

**FABRICATION, INSTALLATION OF NEW PONTOON AND
REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR
RORO/ROPAX FACILITY AT GHOGHA- GUJARAT**
(DPA/RORO/2024, Dated: 25/07/2024)

PART 1 - THE AGREEMENT

DRAFT AGREEMENT

FOR

**FABRICATION, INSTALLATION OF NEW
PONTOON AND REPAIR AND MAINTENANCE
OF EXISTING PONTOON FOR RORO/ROPAX
FACILITY AT GHOGHA- GUJARAT**



**DEENDAYAL PORT AUTHORITY
ADMINISTRATIVE OFFICE BUILDING
POST BOX NO. 50
GANDHIDHAM (KUTCH)
GUJARAT - 370201**

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Part I Preliminary

AGREEMENT

THIS AGREEMENT is entered into on this ----2024.

BETWEEN

The Board of Trustees of Deendayal Port Authority (DPA), Administrative Office Building, Post Box No. 50, Gandhidham (Kutch), Gujarat – 370201. (hereinafter referred to as the “**Employer**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

{-----}, means the selected bidder having its registered office at, (hereinafter referred to as the “**Contractor**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part.

WHEREAS:

- (A) The Employer, Deendayal Port Authority, a major Port Authority constituted under major port trust act 1963, Government of India has proposed FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT.
- (B) The **Employer** had resolved to modify the RoRo/Ropax facility at Ghogha, Gujarat in accordance with the terms and conditions set forth in an agreement to be entered into.
- (C) **Blank**
- (D) The **Employer** had prescribed the technical and commercial terms and conditions, and invited bids (the “Tender document” or “TENDER”) from the bidders for undertaking the Project.
- (E) After evaluation of the bids received, the **Employer** had accepted the bid of the selected bidder and issued its Letter of Acceptance (LOA) No. dated (hereinafter called the “LOA”) to the selected bidder for FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT at the contract price specified hereinafter, requiring the selected bidder to inter alia:
 - (i) deliver to the **Employer** a legal opinion from the legal counsel of the selected bidder with respect to the **Employer** of the selected bidder to enter into this Agreement and the enforceability of the

provisions thereof, within 10 (ten) days of the date of issue of LOA; and

- (ii) Execute this Agreement within 28 (Twenty-Eight) days of the date of issue of LOA.

(F) The Contractor has fulfilled the requirements specified in Recital (E) above;

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the **Employer** hereby covenants to pay the Contractor, in consideration of the obligations specified herein, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound hereby, the Parties agree as follows:

The following documents attached hereto shall be deemed to form an integral part of this Contract:

(a) Volume-I:

- The Agreement;
- Corrigendum to the Agreement;
- Addendum, if any, to Tender;
- Letter comprising the financial Bid;
- Letter of Acceptance;
- Power of Attorney;
- Joint Venture Agreement, if any;
- Legal opinion;
- Any other document to be specified.

(b) Volume-II: Technical Bid

- Vol. I - General conditions and scope works
- Vol. II - Specification for civil and marine concrete works
- Vol. III - Specification for steel Linkspan and pontoon works.
- Vol. IV - Specification for fenders and bollards
- Vol. V - Specification for mechanical, piping, and electrical works
- Vol. VI - Tender drawings
- Vol. VII - Geotechnical report
- Vol. VIII - Bathymetry Drawing
- Response to bidder queries
- Technical clarifications
- Pre-bid meeting minutes
- Any other document to be specified.

ARTICLE 1
1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 28) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;

- (f) references to “construction” or “building” include, unless the context otherwise requires, survey and investigation, design, developing, engineering, procurement, supply of plant, materials, equipment, labour, delivery, transportation, installation, processing, fabrication, testing, and commissioning of the Project facilities, including maintenance during the Construction Period, removing of defects, if any, and other activities incidental to the construction and “construct” or “build” shall be construed accordingly;
- (g) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto during the Construction Period, and “develop” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian standard time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “working day” shall be construed as a reference to a day (other than a Sunday) on which banks in Gandhidham are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a working day, then the period shall run until the end of the next working day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;

- (p) “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (q) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause shall not operate so as to increase liabilities or obligations of the **Employer** hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Engineer / Engineer’s Representative shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Engineer / Engineer’s Representative, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as

a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;

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

(x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, such extended time shall also be of the essence.

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

1.2.3 The rule of construction, if any, that a contract should be interpreted against.

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements and errors/discrepancies

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein and listed below in the order of priority.
 - i. Letter of Acceptance, notice to proceed with the works
 - ii. Specifications
 - iii. Drawings
 - iv. Bill of Quantities and
 - v. Any other document listed in the Contract Data as forming part of the Contract.
- (c) this Agreement at (a) above shall prevail over the agreements and documents at (b).

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

1.5 Joint and several liability

1.5.1 If the Contractor has formed a Consortium of two or more persons for implementing the Project:

- a. these persons shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Employer for the performance of the Agreement; and
- b. The Contractor shall ensure that no change in the composition of the Consortium is affected without the prior consent of the Employer.

Without prejudice to the joint and several liability of all the members of the Consortium, the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Contractor. The Contractor shall ensure that each member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the Employer shall be entitled to rely upon any such action, decision or communication of the Lead Member. The Employer shall have the right to release payments solely to the Lead Member and shall not in any manner be responsible or liable for the *inter se* allocation of payments among members of the Consortium.

Part II Scope of Project

ARTICLE 2

2. SCOPE OF THE PROJECT

2.1. Scope of the Project

Under this Agreement, the scope of the Project (the “**Scope of the Project**”) shall mean and include:

- (a) FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT set forth in Schedule-A and as specified in Schedule-B, and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) Performance and fulfilment of all other obligations of the Contractor in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.

2.2. Order of precedence of contract documents

The documents forming the Contract shall be interpreted in the following order of priority:

- 1) This Agreement
- 2) Letter of Acceptance, notice to proceed with the works.
- 3) Specifications
- 4) Drawings
- 5) Bill of Quantities and
- 6) Any other document listed in the Contract Data as forming part of the Contract.

