



**DESIGN, SUPPLY, INSTALLION, COMMISSIONING AND O & M OF  
PNEUMATIC TUBE CONVEYOR SYSTEM  
AT  
JAWAHARLAL INSTITUTE OF POSTGRADUATE MEDICAL EDUCATION & RESEARCH  
PUDUCHERRY**

**Request For Proposal – Volume II**

**Tender no. HLL/ID/14/43 dtd 28.06.2014 (Re tender)**

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**HLL LIFECARE LIMITED  
Infrastructure Development Division  
“Adarsh” TC 6/1781, Vettamukku,  
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**General Conditions of Contract**

**1 General Provisions**

**1.1 Definitions**

**1.1.1 The Contract**

In the Conditions of Contract ("these Conditions"), which include Special Conditions of Contract and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

**"Contract"** means the Contract Agreement, these Conditions, the Employer's Requirements, the Tender, Notice Inviting Tender, Instructions to Tenderers and further documents (if any), which are listed in the Contract Agreement.

**"Contract Agreement"** means the contract agreement referred to in SubClause 1.6, including any annexed memoranda.

**"Employer's Requirements"** means the document entitled employer's requirements, as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria, for the Works.

**"Tender"** means the Contractor's signed offer for the Works and all other documents, which the Contractor submitted therewith (other than these Conditions and the Employer's Requirements, if so submitted), as included in the Contract.

**"Performance Guarantees"** and **"Schedule of Payments"** mean the documents so named (if any), as included in the Contract.

**1.1.2 Parties and Persons**

**"Party"** means the Employer or the Contractor, as the context requires.

**"Employer"** means the person named as employer in the Contract Agreement and the legal successors in title to this person.

**"Contractor"** means the person(s) named as contractor in the Contract Agreement and the legal successors in title to this person(s).

**"Engineer"** means the person named by the Employer in the Contract or appointed from time to time by the Employer under Sub-Clause 3.1 (The Engineer), who acts on behalf of the Employer.

**"Contractor's Representative"** means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 (Contractor's Representative), who acts on behalf of the Contractor.

**"Employer's Personnel"** means the assistants referred to in Sub-Clause 3.2 (Other Employer's Personnel) and all other staff, labour and other employees of the Employer and of the Engineer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer's Personnel.

**"Contractor's Personnel"** means the Contractor's Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

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**"Subcontractor"** means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works and the legal successors in title to each of these persons.

### **1.1.3 Dates, Tests, Periods and Completion**

**"Commencement Date"** means the date notified under Sub-Clause 9.1 (Commencement of Works), unless otherwise defined in the Contract Agreement.

**"Time for Completion"** means the time for completing the Works or a Section (as the case may be) under Sub-Clause 9.2 (Time for Completion), as stated in the Special Conditions of Contract (with any extension under Sub-Clause 9.4 (Extension of Time for Completion), calculated from the Commencement Date.

**"Tests on Completion"** means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 10 (Tests on Completion) before the Works or a Section (as the case may be) are taken over by the Employer.

**"Taking-Over Certificate"** means a certificate issued under Clause 11 (Employer's Taking Over).

**"Tests after Completion"** means the tests (if any), which are specified in the Contract, and which are carried out under Clause 13 (Tests after Completion) after the Works or a Section (as the case may be) are taken over by the Employer.

**"Defects Liability Period"** means the period for correcting defects in the Works or a Section (as the case may be) under Sub-Clause 12.1 (Completion of Outstanding Work and Remedying Defects), as stated in the Special Conditions of Contract (with any extension under Sub-Clause 12.3 (Extension of Defects Liability Period), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 11.1 (Taking Over of the Works and Sections). If no such period is stated in the Special Conditions of Contract, the period shall be six months.

**"Performance Certificate"** means the certificate issued under Sub Clause 12.9 (Performance Certificate).

- i) **"Day"** means a calendar day.
- ii) **"Month"** means a calendar month.
- iii) **"Year"** means 365 days

### **1.1.4 Money and Payments**

**"Contract Price"** means the agreed amount stated in the Contract Agreement for the design, execution and completion of the Works and the remedying of any defects, and includes adjustments (if any) in accordance with the Contract.

**"Cost"** means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site including overhead and similar charges, but does not include profit.

**"Final Statement"** means the statement defined in Sub-Clause 15.13 (Application for Final Payment).

**"Local Currency"** means the currency of the Country.

**"Statement"** means a statement submitted by the Contractor as part of an application for payment under Clause 15 (Contract Price and Payment).

### **1.1.5 Works and Goods**

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**"Contractor's Equipment"** means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Employer's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

**"Goods"** means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

**"Materials"** means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply only materials (if any) to be supplied by the Contractor under the Contract.

**"Plant"** means the apparatus, machinery and vehicles intended to form or forming part of the Permanent Works.

- i) **"Works"** means the Permanent Works and Temporary Works, or either of them as appropriate.
- ii) **"Permanent Works"** means the permanent works to be planned, designed and executed as well as medical equipments to be procured, installed and commissioned, integrated testing and correction of defects (if any) and maintained in accordance with the Contract during the Defects Liability Period.
- iii) **"Temporary Works"** means all temporary and enabling Works of every kind required for the execution and completion of the Works and the remedying of any defects therein.

#### **1.1.6 Other Definitions**

**"Contractor's Documents"** means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature supplied by the Contractor and approved by the Engineer under the Contract; as described in Sub-Clause 5.2 (Contractor's Documents).

**"Employer's Equipment"** means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Employer's Requirements; but does not include Plant which has not been taken over by the Employer.

**"Force Majeure"** is defined in Clause 20 (Force Majeure).

**"Laws"** means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority in India.

**"Performance Security"** means the security (or securities, if any) under Sub-Clause 4.2 (Performance Security).

**"Site"** means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

**"Variation"** means any change to the Employer's Requirements or the Works, which is instructed or approved as a variation under Clause 14 (Variations and Adjustments).

#### **1.2 Interpretation**

In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be



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recorded in writing, and

- (d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

### **1.3 Communications**

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, 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 the Special Conditions of Contract; 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, it may be sent to the address from which the request was issued.

Approvals, certificates, and consents shall not be unreasonably withheld or delayed.

### **1.4 Law and Language**

The Contract shall be governed by the laws for the time being in force in India.

The language for communications shall be English except specified in Special Conditions of Contract.

### **1.5 Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (i) the Contract Agreement
- (ii) the Letter of Acceptance.
- (iii) the Notice Inviting Tender
- (iv) Instructions to Tenderers
- (v) the Employer's Requirements,
- (vi) Special Conditions of Contract.
- (vii) General Conditions of Contract.
- (viii) The Contractor's Proposal
- (ix) the Tender and any other documents forming part of the Contract.

### **1.6 Contract Agreement**

The Contract shall come into full force and effect on the date of issue of the letter of acceptance. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Contractor.

### **1.7 Assignment**

The Contractor shall not assign a right or benefit under the Contract without first obtaining Employer's prior written consent, otherwise than by:

- a. a charge in favour of the Contractor's bankers of any money due or to become due under the Contract, or

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- b. assignment to the Contractor's insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable.

## **1.8 Care and Supply of Documents**

The Construction and/or Manufacture Documents shall be in the custody and care of the Contractor during the Contract. Unless otherwise stated in Special Conditions of Contract, the Contractor shall provide six copies for the use of the Engineer and their personnel.

The Contractor shall keep on Site one complete set of the documents forming the Contract, the Construction and/or Manufacture Documents, Variations, other communications given or issued from time to time and the documents/samples. The Employer, the Engineer and their personnel shall have the right to access these documents at all reasonable times.

If the Contractor becomes aware of an error or defect of a technical nature in a document, which was prepared for use in executing the Works, the Contractor shall promptly give notice to the Employer of such error or defect and follow the Engineer's Instructions to rectify the same at Contractor's cost. The Engineer's decision in this regard shall be final and binding on the Contractor.

## **1.9 Confidentiality**

The Contractor shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the Employer.

### **1.10 Employer's Use of Contractor's Documents**

The Contractor shall be deemed to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall

- a. apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- b. entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- c. in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

The Employer reserves the full right to use, copy or communicate the Contractor's documents for any purpose he wants to, as long as it doesn't harm Contractor's interests. The Contractor shall make available all the documents which the Employer wants at any point of time without conditions. No claims shall be entertained by the Employer in this regard.

