l) the Developer issues a termination notice in violation of this Contract; or
- (m) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or

if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events.

16.1.2 If any of the events or circumstances mentioned in Clause 16.1.1 above has been caused by reasons solely attributable to the Developer, the Authority may by giving written notice to the Developer require it to cause rectification of the default. If the Developer fails to rectify such default within the next 30 (thirty) days from the date on which the notice is delivered by the Authority to the Developer asking the latter to cure the breach or default specified in such notice (“**Cure Period**”) or any other extended period as may be agreed between the Authority and the Developer, the Authority can terminate the Contract with immediate effect and expel the Developer from the Site.

16.1.3 The termination of the Contract (or part of the Contract vis-à-vis the Scope of Project of the Developer) by the Authority shall not prejudice any other rights of the Authority against the Developer under the Contract or otherwise.

16.2 **Consequences of Termination for Developer’s default**

Upon termination of the Contract (or part of the Contract) by the Authority vis-à-vis the Developer under Clause 16.1, the Developer shall immediately cease all work and services, and if applicable, vacate the Site, and submit all its Developer’s Documents and Approvals lying with it (to the extent possible under law), to the Authority. However, the Developer shall use its best efforts to comply immediately with any reasonable instructions included in the notice of termination (a) for the assignment of any Subcontract, and (b) for the protection of life or property or for the safety of the Project.

Upon receipt of a notice of termination and payment by the Authority of all amounts due to the Developer within 60 (sixty) days of notice of termination, for the Scope of Work already completed under the Contract, the Developer shall, to the extent legally possible and if Authority so requires, assign to Authority all its right, title and benefits (not obligations) under any subcontracts between it and its Subcontractors, including all warranties, performance guarantee or other continuing benefits arising under such subcontracts.

After termination, the Authority may complete the Developer’s Scope of Project and/or arrange for any other entities to do so. The Authority and these entities may then use any Developer’s Documents and other documents made by or on behalf of the Developer.

The Authority shall then give notice that the Developer's plant, machinery and other equipment (if any) will be released to the Developer at or near the Site. The Developer shall also promptly arrange for the removal of all its plant, machinery and other equipment (if any) from the Site at its own risk and cost. However, if the Developer fails to make a payment due to the Authority under the Contract, these items may be sold by the Authority in order to recover its payment. Any balance of the proceeds shall then be paid to the Developer.

The Authority shall be entitled to invoke the Performance Security for recovering all losses incurred by it on account of termination of the Contract under this Clause 16.2 owing to Developer's default.

16.3 Termination for Authority's Default

16.3.1 In addition to any other termination events described in the Contract, the Developer shall be entitled to terminate the Contract to the extent of its Scope of Project if unless the default has occurred as a result of any breach of this Agreement by the Developer or due to Force Majeure:

- (a) the Developer does not receive any undisputed payment within 90 (ninety) days after the Payment Due Date;
- (b) the Authority fails to perform any of its material obligations under this Contract or is in material breach of any obligations under this Contract;
- (c) the Authority suspends Developer's entire Scope of Project for a period of more than 180 (one hundred and eighty) days;
- (d) the Authority becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events.

16.3.2 In any of these events or circumstances, the Developer may, give written notice to the Authority to rectify the default within 30 days from the date on which the notice is delivered by the Developer to the Authority asking the latter to cure the breach or default specified in such notice ("Cure Period") or any other extended period as may be agreed between the Authority and the Developer, and if the default is not rectified within the said period of 30 (thirty) days or such extended period as may be agreed to between the Parties, terminate the Contract.

16.3.3 The termination of the Contract by the Developer shall not prejudice any other rights of the Authority, under the Contract or otherwise.

16.4 Consequences of Termination for Authority's Default

16.4.1 Upon termination pursuant to Clause 16.3, the Developer shall: (a) cease to carry out further Works (except for such works as may have been instructed by the Authority for the protection of life or property or for safety of the Project) and deliver to the Authority, the part of the Works that have been completed by it until the date of termination; (b) to the extent legally possible, assign to the Authority all right, title and benefit of the Developer's Works as on the date of termination, and as may be required by the Authority, in any contracts concluded between the Authority and its Subcontractors; (c) deliver and handover to the Authority, Developer's Documents prepared by it or its Subcontractors in relation to the Works, material and other works (for which the Developer has received payment); and (d) if applicable, arrange for

removal of all its plant, machinery and other equipment from the Site at its own risk and cost and cause all its employees and Subcontractors to leave the Site.

16.4.2 Termination Payment due to termination for Authority's default

As soon as practicable after a termination under Clause 16.3 has taken effect, the Authority shall subject to adjustment of any dues of Developer, immediately return the Performance Security, provided by the Developer and shall proceed to determine the balance amount of the Contract Price not already paid to the Developer. The Authority shall within 30 (thirty) days of such determination, pay the balance Contract Price to the Developer in terms of this Contract.

16.5 Release from performance under Applicable Laws

Notwithstanding any other provision of this Contract, if any event or circumstance outside the control of the Parties (including, but not limited to Force Majeure Event) arises which makes it unlawful for any Party to fulfil its contractual obligations under the Contract or which, under the Applicable Laws governing the Contract, entitles the Party to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Authority to the Developer shall be the same as under the optional termination of the Contract by the Parties under Clause 15.7.

16.6 Requirements after Termination

Upon termination of this Contract in accordance with the provisions of this Article 16, the Developer shall comply with and conform to the following:

- a) deliver to the Authority all Plant and Materials which shall have become the property of the Authority under this Article 16;
- b) deliver all relevant records, reports, intellectual property and other licences pertaining to the Works, other design documents;
- c) transfer and/or deliver all Approvals to the Authority to the extent permissible under Applicable Laws; and
- d) vacate the Site within 5 (five) days.