Any discrepancy between the above shall be brought to the notice of the Engineer and resolution to the issue shall be made by Engineer/Employer and decision of Employer is final.

ARTICLE 3
3. OBLIGATIONS OF THE CONTRACTOR

3.1 *Obligations of the Contractor*

- 3.1.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation, methodology of construction, construction enabling engineering, construction works, residual engineering for Mechanical, Electrical and Firefighting works, procurement, construction, and maintenance of the FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA-GUJARAT and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 3.1.2 The Contractor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 3.1.3 Subject to the provisions of Clauses 3.1.1 and 3.1.2, the Contractor shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 3.1.4 The Contractor shall remedy any and all loss or damage to the Project facilities from the Appointed Date until the end of the Construction Period at the Contractor's cost, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Employer.
- 3.1.5 The Contractor shall remedy any and all loss or damage to the Project facilities during the Defects Liability Period at the Contractor's cost to the extent that such loss or damage shall have arisen out of the reasons specified in Clause 17.3.
- 3.1.6 The Contractor shall remedy any and all loss or damage to the Project facilities during the Defects Liability Period at the Contractor's cost, save and except to the extent that any such loss or damage shall have arisen on account of any default or neglect of the Employer or on account of a Force Majeure Event.
- 3.1.7 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule-F and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for Materials, methods, processes and systems used or incorporated into the Project facilities;
- (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;
- (d) ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
- (e) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (f) support, cooperate with and facilitate the Employer in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (g) ensure that the Contractor and its Sub-contractors comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;
- (h) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope Orders and other communications given under this Agreement. The Engineer / Engineer's Representative and its authorized personnel shall have the right of access to all these documents at all reasonable times;
- (i) cooperate with other contractors employed by the Employer and personnel of any public Employer; and
- (j) not interfere unnecessarily or improperly with the convenience of the public, or 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.

3.1.8 The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

3.1.9 Inspection/surveying/approval by IRS during fabrication, welding, and launching and commissioning is under the scope of the contractor including payment to such agency appointed for the purpose of inspection and certification, surveyor transport charges, daily inspection fee etc. shall be borne by the Contractor.

3.1.10 Contractor shall appoint IRS for survey and inspection during fabrication, welding, and launching and commissioning. The survey and inspection for certification does not relieve the contractor from satisfying the contractual obligations of satisfying the material, fabrication and installation specified in the contract documents and such inspection shall also be carried out by the Engineer/Engineer's representative at any time. All inspections by IRS shall be accompanied by Engineer / Engineer's representative.

3.2 *Obligations relating to sub-contracts and any other agreements.*

3.2.1 Blank

3.2.2 Blank

3.2.3 Blank

3.2.4 It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement that may be entered into by the Contractor, and no default under any such agreement shall excuse the Contractor from its obligations or liability hereunder.

3.3 *Employment of foreign nationals*

The Contractor acknowledges, agrees and undertakes that employment of foreign personnel by the Contractor and/or its Sub-contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Contractor. Upon obtaining necessary visa/permits, approval for accessing the site shall be applied by the contractor to Employer well in advance of 30 days prior to the requirement of such personnel in the work

site. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Contractor or any of its Sub-contractors or their sub-contractors shall not constitute Force Majeure Event and shall not in any manner excuse the Contractor from the performance and discharge of its obligations and liabilities under this Agreement.

3.4 Contractor's personnel

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

3.4.2 The Engineer / Engineer's Representative may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Sub-Contractor's personnel. Provided that any such direction issued by the Engineer / Engineer's Representative shall specify the reasons for the removal of such person.

3.4.3 The Contractor shall on receiving such a direction from the Engineer / Engineer's Representative order for the removal of such person or persons with immediate effect. It shall be the duty of the Contractor to ensure that such persons are evicted from the Site within 10 (ten) days of any such direction being issued in pursuance of Clause 3.4.2. The Contractor shall further ensure that such persons have no further connection with the Works under this Agreement. The Contractor shall then appoint (or cause to be appointed) a replacement.

3.5 Advertisement on Project site

The Project site or any part thereof shall not be used in any manner to advertise any commercial product or services.

3.6 Contractor's care of the Works

The Contractor shall bear full risk in and take full responsibility for the care of the Works, and of the Materials, goods and equipment for incorporation therein, from the Appointed Date until the date of Provisional Certificate (with respect to the Works completed prior to the issuance of the Provisional Certificate) and/or Completion Certificate (with respect to the Works referred

to in the Punch List), save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Employer.

3.7 Electricity, water, and other services

The Contractor shall be responsible for procuring of all power, water, and other services that it may require for the project construction works.

3.8 Unforeseeable difficulties

Except as otherwise stated in the Agreement:

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

3.9 Equipment and Machinery requirement

The Contractor shall have sufficient number of major equipment / machineries having adequate capacity, capable of driving, boring and concreting the guide pin piles to complete the project successfully on time. The bidders shall submit the execution methodology based on the minimum number of work front indicated in this clause. The minimum number of equipment is indicated in the table below.

| Equipment | Minimum Numbers | Capacity |
|--------------------------------------|------------------------|---|
| Jack up Barge Or Piling Gantry | 1 | The gantry / jack up barge should be suitable to construct 2 piles per row simultaneously with minimum of ONE RCD/ROTARY rig. |
| Material barge | 1 | Shall be capable of transporting liners and reinforcement cages. |
| Floating Barge with crane | 1 | Suitable crane for lifting and placing the liners, reinforcement cage and precast elements |

| | | |
|------------------------------|---|---|
| Pontoon Fabrication Facility | 1 | Workshop / shed with all machinery for cutting and assembling plates for fabrication of complete pontoon. |
|------------------------------|---|---|

The bidder shall visit the site on or before the pre-bid meeting and familiarize with the site conditions and propose the construction methodology based on the site conditions. The bidder shall study the proposed tender drawings and location and make sure the construction scheme proposed by the bidder is suitable to complete the work as per the schedule.