### **1.11 Contractor's Use of Employer's Documents**

The Contractor shall not use the Employer's documents without the consent of the Employer. This use shall be restricted for the purpose of the Contract only and at the cost of the Contractor.

### **1.12 Confidential Details**

The Contractor shall disclose any information including confidential information, which the Employer may reasonably require in order to verify the Contractor's compliance with the Contract.

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**1.13 Compliance with Laws**

The Contractor shall conform in all aspects with:

- a. the provision of any enactment in India as applicable from time to time
- b. the regulations or bye-laws of any local body and utilities.
- c. the Contractor shall be bound to give all notices required by statute, regulations or by-laws, as aforesaid and to pay all fees and bills payable in relation to the design, execution and completion of the Works and the remedying of any defects. The Contractor will arrange necessary clearances and Approvals before the Work is taken up.

Ignorance of Rules, Regulations and Bylaws shall not constitute a basis for any claim at any stage of work.

**1.14 Joint and Several Liability**

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:

- a. these persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;
- b. these persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- c. the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

**2 The Employer**

**2.1 Right of Access to the Site**

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Special Conditions of Contract. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Employer's Requirements. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Special Conditions of Contract, the Employer shall give the Contractor right of access to, and possession of, the Site with effect from the Commencement Date.

If there is any delay in the performance of the Contract due to a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 21.1 (Contractor's Claims) to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.4 (Extension of Time for Completion).

No extra payment of whatsoever nature shall be made to the Contractor in this regard.

However, if and to the extent that the Employer's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time.

**2.2 Permits, Licences or Approvals**

It shall be Contractor's exclusive responsibility to get Approvals, permits or license required for the Contract. However, the Employer may (where he is in a position to do so) provide reasonable assistance to Contractor at the request and cost of the Contractor in getting Permits, License or Approvals required during the Contract.

**2.3 Employer's Personnel**

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The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

- a. co-operate with the Contractor's efforts under Sub-Clause 4.5 (Co-operation) and
- b. take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.7 (Safety Procedures) and under Sub-Clause 4.17 (Protection of the Environment).

## **2.4 Employer's Claims**

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Liability Period, he shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.18 (Electricity, Water and Gas), under Sub-Clause 4.19 (Employer's Equipment) or for other services requested by the Contractor.

The notice shall be given as soon as practicable after the Employer became aware of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Liability Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Employer shall then determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Liability Period in accordance with Sub-Clause 12.3 (Extension of Defects Liability Period) and convey the same to the Contractor. Engineer's decision in this regard shall be final and binding on the Contractor.

The Employer may deduct this amount from any moneys due, or to become due, to the Contractor. The Employer shall only be entitled to set off against or make any deduction from an amount due to the Contractor, or to otherwise claim against the Contractor, in accordance with this Sub-Clause or with sub-paragraph (a) and/or (b) of Sub-Clause 15.9 (Interim Payments).

## **3 The Employer's Administration**

### **3.1 The Engineer**

The Employer may nominate or appoint from time to time an Engineer to act on his behalf under the Contract. In this event, he shall give notice to the Contractor of the name, address, duties and authority of the Engineer. The Employer shall also be entitled to change the Engineer with intimation to the Contractor.

The Engineer shall carry out the duties specified or implied in the Contract. If the Engineer is required to obtain the Approval of the Employer before exercising a specified authority, the requirement shall be stated in the Special Conditions of Contract. Any requisite Approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer. The Engineer shall have no authority to amend the Contract nor to relieve the Contractor of any of its obligations of the Contract.

### **3.2 Other Employer's Personnel**

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. The delegation or a revoke should be in writing. The assignment, delegation or revocation shall not take effect until the Contractor has received a copy of it in writing.

### **3.3 Delegated Persons**

Each assistant to the Engineer to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any

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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 Employer. However:

- (a) unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances;
- (b) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials; and
- (c) if the Contractor questions any determination or instruction of a delegated person, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

### **3.4 Engineer's Instructions**

The Engineer may issue to the Contractor instructions, which shall be necessary for the Contractor to perform his obligations under the Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the SubClause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a Variation, Clause 14 (Variations and Adjustments) shall apply. If the Engineer or a delegated assistant gives an oral instruction and

- (a) Receives a written communication of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
- (b) Does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

## **4 The Contractor**

### **4.1 Contractor's General Obligations**

The Contractor shall design, execute and complete the Works in accordance with the Contract, and shall remedy any defects in the Works. When completed, the Works shall be fit for the purposes for which the Works are intended as defined in the Contract.

The Contractor shall provide the Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Works shall include any work which is necessary to satisfy the Employer's Requirements, design as well as procurement, testing, installation, commissioning etc. or is implied by the Contract, and all works which (although not mentioned in the Contract) are necessary for stability or for the completion, or safe and proper operation, of the Works.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations, of all methods of construction and of all the Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Employer.

### **4.2 Performance Security**

- (a) Within 30 days of issue of the Letter of Acceptance, the successful Tenderer shall furnish

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Performance Security in the form of a bank guarantee for an amount of ten per cent of the Contract Value. The approved form provided in the “Instructions to Tenderers documents shall be used for Bank Guarantee. The Bank Guarantee shall be valid upto 6 months beyond the “Defects Liability Period”.

- (b) Failure of the successful Tenderer to furnish the required Performance Security shall be a ground for the annulment of the award of Contract and forfeiture of the Tender security.

If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The Employer shall return the Performance Security to the Contractor within 21 days after the Contractor receives the Performance Certificate.

#### **4.3 Contractor's Representative**

The Contractor shall appoint the Contractor's Representative with prior written approval from the Employer and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

The Contractor shall not, without the prior consent of the Employer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.4 (Engineer's Instructions).

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Employer has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

#### **4.4 Subcontractors**

The Contractor shall not subcontract the Works except for petty labour and material except with the prior approval of the Employer.

#### **4.5 Co-operation with others Persons at Site**

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

- a. the Employer's Personnel,
- b. any other contractors employed by the Employer, and
- c. the personnel of any legally constituted public authorities and authorized by the Employer,

who may be employed in the execution on or near the Site of any work not included in the Contract. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements, which are the responsibility of the Contractor.

The Contractor shall be responsible for his construction activities on the Site, and shall co-ordinate his own activities with those of other contractors employed by the Employer for other purposes.

If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such requirements with the preliminary design and detailed design in accordance with the Employer's

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#### **4.6 Setting Out**

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

#### **4.7 Safety Procedures**

The Contractor shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 11 (Employer's Taking Over), and
- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

#### **4.8 Quality Assurance**

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Employer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Employer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Employer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

#### **4.9 Site Data**

The Employer shall have made available to the Contractor for his information, all relevant data in the Employer's possession on subsurface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data, which come into the Employer's possession at any time.

The Contractor shall be responsible for verifying and interpreting all such data. The Employer shall have no responsibility for the accuracy, sufficiency or completeness of such data, except as stated in Sub-Clause 5.1 (General Design Responsibilities).

#### **4.10 Sufficiency of the Contract Price**

The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price.

Unless otherwise stated in the Contract, the Contract Price covers all obligations of the Contractor under the Contract and all things necessary for the proper design, execution and completion of the Works and the remedying of any defects.

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**4.11 Unforeseeable Difficulties**

Except as otherwise stated in the Contract:

- a. The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;
- b. By signing the Contract, the Contractor accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and
- c. The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs.

**4.12 Rights of Way and Facilities**

The Employer shall provide right of way within its premises to the Contractor for the purpose of the Contract. The Contractor shall bear all costs and charges for special and/or temporary rights of way, which he may require, including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site, which he may require for the purposes of the Works.

**4.13 Avoidance of Interference**

The Contractor shall not interfere unnecessarily or improperly with:

- a. The convenience of the public, or
- b. The access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference

The Contractor should specifically note the fact that the work is required to be carried out in a working hospital and institute. Care should be taken to not to affect the ongoing activities, or harm any person, individual or any part of the building through the Contractor's Operations.