16.7 Other rights and obligations of the Authority

Upon termination of the Contract for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all the Works, materials, stores, implements, construction plants and equipment on or about the Site in relation to the Project without any encumbrances.
- (c) be entitled to restrain the Developer and any person claiming through or under the Developer from entering upon the Site or any part of the Project;

- (d) take possession and control of all Approvals with the Developer in respect of Project; and
- (e) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Developer in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee.

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ARTICLE 17

INDEMNITY AND LIABILITY

17.1 General Indemnity

The Developer shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Developer of any of its obligations under this Contract or from any negligence under the Contract, including any errors or deficiencies in the design documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Contract on the part of the Authority Indemnified Persons.

17.2 Indemnification by the Developer

Without limiting the generality of Clause 17.1, during the Term of this Contract, the Developer shall independently in relation to its specified obligations under this Contract indemnify and hold harmless the Authority and Authority Indemnified Persons against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect or arising out of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and Completion of the Works and the remedying of any defect, unless attributable to any default of Authority and and Authority Indemnified Persons;
- (b) breach of the Contract by the Developer;
- (c) failure of the Developer to comply with Applicable Laws and Approvals;
- (d) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss:
 - (i) arises out of or in the course of or by reason of the design, execution and Completion of the Works and the remedying of any defects, and
 - (ii) is not attributable to any negligence, wilful act or breach of the Contract by the Authority, the Authority's Personnel, its agents, or anyone directly or indirectly employed by any of them.

17.3 Limitation of Liability

17.3.1 Neither Party shall be liable for loss of any profit/ contract nor for any indirect or consequential loss/ damage which may be suffered by the other Party under the Contract.

17.3.2 Subject to Clause 17.3.1 above, the total liability of the Developer to the Authority under this Article 17 shall be the following:

- (a) In case of any fraud, deliberate default or reckless misconduct: Unlimited; and
- (b) In any other case: limited to a sum equivalent to the total Contract Price.

17.3.3 Subject to Clause 17.3.1 above, the total liability of the Authority to the Developer under this Article 17 shall be limited to the Contract Price.

17.4 Undertaking by the Developer

17.4.1 The Developer unequivocally acknowledges, agrees and confirms that it shall be responsible in the performance of the obligations of the Developer under its Scope of Project, as set out in Schedule 2 (Scope of Works) to this Contract and in conformity with Schedule 3 (Technical Specifications and Standards), so as to ensure seamless and uninterrupted interface among all obligations of the Developer under its Scope of Project, including without limitation, the following:

- (a) achieving, in a timely manner, the milestones set out in the Contracts and performing all obligations under the Contract;
- (b) to meet the Technical Specifications and Standards and achieve Completion of the Works during the Construction Period in cost effective manner as per the terms and conditions set out in the Contract; and
- (c) correction of all defects during the Defect Liability Period.

17.4.2 Notwithstanding anything contained in this Contract, the Developer hereby agrees and undertakes that it shall be liable for coordinating the execution of the Works and for the overall performance of this Contract, and shall not deny such liability solely on the ground that the claim was not covered under its Scope of Project. Further, the Developer hereby undertakes and acknowledges that should any gap, deficiency or uncertainty arise with respect to the obligations of the Developer under its Scope of Project, then such gap, deficiency or uncertainty shall be promptly remedied (or caused to be remedied) by the Developer at no cost or expense to the Authority.

17.4.3 Notwithstanding the fact that the Developer having diverse Scope of Project under the Contract, it is solely responsible to perform its Scope of Project and obligations and the Developer hereby agrees and undertakes to guarantee the due performance of the Developer's Scope of Project set out in Schedule 2 (Scope of Works). The Developer hereby agrees and confirms that in case of non-performance or inadequate performance by the Developer of Scope of Project, the Developer will perform (or cause performance) of such obligation without any additional cost to the Authority.

17.5 Survival on Termination

The provisions of this Article 17 shall survive Termination.

ARTICLE 18

CLAIMS, DISPUTE RESOLUTION & GOVERNING LAW

18.1. Authority's Claim

18.1.1 The Authority shall be entitled to raise a claim ("**Authority's Claim**") against the Developer in the following cases:

- (a) If the Authority has paid any amount which is attributable to the breach of any terms and conditions of the Contract by the Developer; and
- (b) Any other claim otherwise specifically stated so in this Contract.

In the above cases, the Authority shall give notice and particulars to the Developer as soon as practicable but not later than 7 (seven) days after the date on which the Authority became aware of the event or circumstances giving rise to the Authority's Claim.

18.1.2 The notice of the Authority in terms of Clause 18.1.1, shall specify the particulars which form the basis of the Authority's Claim, and shall include substantiation of the amount and/or extension to which the Authority considers it is entitled in connection with such Authority's Claim. A notice relating to any extension of the Defect Liability Period shall be given before the expiry of such period. The Authority shall then proceed to agree to determine (i) the amount which the Authority is entitled to be paid by the Developer and/or (ii) extension in the Defect Liability Period. While determining any such matter the Authority shall consult the Developer in an endeavour to reach an agreement. If an agreement is not achieved, the Authority shall make a fair determination in accordance with this Contract, taking due regard of all relevant circumstances.

18.1.3 The Authority shall give notice to the Developer of each agreement or determination with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Developer gives a notice to the Authority of its dissatisfaction with a determination within 14 (fourteen) days of receiving it. Either Party may then try to amicably settle the dispute in terms of Clause 18.3.

18.1.4 The Authority may deduct such amount from any moneys due or to become due to the Developer or otherwise claim against the Developer under the Contract.