It is informed to the bidder that there is no space available at the location of the work front for fabrication of steel liners, reinforcement cage and pre-casting of concrete elements etc. However, the Engineer / Engineer's Representative will identify a suitable location and space within 4 km from the work site for the contractors use. The transportation of all men, equipment and material from the fabrication site to the work site shall be arranged by the contractor.

3.10 Personnel capabilities

The Contractors team shall consist of key personnel having adequate and specialized experiences, capable of discharging their responsibilities in the relevant field of marine, civil, electrical, mechanical, architectural & other related works, required for the construction and successful commissioning of the RoRo/Ropax facility project. A list of all such personnel to be employed / engaged for this project along with details of their qualification and experience (CV's) shall be submitted for Approval of Engineer's Representative. Key personnel can be replaced only with the prior approval of the Employer.

Minimum key personnel for SITE execution work shall be but not limited to as mentioned in below.

- One Resident Project Manager with degree in corresponding discipline of Engineering (Civil Engineering) possessing minimum of 15 years' experience in Marine Works will act as Principal Technical Representative.
- One Engineering Manager with degree in corresponding discipline of Engineering (Civil Engineering) possessing minimum of 10 years' experience in Marine Works will act as Principal Technical Representative.

- One Safety Officer with degree in corresponding discipline of Engineering (Civil/Mechanical/Safety Engineering) possessing minimum of 15 years' experience in Safety Audit in construction will act as Safety Officer for the project.
- Two Graduate Engineers with degree in Civil Engineering possessing minimum of 10 years' experience will act as a Deputy Engineering Managers.

3.11 Obligations relating to pontoon.

The Contractor shall provide following services unconditionally for the procurement, fabrication and installation of new pontoon existing RoRo/RoPax facility.

- Contractor shall arrange a workshop of appropriate size and height with suitable crane for handling components of new and existing pontoon and fabricate the new pontoon and modify the existing pontoon in a covered area with controlled environment and all such arrangement shall be included in his work plan and no extra payment whatsoever will be made in this regard. The work plan shall include the fabrication of all these items during monsoon and rainy season.
- Appointment of IRS as certification agency for the inspection and approval of the new pontoon, modified pontoon and linkspan and its components during material procurement, fabrication and welding and launching and installation. The fee for the inspection and certification of new and modified pontoon and linkspan during the material procurement, modification, fabrication and installation to the certification agency shall be paid by the Contractor.
- Contractor shall appoint IRS as the certification agency as IRS has been appointed for the plan approval by the employer/consultant.
- Sign an agreement with IRS for classification approval for the pontoon and linkspan during materials procurement, modification, fabrication and installation.
- Allow unconditional access to surveyors of the appointed agency to the fabrication yard, storage yard for materials and site for

inspection of materials, modification works, fabrication, welding and launching of linkspan and pontoon.

- Arrange transportation facility for the surveyors from the classification society to the point of inspection including location of material at yard, mill or any other sources and facilitate successful completion of inspection within the stipulated time.
- Payment of charges towards the inspection for the surveyor shall be made by the contractor as per the prevailing rates by the appointed agency.
- Contractor shall liaise with the surveyors for the number of visits during the inspection of materials, modification works, fabrication and installation and arrange according to the requirements.
- In case, any intermediate inspection is required by either employer or its representative / Employer's Engineer or by certification agency, the same shall be arranged by the Contractor and decision of employer in this regard is final.

3.12 Obligations relating modification to existing linkspan.

The Contractor shall provide following services unconditionally for the procurement, fabrication and installation of new members, modification to existing members of existing linkspan at the existing RoRo/RoPax facility.

- Contractor shall arrange suitable floating crane for handling structural members during removal and erection of existing and new members of linkspan while the linkspan is supported on the support frame. The floating crane and facilities including jacks, lifting devices, cranes and other machinery shall be suitable for the operation in all tides and all-weather conditions as per the project data.
- Appointment of IRS as certification agency for the inspection and approval of the modified linkspan and its components during material procurement, fabrication and welding and installation. The fee for the inspection and certification of during the material procurement, modification, fabrication and installation to the certification agency shall be paid by the Contractor.

- Contractor shall appoint IRS as the certification agency as IRS has been appointed for the plan approval by the employer/consultant.
- Sign an agreement with IRS for classification approval for the pontoon and linkspan during materials procurement, modification, fabrication and installation.
- Allow unconditional access to surveyors of the appointed agency to the fabrication yard, storage yard for materials and site for inspection of materials, modification works, fabrication, welding and launching of linkspan and pontoon.
- Arrange transportation facility for the surveyors from the classification society to the point of inspection including location of material at yard, mill or any other sources and facilitate successful completion of inspection within the stipulated time.
- Payment of charges towards the inspection for the surveyor shall be made by the contractor as per the prevailing rates by the appointed agency.
- Contractor shall liaise with the surveyors for the number of visits during the inspection of materials, modification works, fabrication and installation and arrange according to the requirements.
- In case, any intermediate inspection is required by either employer or its representative / Employer's Engineer or by certification agency, the same shall be arranged by the Contractor and decision of employer in this regard is final.

3.13 Obligations relating to modification to existing pontoon.

The Contractor shall provide following services unconditionally for the procurement, fabrication and modification to the existing pontoon existing RoRo/RoPax facility.

- Contractor shall arrange tug boat for dismantling and towing the old pontoon in "as is condition" to a beach front facility or ramp and store in a covered workshop of appropriate size and height.

Contractor shall have suitable crane for handling components of existing pontoon in a covered area with controlled environment and all such arrangement shall be included in his work plan and no extra payment whatsoever will be made in this regard. The work plan shall include the fabrication of all these items during monsoon and rainy season.