**4.14 Access Route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall use reasonable efforts to prevent any building, person, road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) The Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- (b) The Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- (c) The Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route,
- (d) The Employer does not guarantee the suitability or availability of particular access routes, and
- (e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

**4.15 Transport of Goods**



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Unless otherwise stated in the Special Conditions of Contract:

- a. The Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- b. The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- c. The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

#### **4.16 Contractor's Equipment**

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works and shall not be removed without the prior consent of the Engineer.

#### **4.17 Protection of the Environment**

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values prescribed by applicable standards and laws in India.

#### **4.18 Electricity, Water and Gas**

The Contractor shall be responsible for the provision of all power, water and other services he may require at his own cost. The Employer, where feasible may at his discretion assist the Contractor in this respect.

#### **4.19 Employer's Equipment**

The Employer shall make the Employer's Equipment (if any) available for the use of the Contractor for the execution of the Works in accordance with the details, arrangements and prices stated in the Employer's Requirements. Unless otherwise stated in the Employer's Requirements

- (a) the Employer shall be responsible for the Employer's Equipment till the same is handed over to the Contractor, except that
- (b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined in accordance with Sub-Clause 2.4 (Employer's Claims). The Contractor shall pay these amounts to the Employer.

#### **4.20 Progress Reports**

Unless otherwise stated in the Special Conditions of Contract, monthly progress reports shall be prepared by the Contractor and submitted to the Employer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work, which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

Each report shall include:

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- a. Charts and detailed descriptions of progress, including, each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation;
- b. Photographs showing the status of manufacture and of progress on the Site;
- c. For the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
  - i. commencement of manufacture,
  - ii. Contractor's inspections,
  - iii. tests, and
  - iv. shipment and arrival at the Site;
- d. The details described in Sub-Clause 7.10 (Records of Contractor's Personnel and Equipment);
- e. Copies of quality assurance documents, test results and certificates of Materials
- f. List of Variations, notices given under Sub-Clause 2.4 (Employer's Claims) and notices given under Sub-Clause 21.1 (Contractor's Claims);
- g. Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- h. Future requirements from the Employer of any service, plant, foundation etc and
- i. Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

#### **4.21 Security of the Site**

Unless otherwise stated in the Special Conditions of Contract:

- (a) The Contractor shall be responsible for keeping unauthorised persons off the Site, and
- (b) authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer or the Engineer, as authorised personnel of the Employer's other contractors on the Site.

#### **4.22 Contractor's Operations on Site**

The Contractor shall confine his operations to the Site, and to any additional areas, which may be obtained by the Contractor and agreed by the Employer as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works, which are no longer, required.

Upon the issue of the Taking-Over Certificate for the Works, the Contractor shall clear away and remove all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Liability Period, such Goods as are required for the Contractor to fulfill obligations under the Contract.

#### **4.23 Fossils, Discoveries and Items of Value**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

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The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer who shall issue instructions for dealing with it. If the Contractor suffers delay from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled to an extension of time for any such delay, if completion is or likely to be delayed, under Sub-Clause 9.4 (Extension of Time for Completion). No extra payment shall be made to the Contractor in this regard.

## **5 Design**

### **5.1 General Design Obligations**

The Contractor shall be deemed to have scrutinised the Employer's Requirements (including design criteria and calculations, if any). The Contractor shall be responsible for the design of the Works and for the accuracy of such Employer's Requirements (including design criteria and calculations), except as stated below.

The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Employer's Requirements as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from his responsibility for the design and execution of the Works.

However, the Employer shall be responsible for the correctness of the following portions of the Employer's Requirements and of the following data and information provided by (or on behalf of) the Employer:

- (a) Portions, data and information which are stated in the Contract as being immutable or the responsibility of the Employer,
- (b) Definitions of intended purposes of the Works or any parts thereof,

### **5.2 Contractor's Documents**

The Contractor's Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, and the documents described in Sub-Clause 5.6 (As-Built Documents) and Sub-Clause 5.7 (Operation and Maintenance Manuals). Unless otherwise stated in the Employer's Requirements, the Contractor's Documents shall be written in the language for communications defined in Sub-Clause 1.4 (Law and Language).

The Contractor shall prepare all Contractor's Documents, and shall also prepare any other documents necessary to instruct, the Contractor's Personnel and as instructed by the Engineer from time to time.

If the Employer's Requirements describe the Contractor's Documents, which are to be submitted to the Engineer for review, they shall be submitted accordingly, together with a notice as, described below. In the following provisions of this Sub-Clause, (i) "review period" means the period required by the Engineer for review, and (ii) "Contractor's Documents" exclude any documents which are not specified as being required to be submitted for review.

Unless otherwise stated in the Employer's Requirements, each review period shall not exceed 21 days, calculated from the date on which the Employer receives a Contractor's Document and the Contractor's notice. This notice shall state that the Contractor's Document is considered ready, both for review in accordance with this Sub-Clause and for use. The notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.

The Engineer may, within the review period, give notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed in accordance with this Sub-Clause, at the Contractor's cost.

For each part of the Works, and except to the extent that the Parties otherwise agree:

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- (a) Execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution;
- (b) Execution of such part of the Works shall be in accordance with these Contractor's Documents, as submitted for review; and
- (c) If the Contractor wishes to modify any design or document which has previously been submitted for review, the Contractor shall immediately give notice to the Engineer. Thereafter, the Contractor shall submit revised documents to the Engineer in accordance with the above procedure.

Any such agreement (under the preceding paragraph) or any review (under this Sub Clause or otherwise) shall not relieve the Contractor from any obligation or responsibility.

### **5.3 Contractor's Warranty of Design**

- a. The Contractor shall be fully responsible, for the suitability, adequacy, integrity, durability and practicality of the Contractor's proposal.
- b. The Contractor warrants that the Contractor's Proposals meet the Employer's Requirements and is fit for the purpose thereof. Where there is any inadequacy, insufficiency, impracticality or unsuitability in or of the Employer's Requirements or any part thereof, the Contractor's Proposal shall take into account, address or rectify such inadequacy, insufficiency, impracticality or unsuitability at Contractor's own cost.
- c. The Contractor shall indemnify the Employer against any damage, expense, liability, loss or claim, which the Employer might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty set out in this Clause.
- d. The Contractor further specifies and is deemed to have checked and accepted full responsibility for the Contractor's Proposal and warrants absolutely that the same meets the Employer's Requirements:
  - i. Notwithstanding that such design may be or have been prepared, developed or issued by the Employer, any of Contractor's consultants, his sub contractors and/or his qualified personnel/persons or cause to be prepared, developed or issued by others.
  - ii. Notwithstanding any warranties, guaranties and/or indemnities that may be or may have been submitted by any other person.
  - iii. Notwithstanding that the same have been accepted by the Engineer

The Contractor shall be fully responsible for the Plants, Materials, goods, workmanship, preparing, developing and coordinating all design Works to enable that part of the Works to be constructed and/or to be fully operational in accordance with the Contract's requirements.

### **5.4 Technical Standards and Regulations**

The design, the Contractor's Documents, the execution and the completed Works shall comply with the technical standards, building, construction and environmental Laws in force in India, Laws applicable to the product being produced from the Works, and other standards specified in the Employer's Requirements, applicable to the Works, or defined by the applicable Laws. Where suitable Indian standards are not applicable, relevant international standards with the prior approval of the Engineer may be referred to.

### **5.5 Training**

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works to the extent specified in the Employer's Requirements or as desired by the Employer. If the Contract specifies training, which is to be, carried out before taking-over, the Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 11.1 (Taking Over of the Works and Sections) until this training has been completed.

Training shall be carried for the machines, systems installed and for the new medical equipments procured and installed in the hospital. The minimum training period shall be as per the Employer's Requirement.

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## **5.6 As-Built Documents**

The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact as-built locations, sizes and details of the work as executed. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Two copies shall be supplied to the Engineer prior to the commencement of the Tests on Completion.

In addition, the Contractor shall supply to the Employer as-built drawings of the Works, showing all Works as executed, and submit them to the Employer for review under Sub-Clause 5.2 (Contractor's Documents). The Contractor shall obtain the consent of the Engineer as to their size, the referencing system, and other relevant details.