18.2 Developer's Claim

18.2.1 If the Developer considers itself entitled to any extension of Term and/or timelines as per Programme Schedule and/or any additional payment, under any provisions of the Contract, the Developer shall give notice to that effect to the Authority, describing the event or circumstance giving rise to the claim ("**Developer's Claim**"). The notice shall be given as soon as practicable but not later than fourteen (14) days after the date on

which the Developer became aware of the event or circumstances giving rise to the Developer's Claim.

- 18.2.2 If the Developer fails to give notice of a claim, there shall be no extension to the Term and/or timelines as per Programme Schedule and/or entitlement to additional payment, and the Authority shall be discharged from all liability in connection with the Developer's Claim.
- 18.2.3 The Developer shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Authority. Without admitting liability, the Authority may after receiving any notice under this Clause, monitor the record-keeping and/or instruct the Developer to keep further contemporary records. The Developer shall permit the Authority to inspect all these records, and shall (if instructed) submit copies to the Authority.
- 18.2.4 Within 30 (thirty) days after the Developer became aware (or should have become aware) of the event or circumstance giving rise to the Developer's Claim, the Developer shall send to the Authority a fully detailed statement of the Developer's Claim which shall include full supporting particulars of the basis of all the claims and of the extension of time and/or additional payment claimed. If the events or circumstances giving rise to the Developer's Claim have a continuing effect:
- (a) this fully detailed statement shall be considered as interim;
 - (b) the Developer shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Authority may reasonably require; and
 - (c) the Developer shall send a final statement of Developer's Claim as soon as practicable after the end of the effects of the events or circumstances resulting the Developer's Claim but not later than 30 (thirty) days from the end of the effects of the events or circumstances resulting the Developer's Claim.
- 18.2.5 Within 30 (thirty) days after receiving any statement of Developer's Claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Authority and approved by the Developer, the Authority shall respond with approval, or with disapproval and detailed comments. The Authority may also request any necessary further particulars, but shall nevertheless give its response on the principles of the claim within such time.
- 18.2.6 Each interim payment against the Developer's Claim shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the Developer's Claim, the Developer shall only be entitled to payment for such part of the claim as he has been able to substantiate.
- 18.2.7 The Authority shall consult with the Developer in an endeavour to reach an agreement and proceed to determine (i) the extension of the Term (before or after its expiry)/

Timelines as per Programme Schedule and (ii) the additional payment, if any to which the Developer is entitled to under this Contract. However, if such agreement is not achieved, the Authority shall make a fair determination in accordance with the Developer, taking due regard of all relevant circumstances. The Authority shall give notice to the Developer of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Developer gives notice, to the Authority, of its dissatisfaction within 14 (fourteen) days of receiving it to amicably settle the dispute in terms of Clause 18.3.

18.3 Amicable Settlement

- 18.3.1 Any dispute, controversy or claim arising out of or relating to this Contract (whether in tort, contract, under statute or otherwise), including any question regarding its existence, validity, interpretation, breach or termination and so notified in writing by either Party to the other (the "**Dispute**") shall in the first instance be attempted to be resolved amicably between the Parties.
- 18.3.2 Either Party may require such Dispute to be referred to a authorised representative of each Party, for amicable settlement. Upon such reference, the authorized representative of the Parties shall meet at the earliest as per their mutual convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to arrive at an amicable resolution of the Dispute.
- 18.3.3 If, after such meeting between the Parties in accordance with Clause 18.3.2, the Dispute remains unresolved, either Party may refer such dispute to resolved by way of arbitration in terms of this Contract.

18.4 Arbitration

- (i) Any dispute which remains unresolved between the parties through the mechanisms available/ prescribed in the Contract, irrespective of any claim value, which has not been agreed upon/ reached settlement by the parties, will be referred to the tribunal comprising 3 (three) arbitrators. Each Party to the arbitration shall appoint one (1) arbitrator and the two (2) arbitrators thus appointed shall choose the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the "Arbitral Tribunal"). In the event of failure by the either Party to appoint their arbitrator(s) or by the two arbitrators appointed by the Parties to appoint the third arbitrator, the said arbitrator(s) shall be appointed by the High Court of Gujarat.
- (ii) The seat of the arbitration shall be Gandhinagar. The Parties are free to choose a venue in Gandhinagar which may be convenient for different stages of the arbitration proceedings. The language of the arbitration shall be English. The arbitration shall be

conducted in accordance with the Arbitration and Conciliation Act, 1996 as amended from time to time (“**Arbitration Act**”).

- (iii) The reference to arbitration proceeding under this clause shall not;
 - (a) affect the right of both the parties under the contract to take possession of all or any tools plants materials and stores in or upon the works of site thereof belonging to the Developer or procured by him and intended to be used for the execution of the work or any part thereof.
 - (b) Preclude the Authority from utilizing the materials purchased by the Developer in any work or from removing such materials to other places, during the period the work is stopped or suspended in pursuance of notice given to the Developer.
 - (c) Entitle the Developer to stop the progress of the work or the carrying out the additional or altered work in accordance with the provisions of Contract.
- (iv) The Parties shall ensure that any arbitrator appointed to act under this Clause 18.4 will agree to be bound to certain confidentiality obligations with respect to the terms of the Contract and any information obtained during the course of the arbitration proceedings.

18.5 Continuance of Performance

Performance of this Contract by the Parties shall continue during any dispute resolution process referred to in this Clause 18.4.

18.6 Governing Law and Jurisdiction

The Contract shall be construed and interpreted in accordance with and governed by the laws of India, and subject to the provisions of Clause 18.3 and 18.4 the courts at Gandhinagar shall have exclusive jurisdiction over the matters arising out of or relating to this Contract.