- Appointment of IRS as certification agency for the inspection and approval of the modified pontoon its components during material procurement, fabrication and welding. The fee for the inspection and certification to the certification agency shall be paid by the Contractor.
- Contractor shall appoint IRS as the certification agency as IRS has been appointed for the plan approval by the employer/consultant.
- Sign an agreement with IRS for classification approval during materials procurement, modification, fabrication and installation.
- Allow unconditional access to surveyors of the appointed agency to the fabrication yard, storage yard for materials and site for inspection of materials, modification works, fabrication, welding.
- Arrange transportation facility for the surveyors from the classification society to the point of inspection including location of material at yard, mill or any other sources and facilitate successful completion of inspection within the stipulated time.
- Payment of charges towards the inspection for the surveyor shall be made by the contractor as per the prevailing rates by the appointed agency.
- Contractor shall liaise with the surveyors for the number of visits during the inspection of materials, modification works, fabrication and installation and arrange according to the requirements.
- In case, any intermediate inspection is required by either employer or its representative / Employer's Engineer or by

certification agency, the same shall be arranged by the Contractor and decision of employer in this regard is final.

- The location of Long term storage of the modified pontoon shall be advised by DPA at a later date.

ARTICLE 4
4. OBLIGATIONS OF THE EMPLOYER

4.1 *Obligations of the Employer*

- 4.1.1 The Employer shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 4.1.2 The Employer shall be responsible for the detailed design and drawings for FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT.
- 4.1.3 The Employer shall provide to the Contractor:
- (a) upon receiving the Performance Security under Clause 7.1.1, the access to the site in accordance with the provisions of Clauses 8.2 and 8.3, within a period of 30 (thirty) days from the date of this Agreement;
 - (b) Upon receiving necessary approvals as necessary and signing of agreement, issue Notice to Proceed with work (NTP). The date on which notice to proceed with work (NTP) is considered as Appointed date for this agreement.
 - (c) Good for construction drawings (the “GFC”) will be issued by employer within 30 days of appointed date to enable the Contractor to complete the project in accordance with the Specifications and Standards. Good for Construction drawings means the drawings Approved for Construction (AFC) by the competent Authority to be used for construction of project facilities which shall be used by the Contractor. Such drawings issued to the Contractor may be revised upon receiving the geotechnical report / ground investigation work and comments from IRS review during plan approval or during construction. Such changes shall not be construed as change of scope and payment shall be made as per rate quoted by the contractor for the item in the tender.
 - (d) Environmental clearance for the Project will be obtained by the Employer.

- 4.1.4 Delay in providing the access to the site, in accordance with the provisions of Clause 4.1.3 shall entitle the Contractor to Damages in a sum calculated in accordance with the provisions of Clause 8.3 of this Agreement and Time Extension in accordance with the provisions of Clause 10.5 of this Agreement.
- 4.1.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree that the aggregate Damages payable under Clauses 4.1.4, 8.3 and 9.2 shall not exceed 1% (one per cent) of the Contract Price. For the avoidance of doubt, the Damages payable by the Employer under the aforesaid Clauses shall not be additive if they arise concurrently from more than one cause but relate to the same part of the Project. Both the parties agree that payment of these Damages shall be full and final settlement of all claims of the Contractor and such compensation shall be the sole remedy against delays of the Employer and both parties further agree this as final cure against delays of the Employer.
- 4.1.6 The Employer agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, provide reasonable support to the Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;
 - (b) upon written request from the Contractor, provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable than those generally available to commercial customers receiving substantially equivalent services;
 - (c) procure that no barriers that would have a material adverse effect on the works are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;

- (d) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (e) support, cooperate with and facilitate the Contractor in the implementation of the Project in accordance with the provisions of this Agreement; and
- (f) upon written request from the Contractor and subject to the provisions of Clause 3.3, provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Contractor or its Sub-contractors of their obligations under this Agreement and the agreements with the Sub-contractors.

4.2 Appointment of classification society / agency for plan approval

The Employer through its consultant has arranged to obtain plan approval from Indian Register of Shipping (IRS). The Employer's Engineer would carry out the following.

- Appointment of classification society for plan approval.
- Obtain plan approval for the good for construction drawings of the pontoon and linkspan prior to issue to the contractor.

However, Contractor shall appoint IRS classification society for inspection and certification of materials, fabrication and installation and have the responsibility of coordination with the classification society for obtaining final approval of the fabricated pontoon and linkspan at contractor yard.

4.3 Environmental Clearances

The environmental clearances for the Project is already available with the Employer.

ARTICLE 5
5. REPRESENTATIONS AND WARRANTIES

5.1 *Representations and warranties of the Contractor*

The Contractor represents and warrants to the Employer that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and Employer to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and/or other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other Employer, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may

result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (j) no representation or warranty by it contained herein or in any other document furnished by it to the Employer or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Employer in connection therewith;
- (l) all information provided by the selected bidder/ members of the Consortium in response to the Request for Qualification and Tender or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (m) nothing contained in this Agreement shall create any contractual relationship or obligation between the Employer and any Sub-contractors, designers, consultants or agents of the Contractor.

5.2 Representations and warranties of the Employer

The Employer represents and warrants to the Contractor that:

- (a) it has full power and Employer to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;

- (c) it has the financial standing and capacity to perform its obligations under this Agreement; (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Employer's ability to perform its obligations under this Agreement;
- (e) it has complied with Applicable Laws in all material respects;
- (f) it has good and valid right to the Site and has the power and Employer to grant the access to the site in respect thereof to the Contractor; and
- (g) it has procured Right of Way and environment clearances such that the Contractor can commence construction forthwith on 90% (ninety per cent) of the total Project.

5.3 Disclosure

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

ARTICLE 6

6. DISCLAIMER

6.1 Disclaimer

- 6.1.1 The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Tender, Scope of the Project, Good for construction drawings, Specifications and Standards of design, construction and maintenance, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site and all information provided by the Employer or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 4.1.2 and Clause 5.2, the Employer makes no representation whatsoever, express, implicit, or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the Employer in this regard.
- 6.1.2 The Contractor acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 6.1.3 The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above and hereby acknowledges and agrees that the Employer shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.
- 6.1.4 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above shall not vitiate this Agreement or render it voidable.
- 6.1.5 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 6.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error.

6.1.6 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor; and the Employer shall not be liable in any manner for such risks or the consequences thereof.

Part III Construction

ARTICLE 7

7. PERFORMANCE SECURITY

7.1. Performance Security

7.1.1 Security Deposit shall consist of two parts; a) Performance Guarantee to be submitted at award of work, and b) Retention money to be recovered from Running Bills.