Prior to the issue of any Taking-Over Certificate, the Contractor shall supply to the Engineer the specified numbers and types of copies of the relevant as-built drawings, in accordance with the Employer's Requirements. The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 11.1 (Taking Over of the Works and Sections) until the Employer has received these documents.

## **5.7 Operation and Maintenance Manuals**

Prior to commencement of the Tests on Completion, the Contractor shall supply to the Employer provisional operation and maintenance manuals as specified in the Employer's Requirements and Special Conditions of Contract.

The Works shall not be considered to be completed for the purposes of taking-over under Sub-Clause 11.1 (Taking Over of the Works and Sections) until the Employer has received final operation and maintenance manuals in such detail, and any other manuals specified in the Employer's Requirements for these purposes.

## **5.8 Design Error**

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, they and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Clause.

## **6 Medical Equipments**

The Contractor shall procure, install and commission medical equipments for the hospital in accordance with the Employer's Requirements. All the medical equipments shall be of the latest specifications and internationally accepted.

### **6.1 Approval of Specifications of Medical Equipments by Technical Committee**

Before the Equipments are procured and the orders are placed, the Contractor shall finalise the detailed specifications of the medical equipment and get it approved from the technical committee of the Employer. No change or deviation in the broad specifications provided in the Employer's requirement and detailed specifications approved by the technical committee shall be permitted.

### **6.2 Employer's Right to Vary the Specifications**

The Contractor shall submit his quotation at the time of tendering in accordance with the list of equipments and broad specifications provided in the Employer's Requirements.

The Employer reserves the right to change or modify the detailed specifications submitted by the Contractor and order variations for the same. The detailed specifications shall be finalized only at the later stage based

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Any financial risk of providing detailed specifications at a later date and price variations due to the same rests with the Contractor. The Contract price shall not be adjusted on account of this.

### **6.3 Demonstration**

The Contractor shall arrange a demonstration of the working of Equipment before the same is installed permanently in the hospital at Contractor's Cost.

### **6.4 Warranty for Medical Equipments**

The Contractor shall provide OEM warranty for each medical equipment procured, installed and commissioned under the Contract. The minimum warranty period shall be 5 years. Wherever the manufacturers provide warranty period less than 5 years the contractor shall obtain extended warranty for the balance period.

### **6.5 Equipment Error and defect**

The medical equipments procured shall be free of any error (including the least count error) and any defects before the same is handed over to the Employer. It is Contractor's responsibility to ensure that all the medical equipments comply with the above requirements. In case there is any error or defects in the equipment, it should be corrected or made good at Contractor's Cost.

Where there is a faulty equipment, it should be replaced in a reasonable time and with the permission of the Employer. The Contractor shall bear all charges of whatsoever nature for such replacement or repair etc. The Employer shall make no payments to the Contractor in this regard.

### **6.6 Maintenance of Medical Equipments**

- (a) The contractor shall provide Annual Maintenance Contract (AMC) for all the medical equipments for a period of 5 years after the defect liability period.
- (b) The Contractor shall be responsible for the maintenance of the medical equipments during the Defects Liability Period as specified in Special Conditions of Contract.

The Contractor shall supply Operation and Maintenance Manuals of the Equipment along with the original bills, warranty cards etc to the Employer as mentioned in Employer's Requirements.

## **7 Staff and Labour**

### **7.1 Engagement of Staff and Labour**

Except as otherwise stated in the Employer's Requirements, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport. The Contractor shall utilise the local labour and material to the extent possible.

### **7.2 Rates of Wages and Conditions of Labour**

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions, which are not lower than the general level of wages, and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

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**7.3 Persons in the Service of Others**

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel, Engineer and those retired Employees of the Employer at any stage in the Contract.

**7.4 Labour laws**

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights applicable in India.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

**7.5 Working Hours**

No work shall be carried out on the Site on locally recognised days of rest, or outside normal working hours, unless:

- (a) otherwise stated in the Contract,
- (b) with the prior approval from the Engineer, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Employer.

**7.6 Facilities for Staff and Labour**

Except as otherwise stated in the Employer's Requirements, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

**7.7 Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor 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 Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor 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 execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

**7.8 Contractor's Superintendence**

Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfill the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct,

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manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 (Law and Language)) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

## **7.9 Contractor's Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care,
- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

## **7.10 Records of Contractor's Personnel and Equipment**

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work, which is known to be outstanding at the completion date, stated in the Taking-Over Certificate for the Works.

## **7.11 Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site. The Contractor shall indemnify and hold harmless the Employer against any claims on such account.

# **8 Plant Machinery and Maintenance**

## **8.1 Manner of Execution**

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Contract
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.
- (d) Shall be subjected to tests from time to time as and when desired and instructed by the Engineer

## **8.2 Samples**

The Contractor shall submit samples to the Engineer, for review in accordance with the procedures for Contractor's Documents described in Sub-Clause 5.2 (Contractor's Documents), as specified in the Contract and at the Contractor's cost. Each sample shall be labelled as to origin and intended use in the Works.

## **8.3 Inspection**

The Engineer, his authorized subordinates, the employer's personnel and officers of the Chief Technical Examiner's Organization shall at all reasonable times:



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- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and during production, manufacture and construction (at the Site and, to the extent specified in the Contract, elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.
- (b) The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

In respect of the work which Employer's Personnel are entitled to examine, inspect, measure and/or test, the Contractor shall give notice to the Engineer whenever any such work is ready and before it is covered, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Employer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

#### **8.4 Testing**

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Engineer may, under Clause 14 (Variations and Adjustments), vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.

If as a result of a delay for which the Engineer is responsible, the performance of the Contract is delayed, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 21.1 (Contractor's Claims) to an extension of time for any such delay, if completion is or is likely to be delayed, under Sub-Clause 9.4 (Extension of Time for Completion). No extra payment shall be made in this context to the Contractor.

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

#### **8.5 Rejection**

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect at his own cost and ensure that the rejected item is redone complying with the Contract.

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In the event of the contractor failing to do so and if the item of work is acceptable without detriment to the safety and utility of the item and the structure, the engineer may accept such items with suitable cost adjustment/reduction as the competent authority may consider reasonable.

If the Engineer requires this Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. No adjustments or extra payments shall be payable to the Contractor in this regard.

## **8.6 Remedial Work**

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

- (a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- (b) remove and re-execute any other work which is not in accordance with the Contract, and
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

If the Contractor fails to comply with any such instruction, which complies with Sub-Clause 3.4 (Engineer's Instructions), the Employer shall be entitled to employ and pay other persons to carry out the work and recover the additional cost from the Contractor, which may be deducted from any payments due to the Contractor.

## **8.7 Ownership of Plant and Materials**

Each item of Plant and Materials shall, to the extent consistent with Indian laws, become the property of the Employer, free from liens and other encumbrances when it is delivered to the Site;

## **8.8 Royalties**

Unless otherwise stated in the Employer's Requirements, the Contractor shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site, and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

## **9 Commencement, Delays and Suspension**

### **9.1 Commencement of Works**

Unless otherwise stated in the Contract Agreement:

- (a) The Employer shall give the Contractor not less than 7 days notice of the Commencement Date; and
- (b) The Commencement Date shall be as per Clause 1.3 of Instructions to Tenderers.

The Contractor shall commence the design and execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

### **9.2 Time for Completion**

The Contractor shall complete the whole of the Works, within the Time for Completion stated in the Contract for the Works, including:

- (a) achieving the passing of the Tests on Completion, and

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- (b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 11.1 (Taking Over of the Works and Sections).

### **9.3 Programme**

The Contractor shall submit a time programme to the Engineer and get it approved from the Engineer within 30 days after the Commencement Date. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Unless otherwise stated in the Contract, each programme shall include:

- (a) The order in which the Contractor intends to carry out the Works, including the anticipated timing of each major stage of the Works,
- (b) The periods for reviews under Sub-Clause 5.2 (Contractor's Documents),
- (c) The sequence and timing of inspections and tests specified in the Contract, and
- (d) A supporting report which includes:
  - (i) a general description of the methods which the Contractor intends to adopt for the execution of each major stage of the Works, and
  - (ii) the approximate number of each class of Contractor's Personnel and of each type of Contractor's Equipment for each major stage.