ARTICLE 19

MISCELLANEOUS PROVISIONS

19.1 Confidentiality

19.1.1 Confidential Information

All information or documentation provided by any Party to the other Party for the development of the Project in terms of this Contract, as well as the terms and conditions of this Contract (collectively "**Confidential Information**"), shall be considered as confidential and except as otherwise provided herein, may not be disclosed to third parties without the prior written consent of the disclosing Party, provided that any Party may grant access to the Confidential Information to (a) its employees and authorized Subcontractors, vendors, representatives and agents which access is necessary to fulfil the terms of this Contract, (b) the financing parties and (c) potential investors, lenders or partners in the Project (including its advisors, attorneys, consultants Developer and other designees), who shall be bound by the terms of this confidentiality arrangements.

19.1.2 Exclusions from Confidential Information

The Confidential Information shall not include information that (a) the receiving Party can demonstrate as rightfully in its possession prior to receiving it from the other Party; (b) is or becomes publicly known through no act omission or commission of the receiving Party; (c) is approved for release by written authorization of the disclosing Party; (d) is required to be disclosed by the receiving Party pursuant to legal requirements applicable to it or a legal process (so long as prior to furnishing such Confidential Information, the receiving Party notifies the disclosing Party and gives the disclosing Party the opportunity to object to the disclosure and/or to seek a protective order); provided, however, that any Confidential Information required to be so disclosed shall retain its confidential status for all other purposes; or (e) has been rightfully furnished to the receiving Party without any restriction on use or disclosure and not in violation of the rights of the other Party.

19.1.3 Survival of confidentiality obligation

The confidentiality obligations under this Article 19 shall remain in force and effects from the Effective Date and until 24 (twenty-four) months after termination of this Contract.

19.2 Intellectual or industrial property rights

The Developer shall be responsible to ensure that there is no infringement of any all intellectual or industrial property rights covering materials, equipment, or process used in the execution of the Works in terms of this Contract. The Developer shall alone be liable for any damage or claim for such infringement and shall keep the Authority indemnified in that regard. The Developer shall, at its own cost and expenses, defend all suits or proceedings that may be instituted for alleged infringement of any such intellectual or industrial property rights. In the event of any suit or proceedings

instituted against the Authority, the same shall be defended at the cost and expenses of the Developer who shall also satisfy/comply the decree, order or award made against the Authority.

19.3 Notices

Any notice or other communication to be given under this Contract must be in writing and may be delivered or sent by hand delivery, post, fax or email to the Party to be served at its address as follows:

To Authority at:

(Address)(Fax)

(E-mail)

(Designated / Authority Signatory)

To the Developer at:

(Address)

(Fax)

(E-mail)

(Designated / Authority Signatory)

or at such other address, fax number or email address as such Party may have notified to the other Party in accordance with this Clause 19.3.

19.4 Authority's Instructions

The Authority may issue to the Developer instructions which may be necessary for the Developer to perform its obligations under the Contract. Each instruction shall be given in writing and shall state the obligations to which relates and the Sub-clause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a Variation, Clause 2.5 shall apply.

19.5 Assignment and Novation

The Developer, with prior written consent of the Authority, (i) may assign or transfer the whole or any part of the Contract or any benefit, interest, obligation or liability in or under the Contract; and (ii) may create security in favour of a bank, financial institution or other party providing financing, pledge or assign its right to any moneys due, or to become due, under the Contract.

19.6 Amendments

No purported alteration or amendment of this Contract shall be effective unless it is in writing, refers specifically in this Contract and is duly executed by each of the Parties to this Contract.

19.7 Entirety

This Contract contains the entire agreement between the Parties, and supersedes all previous agreements between the Parties, relating to the transactions contemplated

herein. Further, this Contract along with its clauses, schedules and annexures are intended by the Parties as the final expression of its agreement and are intended also as a complete and exclusive statement of the terms of its agreement.

19.8 No waiver

19.8.1 No waiver by any Party of any default or defaults by the other Party in the performance of any of the provisions of the Contract:

- (a) shall operate or be construed as waiver of any other or further default or defaults; and
- (b) shall be effective unless it is in writing and is duly executed by the authorized representative of such Party.

19.8.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms and conditions of the Contract nor time or other indulgence granted by one Party to the other shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Contract, which shall remain in full force and effect.

19.9 Assignment and Charges

- (i) This Contract shall not be assigned by the Developer to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- (ii) Notwithstanding the provisions of Clause 19.9(i), the Developer may pledge or hypothecate to its lenders, any materials or plant prior to their incorporation in the Works. Further, the Developer may, by written notice to the Authority, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Developer in connection with the performance of the Developer's obligations under this Contract. The Developer acknowledges that any such assignment by the Developer shall not relieve the Developer from any obligations, duty or responsibility under this Contract.

19.10 Severability

The provisions contained in each clause of this Contract shall be enforceable independently of each of the others and its validity shall not be affected if any of the others are invalid.

19.11 Exclusion of implied warranties etc.

This Contract expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

19.12 Relationship of the Parties

The Developer is appointed by the Authority as independent Developer dealing at arm's length, and this Contract shall not be interpreted or construed to create an association of persons, joint venture or partnership between the Parties or to impose any partnership, obligation or liability upon any Party. Notwithstanding anything contained in this Contract to the contrary, it is clarified that the intention of the Parties is not to carry on the business in common.

19.13 Successors and assigns

This Contract shall be binding upon, and inure to the benefit of the Parties and its successors and permitted assigns.