***“Security Deposit shall be 10% of Contract price of which 5% of contract price should be submitted as Digital transfer/FDR/BG within 21 days of receipt of Letter of Acceptance and balance 5% recovered as Retention Money from Running Bills. Recovery of 5% of Retention Money to commence from the first bill onwards @ 5% of bill value from each bill. Retention Money be refunded within 14 days from the date of payment of final bill. Balance SD to be refunded immediately not later than 14 days from completion of defect liability period.*”**

- a. “The documentary evidence (copy of paid Challan in Govt. Treasury) of Welfare Cess @ 1% of work done or as amended by Statutory Authority from time to time, paid on final bill shall be submitted before releasing the Performance Guarantee.”
- b. The Contractor shall along with the Performance Security provide to the Employer an irrevocable and unconditional guarantee from a Bank for a sum equivalent to **Rs. crore (Rupees crore)** in the form set forth in Schedule-G (the "Additional Performance Security"), to be modified, mutatis mutandis, for this purpose as security to the Employer if the Bid Price offered by the Contractor is lower by more than 10% with respect to the Estimated Project Cost. Additional Performance Security shall be calculated as under: **(Not Applicable)**
 - (i) If the bid price offered by the Contractor is lower than 10% but up to 20% of the Estimated Project Cost, then the Additional Performance Security shall be calculated @20% of the difference in the (a) Estimated Project Cost (as mentioned in TENDER)-10% of the Estimated Project Cost and (b) the Bid Price offered by the selected Bidder.
 - (ii) If the bid price offered by the Contractor is lower than 20% of the Estimated Project Cost, then the Additional Performance Security shall be calculated @30% of the difference in the (a) Estimated

Project Cost (as mentioned in TENDER)-10% of the Estimated Project Cost and (b) the Bid Price offered by the selected Bidder.

- (iii) The Additional Performance Security shall be valid until 28 (twenty-eight) days after the issue of Completion Certificate under Article 12 of this Agreement.
- (iv) The Additional Performance Security shall not be treated as part of Performance Security.

7.1.2 Blank

7.1.3 As Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

7.1.4 Blank

7.2. *Extension of Performance Security*

The Contractor may initially provide the Performance Security for a period of one year; provided that it shall procure the extension of the validity of the Performance Security, as necessary, at least 2 (two) months prior to the date of expiry thereof. Upon the Contractor providing an extended Performance Security, the previous Performance Security shall be deemed to be released and the Employer shall return the same to the Contractor within a period of 15 (Fifteen) working days from the date of submission of the extended Performance Security.

7.3. *Appropriation of Performance Security*

7.3.1 Upon occurrence of a Contractor's Default, the Employer shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Contractor's Default.

7.3.2 Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Employer shall be entitled to terminate the Agreement in accordance with Article 23. Upon replenishment or furnishing of a fresh Performance Security,

as the case may be, as aforesaid, the Contractor shall be entitled to an additional **Cure Period of 30 (thirty) days** for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such Cure Period, the Employer shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 23.

- 7.3.3 The Additional Performance Security shall be encashed, in case the Contractor cannot achieve the Milestones –I/II/III/IV within the prescribed period as per this Agreement due to the fault of the Contractor.

7.4. Release of Performance Security

- 7.4.1 The Employer shall return the Performance Security to the Contractor as under: (i) Retention money from running bill within 14 days from date of payment of final bill, (ii) Balance security deposit within 14 days from completion of defect liability period.

Notwithstanding the aforesaid, the Parties agree that the Employer shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period have been rectified to the satisfaction of Engineer / Engineer's Representative.

- 7.4.2 The Employer shall return the Additional Performance Security to the Contractor within 28 (twenty-eight) days from the date of issue of Completion Certificate under Article 12 of this Agreement. **(Not Applicable)**

7.5. Blank

ARTICLE 8

8. ACCESS TO THE SITE

8.1 *The Site*

The site of the Project (the “**Site**”) shall comprise the site described in Schedule-A in respect of which the access to the site shall be provided by the Employer to the Contractor. The Employer shall be responsible for:

- (a) acquiring and providing access to the Site in accordance with the location finalised by the Employer, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement; and
- (b) obtaining licences and permits for environment clearance for the Project.

8.2 *Access to the Site*

8.2.1 The Employer Representative and the Contractor shall, within 30 (thirty) days of the date of this Agreement, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Subject to the provisions of Clause 8.2.3, such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access has not been given to the Contractor. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute valid evidence of giving the access to the site to the Contractor for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

Whenever the Employer is ready to hand over any part or parts of the Site included in the Appendix, it shall inform the Contractor, by notice, the proposed date and time such of handing over. The Employer Representative and the Contractor shall, on the date so notified, inspect the specified parts of the Site, and prepare a memorandum containing an inventory of the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site so handed over. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the

authorised representatives of the Parties shall be deemed to constitute valid evidence of giving the relevant access to the site to the Contractor.

8.2.2 The Employer shall provide the access to the site to the Contractor in respect of all land included in the Appendix by the date specified in Schedule-A for those parts of the Site referred to therein, or no later than 90 (ninety) days of the Appointed Date for those parts of the Site which have not been specified in Schedule-A, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Contractor, it shall extend the contract period to the Contractor in accordance with Clause 8.3.

8.2.3 Notwithstanding anything to the contrary contained in this Clause 8.2, the Employer shall specify the parts of the Site, if any, for which access to the site shall be provided to the Contractor on the dates specified in Schedule-A. Such parts shall also be included in the Appendix prepared in pursuance of Clause 8.2.1.

8.3 *Remedy for delay in handing over the Site*

8.3.1 In the event the access to the site to any part of the Site is not provided by the Employer on or before the date(s) specified in Clause 8.2 for any reason other than Force Majeure or breach of this Agreement by the Contractor, the Employer shall extend the contract period accordingly and no other compensation is payable.