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances, which may adversely affect or delay the execution of the Works. In this event, or if the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

### **9.4 Extension of Time for Completion**

The Contractor shall be entitled subject to Sub-Clause 21.1 (Contractor's Claims) to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 11.1 (Taking Over of the Works and Sections) is or will be delayed by any of the following causes;

- (a) A Variation
- (b) A cause of delay giving an entitlement to extension of time, or
- (c) Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub Clause 21.1 (Contractor's Claims). When determining each extension of time under Sub-Clause 21.1, the Engineer may increase, but shall not decrease, the total extension of time.

No claim towards idle time charges shall be entertained by the Employer for any reasons whatsoever. However, if the work is delayed for reasons attributable to the Employer, the Employer may at his discretion, grant extension of time, as he considers reasonable for the proper completion of work. The grant of such extension of time will not bestow on the Contractor any right to claim compensation/extra payment for idling of plant, labour and over head loss etc at a future date whatsoever.

### **9.5 Delays Caused by Authorities**

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If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was not reasonably foreseeable by an experienced contractor by the date for submission of the Tender,

then this delay or disruption will be considered as a cause of delay under subparagraph (b) of Sub-Clause 9.4 (Extension of Time for Completion).

## **9.6 Rate of Progress**

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 9.3 (Programme),

other than as a result of a cause listed in Sub-Clause 9.4 (Extension of Time for Completion), then the Engineer may instruct the Contractor to submit, under SubClause 9.3 (Programme), a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.4 (Employer's Claims) pay these costs to the Employer, in addition to liquidated damages (if any) under Sub-Clause 9.7 below.

## **9.7 Liquidated Damages**

In case the Engineer decides to extend the Contract with liquidated damages for delays due to Contractor, in that case without prejudice to any other right or remedy available to the Employer, the liquidated damages shall be levied at the rate of half percent of the Contract Value for the Works for each week or part of the week the Contractor is in default subject to a maximum of 10% of the total Contract Value.

If the delay relates only to a portion of the Works with a separate and earlier completion period, the Contract Value shall be restricted to the cost of that portion of the Works only.

The decision of the Engineer as to the compensation payable by the Contractor under this Clause shall be final and binding.

## **9.8 Suspension of Work**

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

## **9.9 Consequences of Suspension**

The Contractor shall not be entitled to extra cost (if any), incurred by him, during the period of suspension of Work, if such suspension is

- a. provided for in the Contract, or

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- b. necessary for proper execution of Works or by reasons of weather condition or by some default on the part of the Contractor, or
- c. necessary for the safety of Works or any part thereof or
- d. necessary for the safety of adjoining public or other property or safety of the public or workmen or those who have to be at the Site or
- e. to ensure safety and to avoid disruption of traffic and utilities, as also to permit fast repairs and restoration of any damaged utilities,

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 9.8.

Suspension Period	Extension of Time	Compensation for the suspension period	Remarks
Upto 14 days	NO	NO	Engineer may at his sole discretion may give extension of time in exceptional circumstances
15 – 30 days	YES	NO	Extension of time as considered proper by the Engineer
Above 30 days	YES	<ul style="list-style-type: none"><li>As per Daily rate of wages for idle labour/employees</li><li>70% of the rate for hire charges for idle plant and machinery (excluding cost of fuel and lubricants)</li><li>15% above all these items to cover overhead costs</li></ul>	Compensation as assessed by the Engineer on submission of documentary proof by the Contractor to Engineer's satisfaction
Above 90 days If Contractor asks for force closure	NO	No compensation except as per part (iii) of Sub-Clause 20.5	Contractor may ask for closure of the Contract, or deletion from the Contract of that part of Works which has been suspended

#### **9.10 Resumption of Work**

After the permission or instruction to proceed is given, the Parties shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

#### **10 Tests on Completion**

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**10.1 Contractor's Obligations**

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 8.4, (Testing) after providing the documents in accordance with Sub-Clause 5.6 (As-Built Documents) and Sub-Clause 5.7 (Operation and Maintenance Manuals).

The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.

Unless otherwise stated in the Special Conditions of Contract, the Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of the hospital can safely under-take the next stage
- (b) commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified, under all available operating conditions; and
- (c) trial operation, which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract.

During trial operation, when the Works are operating under stable conditions, the Contractor shall give notice to the Engineer that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the Employer's Requirements and with the Performance Guarantees.

Trial operation shall not constitute a taking-over under Clause 11 (Employer's Taking Over). Unless otherwise stated in the Special Conditions of Contract, any product produced by the Works during trial operation shall be the property of the Employer.

As soon as the Works, or a Section, have passed each of the Tests on Completion described in sub-paragraph (a), (b) or (c), the Contractor shall submit a certified report of the results of these Tests to the Engineer.

**10.2 Delayed Tests**

If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 8.4 (Testing) (fifth paragraph) and/or Sub-Clause 11.3 (Interference with Tests on Completion) shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. These Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

**10.3 Retesting**

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 8.5 (Rejection) shall apply, and the Employer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

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**10.4 Failure to Pass Tests on Completion**

If the Works, or a Section, fail to pass the Tests on Completion repeated under SubClause 10.3 (Retesting), the Engineer shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 10.3;
- (b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in subparagraph (c) of Sub-Clause 12.4 (Failure to Remedy Defects); or
- (c) issue a Taking-Over Certificate.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Engineer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.4 (Employer's Claims).

**11 Employer's Taking Over**

**11.1 Taking Over of the Works and Sections**

Except as stated in Sub-Clause 10.4 (Failure to Pass Tests on Completion), the Works shall be taken over by the Employer when

- (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 9.2 (Time for Completion) and except as allowed in sub-paragraph (a) below, and
- (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Employer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Employer shall, within 28 days after receiving the Contractor's application:

- (a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, including making good of defects if any at Contractor's Cost
- (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work, before issuing a further notice under this Sub-Clause.

**11.2 Taking Over of Parts of the Works**

Parts of the Works (other than Sections) shall not be taken over or used by the Employer, except as may be stated in the Contract or as may be agreed by both Parties.

**11.3 Interference with Tests on Completion**

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Contractor shall carry out the Tests on Completion as soon as practicable.

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If the Contractor suffers delay as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 21.1 (Contractor's Claims) to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 9.4 (Extension of Time for Completion). No extra payment will be made to the Contractor in this regard.

After receiving this notice, the Engineer shall proceed in accordance with to agree or determine these matters.

## **12 Defects Liability Period**

The Defects Liability Period shall be as per the period stated in clause 1.3 of Instructions to Tenderers.

### **12.1 Completion of Outstanding Work and Remedying Defects**

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Liability Period or as soon as practicable thereafter, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over-Certificate, within such reasonable time as is instructed by the Engineer, and
- (b) execute all work required to remedy defects or damage, as may be notified by the Engineer on or before the expiry date of the Defects Liability Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Engineer shall notify the Contractor accordingly.

### **12.2 Cost of Remedying Defects**

All work referred to in sub-paragraph (b) of Sub-Clause 12.1 (Completion of Outstanding Work and Remedying Defects) shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) the design of the Works,
- (b) Plant, Materials or workmanship not being in accordance with the Contract,
- (a) improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Sub-Clauses 5.5 to 5.7 or otherwise), or
- (b) failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Engineer shall give notice to the Contractor accordingly following which; the Contractor must proceed with the instructions given by the Engineer to make good the defects at no extra cost.

### **12.3 Extension of Defects Liability Period**

The Employer may at his discretion, extend the Defects Liability Period for the Works or a Section if and to the extent that the Works, Section or a major equipment of the Hospital (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or damage. However, a Defects Liability Period shall not be extended by more than six months. Extra expenses /losses incurred by the Employer due to any extension of Defects Liability Period shall be recovered from Contractor.

### **12.4 Failure to Remedy Defects**

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by the Engineer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work, the



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Employer may (at his discretion):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.4 (Employer's Claims) pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

## **12.5 Removal of Defective Work**

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

## **12.6 Further Tests**

If the work of remedying of any defect or damage may affect the performance of the Works, the Employer may require the repetition of any of the tests described in the Contract, including Tests on Completion and/or Tests after Completion. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 12.2 (Cost of Remedying Defects), for the cost of the remedial work.