19.14 Counterparts

This Contract may be executed in any number of counterparts, whether signed originally or reproduced by facsimile, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument.

19.15 Language

All notices required to be given by one Party to the other Party and all other communications, documentation, proceedings and matters which are in any way relevant to this Contract shall be in writing and in English language.

19.16 Communications

Wherever this Contract provides for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in Clause 19.3 (Notices); and
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, communications may be sent to the address from which the request was issued.

19.17 Stamp Duty

This Contract shall be executed on payment of requisite stamp duty and registration fees under Applicable Law. Any stamp duty, registration charges or other fees, taxes or charges of any kind whatsoever pertaining to the execution of this Contract shall be borne by the Developer.

IN WITNESS WHEREOF, intending to be legally bound hereby, the Parties have executed this Contract as of the date first set forth above.

EXECUTED by acting by the
Authority, [Name], in the presence of: [Registrar]
in the presence of:

Witness's Signature:

Name:

Address:

EXECUTED by [Name of the
Developer] through [Name of the
authorised signatory], a [Designation] in
the presence of:
Director/Authorised Signatory/Attorney

Witness's Signature:

Name:

Address:

SCHEDULE 1 - DEFINITIONS

“**Affected Party**” shall have the meaning set forth in Clause 15.1.1;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Contract and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Contract;

“**Applicable Permits**” means all clearances, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the Project, during the subsistence of this Contract;

“**Appointed Date**” means the date on which the Conditions Precedent of both the Parties have been met or waived, as the case may be, and shall be deemed to be the date of commencement of the Term with respect to the Project;

“**Approvals**” means any authorization, clearance, license, no-objection certificate, exemption, privilege, approval, registration, permit, waiver, acknowledgement, agreement, or concession required to be obtained from or provided by any Government Instrumentality relating to the development, execution, operations and the Works or to the performance by Developer of any obligations under this Contract;

“**As-Built Documents**” shall have the meaning set forth in Clause 11.1.8(c);

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time

“**Authority**” means the Gujarat Biotechnology University ;

“**Authority’s Personnel**” means the Authority’s Representative and all other personnel whom the Authority utilise on Site, who may include staff, labour and other employees of the Authority and each Subcontractor appointed by the Authority itself, and any other personnel assisting the Authority during the execution of the entire Works by the Developer;

“**Authority’s Representative**” shall have the meaning set forth in Clause 7.3;

“**Base Rate**” means the means the floor rate of interest announced by the State Bank of India for all its lending operations;

“**Bid Security**” means the security provided by the Developer to the Authority along with the Bid in a sum of INR 188.48 Lakhs (Rupees One crore Eighty eight Lakhs Forty Eight Thousand Only), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security

“**Bill of Quantities**” shall be as defined in Schedule 10;

“**Change in Law**” shall have the meaning set forth in Clause 10.9;

“Completion” means the testing, checking and the conduct of the various procedures by the Developer upon completion of construction of the entire Project/Works or any part thereof in accordance with the Technical Specification and Standards, to ensure the operation of the Project;

“Completion Date” shall have the meaning set forth in Clause 11.2;

“Confidential Information” shall have the meaning set forth in Clause 19.1.1;

“Construction Period” means the period commencing from the Appointed Date and ending on the date of the Works Completion Certificate;

“Contract” means this Contract, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Contract;

“Contract Price” means the consideration to be payable to the Developer for execution of the Project in accordance with this Contract and as mentioned in Schedule 6 (Contract Price & Payment Milestones) of the Contract;

“Cure Period” means the period specified in this Contract for curing any breach or default of any provision of this Contract by the Party responsible for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Contract;

provided that if the cure of any breach by the Developer requires any reasonable action by the Developer that must be approved by the Authority, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

“Damages” shall mean the damages payable by either Party to the other of them, as set forth in this Contract, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty;

“Defect Liability Period” shall have the meaning set forth in Clause 11.7;

“Developer” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Developer’s Claim” shall have the meaning set forth in Clause 18.2.1;

“Developer’s Document” shall have the meaning set forth in Clause 11.1.8;

“Developer’s Personnel” means the Developer’s Representative and all other personnel whom the Developer utilise on Site, who may include staff, labour and other employees of the Developer and each Subcontractor, and any other personnel assisting the Developer in the execution of the entire Works;

“Developer’s Representative” shall have the meaning set forth in Schedule 7;

“Dispute” shall have the meaning set forth in Clause 18.3.1;

“Design and Technical Agency or DTA” shall mean the Design and Technical Agency named M/s Suresh Goel and Associates, appointed by the Authority for the purpose of monitoring the Works;

“Effective Date” means the date of execution of this Contract;

“Force Majeure/Force Majeure Event” shall have the meaning set forth in Clause 15.2;

“Good Industry Practice” means the exercise of that degree of skill, diligence efficiency, reliability and prudence and those practices, methods, Technical Specifications and Standards and standards of equipment, safety, services and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced Developer engaged in activities similar to the Works required to be carried out under this Contract;

“Government Instrumentality” means the Government of India, Governments of state of Gujarat, and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub-division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body of India;

“Gregorian calendar” means the internationally accepted civil calendar;

“Hazardous Material” means (i) any element, compound, substance, preparation, chemical, physio-chemical properties or biological derivative, radiation, noise, vibration, material or combination thereof which by reason of its composition or characteristics is defined in Applicable Law as a hazardous material, or (ii) any other material which any Government Instrumentality determines from time to time is harmful, toxic, or dangerous, or otherwise ineligible for handling, storage or disposal by unregulated means or is liable to cause harm to human beings, other living creatures, plant, micro-organism, property or the environment;

“INR” means the Indian Rupees;

“Indian Standard Time” means the time observed throughout India;