8.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor expressly agrees that Works on all parts of the Site for which access to the site is granted within 90 (ninety) days of the Appointed Date, or with respect to the parts of the Site provided in Schedule-A, no later than the date(s) specified therein, as the case may be, shall be completed before the Scheduled Completion Date and shall not qualify for any Time Extension under the provisions of Clause 8.3.1.

8.3.3 Notwithstanding anything to the contrary contained in this Agreement, the Employer may at any time withdraw any Works forming part of this Agreement, subject to such Works not exceeding an aggregate value, such value to be determined in accordance with Schedule-H, equal to 10(ten) percent of the Contract Price. Provided that if any Works cannot be undertaken because the requisite clearances or approvals for commencing construction of Works therein have not been given within 240 (two hundred and forty) days of the Appointed date, the affected Works shall be deemed to be withdrawn under the provisions of this

Clause 8.3.3 unless the Parties agree to the contrary, and such Works shall not be computed for the purposes of the aforesaid ceiling of 10% (ten per cent) hereunder.

8.3.4 The proposed project being modification to existing structures and pontoon, full access to the facilities will not be given to the contractor for the contract period. All the preparatory works and fabrication shall be carried out by the contractor in his work shop and fabrication yard on land. Specific window agreed upon between the employer and the contractor will be allocated and intimated. During this period, contractor will be allowed to work at site on activities related to the project such as piling works, modification to existing linkspan, removal and replacement of floating pontoon. Such period of work shall be decided based on availability from the operator and employer decision is final. A total of 30 days shall be made available for site activities indicated above. The 30 days will be determined based on requirement and allocation will be made by the employer depending on the slot available to stop the operation and will not be continuous 30 days. Contractor shall plan the activities in 3 to 4 slots.

8.4 *Site to be free from Encumbrances.*

Subject to the provisions of Clause 8.2, the Site shall be made available by the Employer to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Employer on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

8.5 *Protection of Site from encroachments*

On and after signing the memorandum and/or subsequent memorandum referred to in Clause 8.2.1, and until the issue of the Completion Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place. During the Construction Period, the Contractor shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create

nor permit any Sub-contractor or other person claiming through or under the Agreement to place or create any Encumbrance or security threat over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to the Employer and undertake its removal at its own cost and expenses.

8.6 *Special/temporary Right of Way*

Access to the site can be made through the existing road that connects to the existing RORO/Ropax facility at Ghogha. The facility is an independent facility with minimum vehicle movement. Precaution shall be taken by Contractor for access through the existing facilities and all permits related to site access shall be taken and cost associated with same shall be part of his bid.

The Contractor shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site or precast yard. The Contractor shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

8.7 *Access to the Employer and the Engineer / Engineer's Representative*

8.7.1 The access to the site given to the Contractor hereunder shall always be subject to the right of access of the Employer and the Engineer / Engineer's Representative and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

8.7.2 The Contractor shall ensure, subject to all relevant safety procedures, that the Employer has un-restricted access to the Site during any emergency situation, as decided by the Engineer / Engineer's Representative.

8.8 *Geological and archaeological finds*

It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Contractor for the Works, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other

remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Employer or the concerned Government Instrumentality. The Contractor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Employer forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Contractor hereunder shall be reimbursed by the Employer. It is also agreed that the Employer shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE 9
9. UTILITIES, OBSTRUCTIONS AND HAZARDOUS AREA

9.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing site, right of way, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the Employer, right of way or utility.

9.2 Surveys

- 9.2.1 The Contractor shall carry out surveys necessary for the site to determine the existing seabed levels, bathymetry, soil conditions, obstructions, seabed rocks, buried rocks etc. prior to the starting of the work.
- 9.2.2 The surveys will include seabed bathymetry using multi-beam echo sounder and side scan sonar surveys and shallow seismic surveys.

9.3 New utilities

- 9.3.1 The Contractor shall allow, subject to such conditions as the Employer may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Contractor, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 9.3 shall not in any manner relieve the Contractor of its obligation to construct and maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Employer.

9.3.2 **Blank**

9.3.3 **Blank**

- 9.3.4 In the event the construction of any Works is affected by a new utility or works undertaken in accordance with this Clause 9.3, the Contractor shall be entitled to a reasonable Time Extension as determined by the Engineer / Engineer's Representative.

9.4 Obstructions

9.4.1 The existing RORO/Ropax facility at Ghogha is an individual facility and does not have any other adjacent facilities. Further, the pile construction in the vicinity of existing facility may have under water boulders, large rocks and buried armour and rocks etc. and the contractor shall carry out survey, side scan sonar etc. to determine these obstructions prior to starting of pile works. Any obstruction to work due to existing structures, conveyor and utilities shall be verified prior to the commencement of work and communicated to the Employer in advance. Construction shall not commence until unless agreed upon by the Employer / Engineer in writing for any modification to the existing facilities. Any alternate plan, drawings and work program or alignment proposed by the contractor shall be reviewed by the Engineer and approved and such changes shall not be construed as variation to the scope of works and requirement of any equipment for conducting such works shall be part of this bid. No cost whatsoever shall be paid on this account to the contractor.

9.5 Blank

9.5.1 Blank

ARTICLE 10

PROJECT SCOPE OF WORKS

10.1 Obligations prior to commencement of Works

- 10.1.1 Within 30 (thirty) days of the Appointed Date, the Contractor shall:
- (a) appoint its representative, duly authorised to deal with the Employer in respect of all matters under or arising out of or relating to this Agreement;
 - (b) appoint an Engineering Manager who will head the Contractor's engineering unit and shall be responsible for liaising with Employer in obtaining all necessary drawings for FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT and carry out all necessary modification enabling engineering and residual engineering for the Mechanical, Electrical and Firefighting works;
 - (c) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
 - (d) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.
- 10.1.2 The Employer shall, within 30 (thirty) days of the date of this Agreement, appoint an engineer (**the “Engineer / Engineer’s Representative”**) to discharge the functions and duties specified in this Agreement, and shall notify to the Contractor the name, address and the date of appointment of the Engineer / Engineer’s Representative forthwith.
- 10.1.3 Within 30 (thirty) days of the Appointed Date, the Contractor shall submit to the Employer and the Engineer / Engineer’s Representative a programme (the **“Programme”**) for the Works, developed using networking techniques giving the following details:

Part I Contractor’s organisation for the Project, the general methods and arrangements for modification, environmental management plan in compliance with the conditions

stipulated in the Environmental clearance letter by MoEF, Quality Assurance Plan and safety plan covering safety of users and workers during construction, Contractor's key personnel and equipment.