## **12.7 Right of Access**

Until the Performance Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Employer's reasonable security restrictions.

## **12.8 Contractor to Search**

The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. The defect is to be remedied at the cost of the Contractor under Sub-Clause 12.2 (Cost of Remedying Defects).

## **12.9 Performance Certificate**

Performance of the Contractor's obligations shall not be considered to have been completed until the Employer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Employer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Liability Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested the Works, including remedying any defects.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

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## **12.10 Unfulfilled Obligations**

After the Performance Certificate has been issued, each Party shall remain liable for the fulfillment of any obligation, which in the opinion of the Engineer 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.

## **12.11 Clearance of Site**

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after the Employer issues the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

## **13 Tests after Completion**

### **13.1 Procedure for Tests after Completion**

- a. the Contractor shall provide everything necessary to carry out the Tests after Completion efficiently; and
- b. the Contractor shall carry out the Tests after Completion in the presence of Engineer, any Employer's and/or Contractor's Personnel as either Party may reasonably request.

The Tests after Completion shall be carried out as soon as is reasonably practicable after the Works or Section have been taken over by the Employer. The Engineer shall give to the Contractor 21 days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, these Tests shall be carried out within 14 days after this date, on the day or days determined by the Engineer in consultation with the Employer.

The results of the Tests after Completion shall be compiled and evaluated by the Contractor, who shall prepare a detailed report. The Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works.

### **13.2 Delayed Tests**

If the Contractor suffers any delay as a result of any unreasonable delay by the Employer to the Tests after Completion, the Contractor shall

- (i) give notice to the Engineer and.
- (ii) be entitled subject to Sub-Clause 21.1 (Contractor's Claims) to extension of time.

If, for reasons not attributable to the Contractor, a Test after Completion on the Works or any Section cannot be completed during the Defects Liability Period (or any other period agreed upon by both Parties), then the Works or Section shall be deemed to have passed this Test after Completion. No extra payments shall be made to the Contractor in this regard.

### **13.3 Retesting**

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If the Works, or a Section, fail to pass the Tests after Completion:

- (a) sub-paragraph (b) of Sub-Clause 12.1 (Completion of Outstanding Work and Remedying of Defects) shall apply, and
- (b) either Party may then require the failed Tests, and the Tests after Completion on any related work, to be repeated under the same terms and conditions.

If and to the extent that this failure and retesting are attributable to any of the matters listed in sub-paragraphs (a) to (d) of Sub-Clause 12.2 (Cost of Remedying Defects) and cause the Employer to incur additional costs, the Contractor shall pay these costs to the Employer.

### **13.4 Failure to Pass Tests after Completion**

If the Works, or a Section, fail to pass a Test after Completion and the Contractor shall then remain liable to carry out the adjustments or modifications and to satisfy this Test as per the instructions of the Engineer.

## **14 Variations and Adjustments**

### **14.1 Right to Vary**

The Employer may initiate variations at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any work, which is to be carried out by others.

The Contractor shall execute and be bound by each Variation. There will be no adjustments or change in contract price on account of variations that do not materially alter the scope of work.

### **14.2 Variation Procedure**

If the Employer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons or by submitting:

- (a) a description of the proposed design and/or work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 9.3 [Programme] and to the Time for Completion, and

Each instruction to execute a Variation, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.

### **14.3 Adjustments in Contract Price**

Where there is material departure from the scope of work, adjustments in the Contract Price shall be made on pro-rata basis.

## **15 Contract Price and Payment**

### **15.1 The Contract Price**

Unless otherwise stated in the Special Conditions of Contract:

- (a) payment for the Works shall be made on the basis of the lump sum Contract Price, subject to

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- adjustments in accordance with the Contract; and
- (b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs
- (c) The contract price shall be inclusive of all taxes and levies payable under respective statutes. However, pursuant to the constitution (46<sup>th</sup> Amendment) Act 1982, if any further tax or levy is imposed by Statute, after the last stipulated date for the receipt of tender including extensions if any and the contractor thereupon necessarily and properly pays such taxes/levies, the contractor shall be reimbursed the amount so paid, provided such payment, if any, is not, in the opinion of the Employer (whose decision shall be final and binding on the contractor) attributable to delay in execution of work within the control of the contractor.  
The contractor shall keep books of accounts and other documents for the purpose of this condition as may be necessary to clearly arrive at such amounts and shall allow inspection of the same by a duly authorized representative of the Employer and further shall furnish such other information/document as the Employer may require from time to time.

## **15.2 Schedule of Payments**

The schedule of payments shall be as per Clause 3.2 of NIT. All the payments to the Contractor shall be made according to the schedule of payments except as stated in the Contract.

## **15.3 Payments in Indian Currency**

All the payments shall be made in Indian Rupees only.

## **15.4 Advance Payment**

The Employer shall make the following advance payments to the Contractor for the purpose of the Works

### **i. Mobilization Advance**

Mobilisation advance shall be paid upto 5% of original Construction Value stated in the Letter of Acceptance and is payable in two equal installments. The first installment shall be paid after mobilization has started and next installment shall be paid after satisfactory utilization of earlier advance. The interest rates shall be charged at 5.25%.

Mobilisation advance shall be paid against acceptable Bank Guarantee from a Scheduled Commercial Bank in India.

In case of mobilization advance, the Contractor, once the 50% of mobilization advance has been recovered, shall have a one-time option to reduce the Bank Guarantee for the mobilization advance by the amount recovered.

### **ii. Plant and Machinery Advance**

Advance shall be paid for plant and machinery which shall form part of the installation when the detailed design has been approved by the Employer.

Plant and machinery advance shall be paid upto 5% of original Construction Value stated in the Letter of Acceptance. The advance shall be limited to 80% of the assessed cost of machinery.

Plant and machinery advance shall be paid against a bank guarantee for an equivalent amount from a scheduled commercial bank acceptable to the Employer.

### **iii. Equipment Advance**

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Equipment Advance shall be paid upto 15% of the Equipment Cost. This advance shall be paid after the specifications have been fixed and approved by the technical committee. Equipment advance shall be paid against acceptable Bank Guarantee from a Scheduled Commercial Bank in India.

**15.5 Recovery of Advances**

- a. The recovery of mobilization advances shall commence when 15% of the original Construction Value of the work has been paid and it will be completed by the time 85% of the original construction value has been paid. As far as possible the recovery of advances shall be limited to 30% of an account bill.
- b. Recovery of plant and machinery advance shall be done in one lumpsum at the time of payment for the installation of such plant and machinery.
- c. The Contractor shall always have the option to have the recoveries commenced and / or completed earlier, and / or to have recoveries affected in installments of higher amount and also to repay part or whole of the advance by direct payment rather than through On-account Bills.

**15.6 Interest in Case of Delay in Repayment of Advances**

Should there be any delay in the progress and completion of work, as a result of which it is not possible to recover the advance and interest thereon, before the original date of completion stipulated in the Contract, then the interest to be charged from the Contractor on the remaining portion of the advance beyond the completion date specified in the Contract, shall be 2% above State Bank of India prime lending Rate or 10% whichever is higher. In all cases, the advance shall be valid for 6 months after Defects Liability Period.

**15.7 Advances to be used only for This Work.**

The advances shall be used by the Contractor strictly for the purpose of the Contract, and for the purpose for which they are paid. Under no circumstances, shall the advances be diverted for other purposes. Any such diversion shall be construed as a breach of the Contract and the Contractor shall be liable to return the advance at once and to pay interest at 2% above State Bank of India prime lending Rate or 15% per annum whichever is higher, till the advance is recovered back from him.

**15.8 Application for Interim Payments**

The Contractor shall submit a Statement in six copies to the Employer after the end of the period of payment stated in the Contract (if not stated, after the end of each month), in a form approved by the Employer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.20 (Progress Reports).

**15.9 Interim Payments**

No amount will be paid until the Employer has received and approved the Performance Security. Thereafter, the Employer shall within 28 days after receiving a Statement and supporting documents, give to the Contractor notice of any items in the Statement with which the Employer disagrees, with supporting particulars. Payments due shall not be withheld, except that:

- (a) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Employer, the value of this work or obligation may be withheld until

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the work or obligation has been performed.

The Employer may, by any payment, make any correction or modification that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction.