“Interim Payment Certificate” or **“IPC”** means the interim payment certificate issued by the DTA for payment to the Developer in respect of Developer’s claims for payment raised in accordance with the provisions of this Contract;

“LOA” means the Letter of Award dated [●], issued to the Developer to establish the Project;

“Payment Due Date” shall have the meaning set forth in Clause 10.2.3;

“Performance Security” shall have the meaning set forth in Clause 5.1;

“Programme Schedule” means the programme schedule set out in Schedule 4;

“Project” means the construction of the Residential Facilities at GBU in accordance with the provisions of this Contract, and includes all Works, services and equipment relating to or in respect of the Scope of the Project;

“Project Milestones” means project milestones as set out in Schedule 4;

“Residential Facilities” means the amenities and infrastructure that will be constructed by the Developer on the specified location (detailed in Schedule 2) through the execution of the specified tasks outlined in Schedule 2 and in accordance with the terms stipulated in the Contract;

“Right of Way” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction of the Project and real estate development in accordance with this Contract;

“Rs.” or **“Rupees”** means Indian Rupees, the lawful currency of India;

“Site” means the lands or other places, which is licensed to the Developer for constructing the Project as per this Contract and as described in Schedule 2;

“Staff Training documents” means documents related to training of staff and personnel;

“Subcontractor” means any person or persons to whom a part of the Works has been subcontracted by the Developer and the permitted legal successors in title to such person, but not an assignee to such person;

“Technical Specifications and Standards” means the Technical Specifications and Standards set out in Schedule 3;

“Term” shall have the meaning set forth in Clause 4.1;

“Variation” means any variation in the Scope of Works as more elaborately provided in Clause 2.2 of this Contract;

“Works Completion Certificate” means the certificate issued by the Authority pursuant to Clause 11.6 of this Contract on successful completion of Works;

“Works” means all things or tasks which the Developer is, or may be, required to do to for the Completion of the Project, which includes, inter alia, construction of the Project, procurement and commissioning of the trees, plants, furniture and other components planned for the Project, taking delivery, transporting to Site, storing at Site, installing, erecting, testing of the Project components, procurement and Completion of the Project, in accordance with this Contract;

SCHEDULE 2 – SCOPE OF WORKS

Refer separate attachment

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SCHEDULE 3 – TECHNICAL SPECIFICATIONS AND STANDARDS

Refer separate attachment

Draft Only

SCHEDULE 4 – PROGRAMME SCHEDULE

The Programme Schedule shall be submitted by the Developer after the execution of this Contract. Upon furnishing of the Programme Schedule to the Authority, the same shall form an integral part of the Contract.

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SCHEDULE 5 – AUTHORITY’S REPRESENTATIVE

The details in relation to the Authority’s Representative would be shared by the Authority from time to time during the Term of the Contract.

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SCHEDULE 6 - CONTRACT PRICE & PAYMENT MILESTONES

The Contract Price is the arithmetic sum of all the line items, amounting to Rs. [●] (**** amount in words ****), which is exclusive of applicable Goods and Service Tax (GST) but inclusive of all other applicable taxes and duties under the Applicable Laws for undertaking the Project.

Subject to the terms of this Contract, the Contract Price shall be paid by the Authority to the Developer on monthly basis as per the following mechanism,

Payment stage	Description
Monthly progress payment on prorated basis	<p>Amount of monthly Payment for Works = 95% of Monthly Value of completed Works (in value terms) in the relevant month computed as per the BOQ (Schedule-10)</p> <p>It is further clarified that all Works shall be executed as per scope defined in Clause 2.1 and further the Bill of Quantities with prices provided in Schedule 10 as approved by the Authority is for the sole purpose determination of the Contract Price in the event of Variation as per clause 2.2 and to determine the value of completed Works as per this schedule.</p>
Retention Money	<p>Amount of Retention Money for Works = 5% of Monthly Value of completed Works (in value terms) in the relevant month computed as per the BOQ (Schedule-10)</p> <p>The Retention Money shall remain in force and effect for a period of 3 (three) months from issuance of Provisional Certificate or Works Completion Certificate whichever is earlier, subject to adjustment as provided in this Clause 5.9. However, the Authority shall have right to retain balance Retention Money, up to satisfactory completion of Works as per the Authority, for a maximum period of 6 (six) months from the date of Provisional Certificate or Works Completion Certificate, whichever is earlier.</p>

Further, the monthly payments shall be made after verification of each activity completed by DTA and after getting approval of each activity. Authority shall entertain a minimum Invoice of Rs. 50,00,000/- only. (Only in special case, Authority Representative/ Engineer-in-Charge may use his discretion and allow an Invoice of amount lesser than prescribed herewith).

For all the other BOQ items whose per unit price is more than INR 30 lakhs, the payment towards the works shall be made as per below mechanism:

- 10% of the cost of line item to be considered towards value of works completed upon hardcopy approval of content/design and submission of the order copy.
- 30% of the cost of line item to be considered towards value of works completed upon completion of the fabrication/development of the works and approval from the Authority/DTA
- 20% of the cost of line item to be considered towards value of works completed upon delivery at site and approval from the Authority/DTA

- 20% of the cost of line item to be considered towards value of works completed upon Assembly/ Installation at site as per approved location and approval from the Authority/DTA
- 20% of the cost of line item to be considered towards value of works completed upon Assembly/ Installation/ commissioning at gallery and approval from Authority/DTA.