Part II Contractor's plan for the construction enabling engineering in accordance with clause 10.2.3 including list of deliverables such as design, drawings and procurement specifications etc.

Part III Programme for completion of all stages of modification given in Schedule-H and Project Milestones of the Works as specified in Project Completion Schedule set forth in Schedule-J. The Programme shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing and stages of Works;
- (b) the periods for reviews under Clause 10.2;
- (c) the sequence and timing of inspections and tests specified in this Agreement.

The Contractor shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the Contractor's obligations.

10.1.4 The Contractor shall verify, on the basis of the Approved for Construction (AFC) Drawings issued to him in accordance with Clause 10.2.2, inform the Engineer / Engineer's Representative, any discrepancies between the drawings and Bill of Quantities of various items of work specified in Schedule-H comprising the Scope of the Project. The Parties expressly agree that these details shall form the basis for estimating the interim payments for the Works in accordance with the provisions of Clause 19.3. However, payment will be made only for the quantities of work completed and certified by Engineer / Engineer Representative.

10.1.5 The Contractor shall appoint a safety officer (the "**Safety Officer**") to carry out safety audit of the Project in accordance with the Applicable Laws and Good Industry Practice. The Safety Officer shall be appointed after proposing to the Employer a panel of three names of qualified and experienced firms from whom the Employer may choose one to be the Safety Officer. Provided, however, that if the panel is not acceptable to the Employer and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Employer a revised panel of three names from the firms empanelled

as Safety Officers by the Ministry of Shipping for obtaining the consent of the Employer. The Contractor shall also obtain the consent of the Employer for the key personnel of the Safety Officer who shall have adequate experience and qualifications in safety audit of the Port projects. The Employer shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Safety Officer.

- 10.1.6 The safety audit pursuant to Clause 10.1.5 shall be carried out by the Safety Officer in respect of all such design details that have a bearing on safety of Users. The recommendations of the Safety Officer shall be incorporated in the design of the Project facilities and the Contractor shall forward to the Engineer / Engineer's Representative a certificate to this effect together with the recommendations of the Safety Officer. In the event that any works required by the Safety Officer shall fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Contractor shall make a report thereon and seek the instructions of the Employer for Change in Scope. For the avoidance of doubt, the Safety Officer to be engaged by the Contractor shall be independent of the design and implementation team of the Contractor.

10.2 Design and Drawings

- 10.2.1 Detailed Engineering and preparation of Good for Construction Drawings for the permanent facilities including Modification of existing pontoon, fabrication of new pontoon, construction of linkspan support frame and modification of existing linkspan shall be developed by the Design Consultant in conformity with the Specifications, Scope of works and Standards set forth in Schedule-D.
- 10.2.2 Detailed design of the proposed modification works in the existing RoRo/RoPax Facility has been carried out by the Design Consultant. Layout drawings, General arrangement drawings (GADs) and reinforcement details are issued for the purpose of tendering and the Approved for Construction (AFC) drawings will be issued only to the successful bidder within 30 days (Thirty days) of this agreement. Subsequently, the AFC drawings for pile foundations and superstructure civil work may be revised based on site condition, geotechnical investigation to be carried out by the contractor at the

proposed site, seabed condition, soil layers, and hard rock layers during the course of the project execution including changes due to comments from IRS or changes due to detailed engineering. Such changes shall not be construed as variation to scope of work except for payment as per the rate quoted by the contractor for the particular item. The pile termination level indicated in the AFC drawings are design depths and actual termination shall be decided upon using the criteria specified in the drawings. Contractor shall study the criteria before bidding and shall make sure the contractor proposed equipment is suitable to establish the required pile termination levels. The location, alignment or orientation of piles or mooring dolphins change due to navigational study or any other ground conditions shall not be treated as change to the scope of work and payment shall be made as per the rate quoted by the contractor for the particular item.

10.2.3 In respect of the Contractor's obligations with respect to the design and Drawings for the Project as set forth in Schedule-I, the following shall apply:

- (a) The AFC drawings issued to the contractor will not be revised at the request of the contractor to suit his construction methods or ease of construction. Such request shall not be entertained as it will have impact on the strength of permanent structures. No modification to the dimensions of permanent structure is permissible. No openings for cables and pipes are permitted in permanent structures. Contractor shall plan all such services within the space provided.
- (b) Contractor shall carry out Construction enabling Engineering and prepare all the design, calculations, specifications and drawings whether pertaining to temporary works in conformity with the Scope of the Project, the Specifications and Standards and the Applicable Laws; The construction enabling engineering may include but not limited to the following.
 - i. Setting out of works based on preconstruction survey coordinates carried out by the Contractor and preparation of drawings and bench marks / levels.
 - ii. Preparation of drawings and calculations for construction enabling work such as clearing of earth, filling, trenching, slope stability, etc.
 - iii. Design and detailing of Piling Gantry and frame.