#### **15.10 Timing of Payments**

Except as otherwise stated in Sub-Clause 2.4 (Employer's Claims), the Employer shall pay to the Contractor:

- (a) the first installment of the advance payment within 42 days after the date on which the Contract came into full force and effect or within 21 days after the Employer receives the documents in accordance with Sub-Clause 4.2 (Performance Security) and Sub-Clause 15.4 (Advance Payment), whichever is later;
- (b) the amount which is due in respect of each Statement, other than the Final Statement, within 56 days after receiving the Statement and supporting documents; and
- (c) the final amount due, within 42 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 15.13 (Application for Final Payment) and Sub-Clause 15.14 (Discharge).

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

#### **15.11 Delayed Payment**

If the Contractor does not receive payment in accordance with Sub-Clause 15.10 (Timing of Payments), the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay.

Unless otherwise stated in the Special Conditions of Contract, these financing charges shall be calculated at the annual rate of the Prime Lending Rate plus 2% or 10% whichever is lower.

The Contractor shall be entitled to this payment without formal notice, and without prejudice to any other right or remedy.

#### **15.12 Statement at Completion**

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Employer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 15.8 (Application for Interim Payments), showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Employer shall then give notice to the Contractor in accordance with Sub-Clause 15.9 (Interim Payments) and make payment in accordance with Sub-Clause 15.10 (Timing of Payments).

#### **15.13 Application for Final Payment**

Within 60 days after receiving the Performance Certificate, the Contractor shall submit, to the Employer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Employer:

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- (a) the value of all work done in accordance with the Contract, and
- (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Employer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Employer may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Employer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Parties and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Employer shall pay the agreed parts of the draft final statement in accordance with Sub-Clause 15.9 (Interim Payments) and Sub-Clause 15.10 (Timing of Payments). Thereafter, if the dispute is finally resolved under Clause 21 the Contractor shall then prepare and submit to the Employer a Final Statement.

#### **15.14 Discharge**

When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the out-standing balance of this total, in which event the discharge shall be effective on such date.

#### **15.15 Final Payment**

In accordance with sub-paragraph (c) of Sub-Clause 15.10 (Timing of Payments), the Employer shall pay to the Contractor the amount which is finally due, less all amounts previously paid by the Employer and any deductions in accordance with Sub-Clause 2.4 (Employer's Claims).

#### **15.16 Cessation of Employer's Liability**

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- (a) in the Final Statement and also
- (b) except for matters or things arising after the issue of the Taking-Over-Certificate for the Works) in the Statement at completion described in Sub Clause 15.12 (Statement at Completion).

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

### **16 Termination by the Employer**

#### **16.1 Notice to Correct**

If the Contractor fails to carry out any obligation under the Contract, the Employer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

#### **16.2 Termination by Employer due to Contractor's Default**

The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with Sub-Clause 4.2 (Performance Security) or with a notice under Sub-Clause

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**16.1 (Notice to Correct),**

- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) without reasonable excuse fails to proceed with the Works in accordance with Clause 9 (Commencement, Delays and Suspension),
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his 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, or
- (f) gives 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:
  - (i) for doing or forbearing to do any action in relation to the Contract, or
  - (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor'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 sub-paragraph (f).

In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Employer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice

- (i) for the assignment of any subcontract and
- (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer. These items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

### **16.3 Valuation at Date of Termination**

As soon as practicable after a notice of termination under Sub-Clause 16.2 has taken effect, the Engineer shall determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract as considered reasonable by the Engineer.

### **16.4 Payment after Termination**



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After a notice of termination under Sub-Clause 16.2 has taken effect, the Employer may:

- (a) proceed in accordance with Sub-Clause 2.4 (Employer's Claims),
- (b) with-hold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- (c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 16.3 (Valuation at Date of Termination). After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

## **16.5 Termination due to Employers Convenience**

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

After this termination, the Contractor shall proceed in accordance with Sub-Clause 17.2 (Cessation of Work and Removal of Contractor's Equipment) and shall be paid in accordance with Sub-Clause 20.5 (Optional Termination, Payment and Release).

## **17 Termination by Contractor**

### **17.1 Termination by Contractor**

The Contractor shall be entitled to terminate the Contract if:

- (a) failing to pay to the Contractor the amount due without reasonable cause, under any certificate of the Engineer, within ninety days after the same shall have become due under the terms of the Contract, subject to any deduction that the Employer is entitled to make under the Contract, or
- (b) (the Employer substantially fails to perform his obligations under the Contract,
- (c) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his 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.

In any of these events or circumstances, the Contractor may, upon giving 52 days notice to the Employer, terminate the Contract. However, in the case of subparagraph (e), the Contractor may by notice terminate the Contract immediately.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

### **17.2 Cessation of Work and Removal of Contractor's Equipment**

After a notice of termination under Sub-Clause 16.5 (Termination Due to Employer's Convenience), Sub-Clause 16.1 (Termination by Contractor) or Sub-Clause 20.5 (Optional Termination), Payment and Release) has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Employer for the protection of life or property or for the safety of the Works,
- (b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor

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has received payment, and

- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

### **17.3 Payment on Termination**

After a notice of termination under Sub-Clause 17.1 (Termination by Contractor) has taken effect, the Employer shall promptly:

- (a) return the Performance Security to the Contractor,
- (b) pay to the Contractor the value of the Work done as considered reasonable by the Engineer and
- (c) pay the Contractor in accordance with Sub-Clause 20.5 (Optional Termination, Payment and Release)

## **18 Risk and Responsibility**

### **18.1 Contractor's Care of the Works**

The Contractor shall be fully responsible for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued for any Section of the Works, responsibility for the care of the Section shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work, which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 18.3 (Employer's Risks), the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform to the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over-Certificate has been issued and which arose from a previous event for which the Contractor was liable.

### **18.2 Indemnities**

#### **18.2.1 Indemnity by the Contractor**

The Contractor shall indemnify and hold harmless the Employer, the Engineer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect 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 defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Engineer, the Employer's Personnel, or any of their respective agents, and
- (b) 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 Employer, the Employer's Personnel, their respective agents, or anyone directly or

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indirectly employed by any of them.

**18.2.2 Indemnity by the Employer**

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of

- (a) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents,

**18.3 Employer's Risks**

The risks referred to in Sub-Clause 18.4 below are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war, within the Country,
- (c) riot, commotion or disorder within the Country by persons other than the
- (d) Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (e) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (f) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

**18.4 Consequences of Employer's Risks**

If and to the extent that any of the risks listed in Sub-Clause 18.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer with a copy to the Employer and shall rectify this loss or damage to the extent required by the Engineer.

If as a result of rectifying this loss or damage, there is any delay in the performance of the Contract, the Contractor shall give a further notice to the Engineer and shall be entitled subject to an extension of time for any such delay, if completion is or will be delayed under Sub-Clause 9.4 (Extension of Time for Completion). No extra payment shall be given to the Contractor for any delay suffered due to the above reason.

**18.5 Intellectual and Industrial Property Rights**

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever the Contractor does not give notice to the Employer of any claim within 28 days of receiving the claim, the Contractor shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to

- (i) the Contractor's design, manufacture, construction or execution of the Works, procurement, installation, commissioning and testing of medical equipments
- (ii) the use of Contractor's Equipment,
- (iii) the proper use of the Works.

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## **18.6 Limitation of Liability**

The Employer shall not be liable to the Contractor for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the Contractor in connection with the Contract, other than under Sub-Clause 17.3 (Payment on Termination) and Sub-Clause 18.2 (Indemnities).

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.18 (Electricity, Water and Gas), Sub-Clause 4.19 (Employer's Equipment), Sub-Clause 18.2 (Indemnities) and Sub-Clause 18.5 (Intellectual and Industrial Property Rights), shall not exceed the sum stated in the Special Conditions of Contract or (if a sum is not so stated) the Contract Price stated in the Contract Agreement.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

## **19 Insurance**

### **19.1 General Requirements for Insurance**

Before commencing execution of Works, unless stated otherwise in the Special Conditions of Contract, it shall be obligatory for the Contractor to obtain at his own cost stipulated insurance cover under the following requirements:

- (a) Contractor's All Risk and Third Party Cover.
- (b) Liability under the Workmen's compensation Act, 1923, Minimum Wages Act, 1948 and Contract Labour (Regulation and Abolition) Act, 1970.
- (c) Accidents to staff, Engineers, Supervisors and others who are not governed by Workmen's Compensation Act.
- (d) Damage to Material, machinery and Works due to fire, theft etc.
- (e) Any other risk insurance which the Employer requires at any point of time or that is specified in the Special Conditions of Contract.