Note:

1. The above bifurcation of payments are subject to sole discretion of the Authority. Authority may decide to release the payment of the above items on case-to-case basis.
2. All the above payments are subject to the retention clause as applicable.
3. Balance Contract Price for i.e., balance amount of Contract Price for Works, pending to be paid after 100% completion of Works in value terms shall be paid 3 months after issue of Works Completion Certificate by the Authority.
4. It is further clarified that all Works shall be executed as per scope defined in Clause 2 and Schedule 2, Schedule 3 and Schedule 10
5. It is hereby clarified that the aggregate amount computed by the way of arithmetic sum of all line items in the table given in Schedule 10 shall be sole basis for the Contract price. However, the actual payments shall be made basis the respective quantities which are utilized towards the event.

SCHEDULE 7 – Developer’s REPRESENTATIVE

Name of the Representative:

Designation:

Company:

Address:

Telephone No:

Fax Number:

Email Address:

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SCHEDULE 8 – Bank Guaranty (formats)

Part A: PERFORMANCE SECURITY (as per clause 5.1)

Registrar,
Gujarat Biotechnology University,
GIFT City Road, Gandhinagar– 382 355,
Gujarat, India.

WHEREAS:

- (A)⁴(the “**Developer**”) and the Gujarat Biotechnology University, GIFT City Road, Gandhinagar – 3822355 (the “**Authority**”) have entered into a Construction Contract dated (the “**Contract**”) whereby the Developer has agreed to the undertake construction and development of Residential Facilities at Site of the Authority, in accordance with the provisions of the Contract.
- (B) The Contract requires the Developer to furnish a Performance Security to the Authority for a sum of Rs. ***** cr. (Rupees ***** crore) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Contract, during the Constrction Period (as defined in the Contract).
- (C) We, through our Branch at⁵ (the “**Bank**”) have agreed to furnish this Bank Guaranty by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Developer’s obligations during the Term, under and in accordance with the Contract, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Developer, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer duly authorized by the Chairman of the Authority, that the Developer has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Contract shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Developer is in default in due and faithful performance of its obligations during the Term under the Contract and its decision that the Developer is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Developer, or

⁴ Insert name and address of Developer

⁵ Insert name of branch of bank in Gujarat

any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Developer for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Developer and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Developer before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Contract or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Developer contained in the Contract or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Developer, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Contract and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Developer or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Contract or for the fulfilment, compliance and/or performance of all or any of the obligations of the Developer under the Contract.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall remain in force and effect until Defects Liability Period prescribed under the Clause 11.7 of the Contract or unless a demand or claim in writing is made by the Authority to the Bank under this Guarantee.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall be encashable at⁶ and shall come into force with immediate effect and shall remain in force and effect for a period until 3 (three) months from completion of Term or Contract Period as per the terms of the Contract or until it is released earlier by the Authority pursuant to the provisions of the Contract.

Signed and sealed this Day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

⁶ Insert name of branch of bank in Gujarat

SCHEDULE 9
SCOPE OF DTA

[This would be limited to this Contract]

The following is the scope of Services to be provided by the DTA

i. Services during Design Phase

Activity	Deliverables (including but not limited to and after due approval of the Authority)-
Concept Development	Conceptual Masterplan/ Site plan
	Conceptual Plans, Elevations & Sections with zoning & Areas demarcated for all proposed development options
	Rendered 3D views with walkthrough (walkthrough only if value of works more than 50 Crores)
	Block Cost Estimate with Finishing Schedule
Studies and Investigations	Design Basis Report inclusive of
	1. Contour /Topographic survey, Soil investigation or any other survey as per Project requirement.
	2. Facilities List for consideration and selection
	3. Associated concepts for incorporation as per best practice.
	Environmental Clearance for the Project as per the norms
Detailed Design and Cost Estimation	Detailed Design Report:
	1. Masterplan & Site plan with external services, coordinated plan and landscape drawings with hardscape & softscape details.
	2. Detailed architectural drawings with Plans, Elevations, Sections & various standard details and coordinated services.
	3. Interior package including details of all zones with all proposed elements/ facilities, laboratories(complete detailing for the research space including but not limited to workspace, hotdesking, meeting space, equipment space with supporting infrastructure),with false ceiling flooring & wall cladding/ partitions general as well as in line with a biotech research environment wherever required.
	4. Final Rendered 3D views (including interiors) with updated walkthrough if any

Activity	Deliverables (including but not limited to and after due approval of the Authority)-
	5. Detail drawings of all services including Structure, HVAC, Electrical, ICT, plumbing & firefighting & other specialized services.
	6. Detail cost estimate with Specifications and Make with finishing schedule including but not limited to components, fixtures and fittings, flooring, building finishes, roof and ceiling, interiors including furniture or seating area, laboratory furniture and fixtures and walls, show casings and enclosures.
	Inputs to Construction Contract:
	Draft RFQ and contract document including all technical schedules, specifications, drawings and inputs as would be required for the Appointment of the CMA by the Authority.
Approval from Independent Engineer	Approval from independent engineer / R&B on the drawings provided. Independent Engineer shall be appointed by the Authority.