No adjustments in contract price shall be made for providing insurance.

### **19.2 Policy In Joint Names of Contractor and Employer**

The policy referred to under **Sub-clause 19.1 (a)** above shall be obtained in the joint names of the Contractor and the Employer and shall inter alia provide coverage against the following, arising out of or in connection with execution of Works, their maintenance and performance of the Contract.

- (a) Loss of life or injury involving public, employee of the Contractor, or that of Employer and Engineer, labour etc.
- (b) Injury, loss or damages to the Works or property belonging to public, Government bodies, local authorities, utility organisations, Contractors, Employer or others.

### **19.3 Currency of Policy**

The policies shall remain in force through out the period of execution of the Works and till the expiry of the Defects Liability Period. If the Contractor fails to effect or keep in force or provide adequate cover in the

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Insurance policies mentioned in **Sub-clause 19.1**, or any other insurance he might be required to effect under the Contract, then, the Employer may effect and keep in force any such insurance or further insurance and the cost and expenses incurred by him in this regard shall be deductible from payments due to the Contractor or from the Contractor's Performance Security.

## **20 Force Majeure**

### **20.1 Definition of Force Majeure**

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub contractors,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

### **20.2 Notice of Force Majeure**

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

### **20.3 Duty to Minimise Delay**

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

### **20.4 Consequences of Force Majeure**

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 20.2 and the performance of the Contract is delayed or likely to be delayed by reason of such Force Majeure, the Contractor shall, in the opinion of the Engineer, be entitled subject to a reasonable extension of time for any such delay in accordance with Clause 9.9

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(Consequences of Suspension).

## **20.5 Optional Termination, Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 20.2 (Notice of Force Majeure), or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 17.2 (Cessation of Work and Removal of Contractor's Equipment).

Upon such termination, the Employer shall pay to the Contractor:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor and in the opinion of the Engineer has become the property of the Employer and the Contractor shall place the same at the Employer's disposal;
- (c) any other Cost or liability which in the opinion of the Engineer was reasonably incurred by the Contractor in the expectation of completing the Works;

## **20.6 Release from Performance under the Law**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfill its or their contractual obligations or which, under the law governing the Contract, entitles the Parties 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 Employer to the Contractor shall be the same as would have been payable under Sub-Clause 20.5 (Optional Termination, Payment and Release) if the Contract had been terminated under Sub-Clause 20.5.

## **21 Claims, Disputes and Arbitration**

### **21.1 Contractor's Claims**

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer with a copy to the Employer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor

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Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer with a copy to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim for the extension of time. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

The Engineer shall determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 9.4 (Extension of Time for Completion).

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

## **21.2 Claims & Liens In Respect Of Claims In Other Contracts**

### **21.2.1 Claims**

The Contractor shall send to the Engineer's Representative once in every three months an account giving particulars, along with full details and justification, of all claims for any additional payment to which the Contractor may consider himself entitled and of all extra or additional work ordered by the Engineer, which he has executed during the preceding three months. No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars

### **21.2.2 Lien In Respect Of Claims In Other Contracts**

Any money due to the Contractor either alone or jointly with others, including the Performance Security amount returnable to him, may be withheld or retained by exercise of lien by the Employer, against any claim of the Employer in respect of payment of a sum of money arising out of or under any Contract other than the present Contract made by the Contractor, alone or jointly with the Employer. It is an agreed term of Contract that the sums of money so withheld or retained under this clause by the Employer, shall be kept withheld or retained till the claims arising out of or under the other Contract, are either mutually settled or determined by the Arbitrator, or by the competent Court, as the case may be and the Contractor will have no claims of interest or damage in this regard whatsoever

## **21.3 Dispute to be referred to and Settled by Engineer at the First Place**

Should any dispute or difference of any kind whatsoever arise between the Employer and the Contractor, touching, in connection with, or arising out of the Contract, or subject matter thereof, or the execution of Works, whether, during the progress of Works or after their completion and whether before or after termination, abandonment or breach of Contract, it should, in the first place, subject to the provision under **Sub-clause 15.16** be referred to and settled by the Engineer, who shall, within a period of sixty days after

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being requested in writing by either party to do so, give written notice of his decision to the Employer and the Contractor. The Engineer while considering the matters of dispute referred to him, shall be competent to call for any records, vouchers, information and enforce the attendance of the parties either in person or through authorised representatives, to sort out or clarify any issue, resolve the differences and to assist him to decide the matters referred to him. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and shall forthwith be given effect to by the Employer and by the Contractor, who shall proceed with the execution of Works with all due diligence irrespective of whether any of the parties goes in or desires to go in for arbitration. If the Engineer has given written notice of his decision to the Employer and the Contractor and no intimation of reference of any claim to arbitration has been sent to him by either the Employer or the Contractor within a period of sixty days from receipt of such notice, the said decision of the Engineer shall remain final and binding upon the Employer and the Contractor and the same shall be deemed to have been accepted by them. The Employer or the Contractor shall not seek any arbitration thereafter.

#### **21.4 Referring of Dispute for Arbitration**

If the Engineer shall fail to give notice of his decision, as aforesaid, within a period of sixty days after being requested or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer, then the matter in dispute shall be referred to arbitration as herein provided.

#### **21.5 Dispute Due For Arbitration**

Disputes or differences shall be due for arbitration only if all the conditions in **Sub-clauses 21.3 and 21.4** are fulfilled.

#### **21.6 Settlement of Disputes**

Except where otherwise provided in the Contract, all questions, and disputes relating to the meaning of the specification, design, drawings and instructions here-in-before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the Contract, Employer's Requirements, specification, estimates, instruction, orders or these conditions or otherwise concerning the Works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned under in **Clause 21.7**

#### **21.7 Nomination of Arbitrators / Sole Arbitrator**

If the Engineer fails to give his instructions or decisions in writing within 2 weeks or if the Contractor is dissatisfied with the instructions or decision of the Engineer, the Contractor may within 14 days, of the receipt of Engineer's decision appeal to the Director, JIPMER who shall appoint an arbitrator.

Except where the decision has become final binding and conclusive, disputes shall be referred for arbitration by the sole arbitrator appointed as above. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever nature, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

It is a term of this Contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Director, JIPMER of the appeal.

It is also a term of this Contract that no person other than a person appointed by the administrative head in



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respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer that the final bill is ready for payment the claim of the Contractor shall have to be waived and absolutely barred and the institute shall be discharged and released of all liabilities under the Contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this Contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000 the arbitrator shall give reasons for the award.

It is also a term of the Contract that if any fees are payable to the arbitrator these shall be paid equally by both the parties.

It is also a term of the Contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published be paid half and half by each of the parties. The cost of the reference and of the awards (including the fees, if any of the arbitrator) shall be in the discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

## **21.8 No Suspension of Work**

The reference to arbitration shall proceed notwithstanding that Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reasons of arbitration being conducted during the progress of Works. Neither party shall be entitled to suspend the work to which the dispute relates on account of arbitration and payments to the Contractor shall continue to be made in terms of the Contract.

## **21.9 Award To Be Binding On All Parties**

The arbitration award shall be binding on all parties.

## **21.10 Rules Governing The Arbitration Proceedings**

The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act, 1996, as amended from time to time.

## **21.11 Limitation of Time**

No dispute shall be referred to Arbitration after expiry of 60 days from the date of decision by the Engineer, if notified, or from the date when the Engineer ought to have given his decision in terms of provisions under **Sub-clause 21.3** in case of failure on the part of the Engineer to give notice of decision.

**21.11 A** Where the arbitral award is for payment of money, no interest shall be payable on the whole or any part of the money for any period till the date on which the award is made

**21.11B** The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia the fees of the Arbitrator(s) as per the rates fixed by the Employer from time to time.