II Services during Construction Phase

- The DTA shall, on behalf of Authority, apply for and obtain all the statutory approvals, licenses and permits required to commence the construction works.
- The DTA shall on finalisation of the Construction agency tender submit the timeline for submission and approval of drawings.
- The DTA shall prepare and submit working/construction drawings and details for proper execution of work during construction.
- The DTA shall ensure that all the construction is done as per the specifications to which the detailed design has been made.
- The DTA shall submit daily progress report and monthly report to the Authority on status of construction works with respect to the agreed schedule. The monthly report shall also include a progress bar chart with respect to the planned schedule.
- Monitor the construction obligations being discharged by the Construction / Implementing Agency and keep the Authority informed about its compliance.
- Keep the Authority informed about compliance or any variance from the completion schedule and recommend to the Authority steps or amendments (if any) required to ensure timely completion of the construction of the Project;
- The DTA shall maintain all records for quality compliance. Further, Review and report to the Authority as to whether the Quality Assurance System complies with the requirements of standards stipulated by the Authority and provide to the Authority details of the non-compliance, as soon as reasonably practicable;

- Review any issue/ concern raised by the CMA and suggest authority on the possible actions that can be taken within 7 days of receipt of such letter.
- Inspect completed works on receipt of a notice and advice Authority if the Construction Management / Implementation Agency has discharged all its obligations and if a completion certificate can be issued by the Authority;
- Conduct periodic audits of Operations and Maintenance obligations of the Construction Management / Implementation Agency for compliance with the Authority's requirements;
- Review the periodic condition surveys to establish compliance with the performance specifications specified in the Authority's requirements
- Any other obligations required by the Authority at the time of appointment of the Construction Management / Implementation Agency
- Suggest modifications in the Construction Management / Implementation Agency's work program method statements, material sources etc., including activity scheduling and resource programming for timely completion of work;
- The DTA shall approve the setting out of the works;
- The DTA shall verify, and if necessary, order correction of, the as-built drawings (if any) supplied by the CMA;
- The DTA shall ensure a system of Quality Assurance of works; approve materials and sources of materials; review all bituminous mix designs and concrete mix designs proposed by the CMA and approve/suggest modifications in the mix design, sampling and testing procedure and Quality Control measures to ensure required standard and consistency in quality.
- The DTA shall check the setting up of laboratory (including calibration of equipment) and field tests carried out by the CMA and develop a mechanism in consultation with Authority to carry out adequate number of independent tests other than the regular testing done by Developer;
- The DTA shall make independent measurements, day to day records of material consumption in the format as approved by authority and quality checks towards realization of the CMA's milestone and ensure that all necessary documentation is provided in support of the realization of the works completed against the milestone
- The DTA shall monitor and check the day to day quality control of the works carried out under the Contract, keep all records as per the directions of the Authority and verify completion of milestones/ interim work, when the quality of the works is satisfactory, and the works have been carried out as the requirements laid in the contract.
- The DTA shall direct the CMA, on behalf of the Authority, in all matters concerning construction safety and care of the works (including the erection of the temporary signs at road-works) and, if required, to request the Developer to provide any necessary lights, guards, fencing and watchmen;
- The DTA shall direct the CMA, on behalf of the Authority, to carry out all such works or to do such things as may be necessary in his opinion to avoid or to

reduce the risk of any emergency affecting the safety of life or of adjoining property.

- The DTA shall direct the CMA to take all necessary steps including those mentioned in the construction contract to protect the environment on and off the site which may arise due to construction operations
- The DTA shall direct the CMA to take all necessary steps to maintain the rate of progress of works as per the approved Programme Schedule of the CMA on monthly basis; Further it should develop a program schedule in consultation with CMA in case of deviation of timelines by CMA.
- The DTA shall verify the As built drawings supplied by the CMA;
- The DTA shall assist/advise Authority for advance actions required to be taken for handing over of site and in achieving different milestones for completion of projects as per schedule;
- The DTA shall prepare and issue monthly and quarterly progress reports along with detailed quality control test statement in an approved format and also prepare detailed contract completion report; The copy of the same shall be submitted to Authority as well as CMA.
- DTA shall assist the Authority in taking over the works from the CMA for each section, in particular by preparing list of punch-points and deficiencies which need to be corrected/completed;
- DTA shall assist the Authority in co-ordination works with different executing agencies (if any) and support in timely implementation of the project;
- In the event that the CMA carries out any remedial works for removal or rectification of any defects or deficiencies, the DTA shall require the CMA to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards
- DTA shall carry out planning, scheduling and monitoring of the projects using appropriate IT tools and techniques as approved by the Authority.
- The DTA shall deploy the manpower on full time and/or parttime as per the mutually agreed discussion between Authority and DTA. The DTA shall assess its scope during the construction phase and deploy manpower in addition to the above, as and when required.
- The DTA shall support the Construction and Maintenance Agency (CMA) for obtaining the Project Completion certificate from Authority on successful test run and commissioning of the Project. For the avoidance of doubt, it is clarified that liaising and obtaining all statutory and necessary approvals required prior to commencement of construction shall be the responsibility of the DTA.
- Contract management and support in certification of milestones of the respective part of the Project.
- Handholding support to the Authority during various meetings/interactions with stakeholders as well as support the Authority in preparation of project specific presentations, project specific proposals, procurement outcomes, budget

utilization report, drafting application for various approvals from concerned authorities.

- The DTA shall inform the authority for any variation in scope of CMA and ensure necessary approvals of authority for execution of the same.
- Manpower during Construction Phase. The DTA shall provide following manpower during the Construction Phase full time on project site.

Category	Value of Works	Position	No.s	Qualification
2	More than 15 Crores but less than 100 Crores	Construction Manager	1	B.E. Civil Engineering + minimum 10 years of work experience
		Project Engineer Civil/ Electrical/ Mech.	1	B.E. Civil/ Electrical/ Mech.+ minimum 5 years of work experience
		Subject Expert (Biotech background on intermittent basis to support in design and supervision for development of labs)	1	Postgraduation + min 7 years experience in biotechnology and allied discipline OR PhD + min 5 years experience in biotechnology and allied discipline

The above indicated manpower is the minimum expected manpower required to be deployed by the Service Provider during the Construction Phase. The DTA shall assess its scope during the construction phase and deploy manpower in addition to the above, as and when required.

SCHEDULE 10 – BILL OF QUANTITIES

Refer separate attachment

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