- iv. Design and detailing of Jack up and its piling equipment.
 - v. Design and drawings for Floating Pontoon for transportation and erection of men and materials.
 - vi. Design and detailing of Temporary or permanent supports to pile, pile muff, precast elements, in-situ works, shuttering, piping supports etc.
 - vii. Bar bending schedule, mix design and reinforcement cage stability calculations etc.
 - viii. Design, drawings and specifications of test pile, anchor pile, Pile testing frame, loading frame and test methods.
 - ix. Design and detailing of pile liner fabrication, lifting, joining, and driving scheme.
 - x. Design and detailing of reinforcement cage including joining of longitudinal bars during lifting and handling.
 - xi. Design and detailing of lifting frame for Lifting of precast elements.
 - xii. Design of Construction equipment support foundations.
 - xiii. Any other works to complete the project facility that has not been detailed in the AFC drawings.
- (c) Within 15 (fifteen) days of the receipt of the Construction enabling engineering Drawings, specifications, datasheets and calculations, the Engineer / Engineer's Representative shall review the same and convey its observations to the Contractor with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Contractor shall not be obliged to wait for the observations of the Engineer / Engineer's Representative on the Drawings submitted pursuant hereto beyond the said period of 15 (fifteen) days and may begin or continue works at its own discretion and risk; Provided, however that in case of a major structure or item that may affect the integrity of the proposed scheme, the aforesaid period of 15 (fifteen) days may be extended up to 30 (thirty) days;
- (d) the Contractor warrants that its designers, consultants, engineers, including any third parties engaged by it, shall have the required experience and capability in accordance with clause 3.10(B) and it 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.

- 10.2.4 Any cost or delay in construction arising from review by the Engineer / Engineer's Representative shall be borne by the Contractor.
- 10.2.5 Works shall be executed in accordance with the AFC Drawings provided by the Engineer / Engineer's Representative and engineering drawings provided by the Contractor in accordance with the provisions of Clause 10.2.3(b) and the observations of the Engineer / Engineer's Representative thereon as communicated pursuant to the provisions of Clause 10.2.3 (c). Such Drawings shall not be amended or altered without prior written notice to the Engineer / Engineer's Representative. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.
- 10.2.6 Within 90 (ninety) days of the Project Completion Date, the Contractor shall furnish to the Employer and the Engineer / Engineer's Representative a complete set of as-built Drawings, in 2 (two) hard copies and soft copy as may be acceptable to the Employer, reflecting the Project as actually designed, engineered and constructed forming part of Project.

10.3 Construction

- 10.3.1 The Contractor shall execute the FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. 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. The 12 months (Twelve Months including monsoon and mobilisation period) from the Appointed Date shall be the scheduled completion date (the "**Scheduled Completion Date**") and the Contractor agrees and undertakes that the modification works shall be completed on or before the Scheduled Completion Date, including any extension thereof.
- 10.3.2 The Contractor shall execute the FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT in accordance with the Project Completion Schedule set forth in

Schedule-J. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 30 (thirty) days from the date set forth in Schedule-J, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Employer, it shall pay Damages to the Employer of a sum calculated at the rate of 0.5% (zero point five percent) of the Contract Price for delay of each day reckoned from the date specified in Schedule –J and until such Project Milestone is achieved or the Works are completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-J shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-J has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension, applicable for that work or section, the Damages paid under this Clause 10.3.2 shall be refunded by the Employer to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 10.3.2 shall be without prejudice to the rights of the Employer under this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected works as specified in Clause 10.5.2.

- 10.3.3 The Employer shall notify the Contractor of its decision to impose Damages in pursuance with the provisions of this Clause 10.3. Provided that no deduction on account of Damages shall be effected by the Employer without notifying the Contractor of its decision to impose the Damages, and taking into consideration the representation, if any, made by the Contractor within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under Clause 10.3.2 shall not exceed 10% (ten percent) of the Contract Price.
- 10.3.4 Contractor shall carry out initial surveys & geotechnical investigation as set forth in the bill of quantities and specifications and submit the geotechnical report within 30 days from the date of signing this agreement. A detailed report consisting of topographical features of existing facility including existing jetty, roads, bathymetry of the port area covering the entire port including the proposed new berth area shall be submitted before initiating any construction work at site.

10.3.5 Blank

10.4 Changes to seabed strata and pile alignment

- 10.4.1 Soil investigation carried out by “M.K Soil testing agency” in the year 2012 at the location of Ghogha RoRo/Ropax terminal is made available to the contractor for reference based on which the pile termination levels in the tender and construction drawings have been finalized. Contractor shall carry out new geotechnical investigation within 30 days of award of work and submit the report to the Engineer. The changes to the pile termination levels required to satisfy the socket depth as per design requirement based on the new geotechnical investigation report shall be accommodated in the pile boring equipment selection and associated marine spread required for the successful completion of pile construction. No extra payment in this regard for changes to pile termination level in lieu of seabed strata changes shall be allowed.
- 10.4.2 The design of pile foundation has been completed considering the prevailing seabed conditions at site. The alignment of pile including spacing, locations and size has been derived considering the above requirements. However, the same may vary due to site conditions, underlying seabed strata changes, obstructions due to underground obstacles and any unforeseen issue at site. Such changes to the alignment of pile, location of pile, spacing or diameter shall not constitute change to the scope and warrant change of marine spread such as piling gantry, barges, boat, piling equipment and crane. No extra payment whatsoever shall be permitted for such changes in addition to the items catered in the BOQ.

Boulders, rocks, armour or any other obstruction found shall be removed and disposed at the location specified by the Engineer prior to the pile construction works. No extra payment or extension of time in this regard is permissible.

10.5 Extension of time for completion

- 10.5.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Contractor shall be entitled to extension of time in the Project Completion Schedule (the “**Time Extension**”) to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:

- (a) delay in providing access to the site, specified in Clause 4.1.4; Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Article 13);
- (b) occurrence of a Force Majeure Event;
- (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; and
- (d) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

10.5.2 The Contractor shall, no later than 15 (fifteen) working days from the occurrence of an event or circumstance specified in Clause 10.5.1, inform the Engineer / Engineer's Representative by notice in writing, with a copy to the Employer, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) working days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance.

Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected hereunder.

10.5.3 In the event of the failure of the Contractor to issue to the Engineer / Engineer's Representative a notice in accordance with the provisions of Clause 10.5.2 within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this clause 10.5.3, the Employer shall be discharged from all liability in connection with the claim.

10.5.4 The Engineer / Engineer's Representative shall, on receipt of the claim in accordance with the provisions of Clause 10.5.2, examine the claim expeditiously within the time frame specified herein. In the

event the Engineer / Engineer's Representative requires any clarifications to examine the claim, the Engineer / Engineer's Representative shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Contractor shall, on receipt of the communication of the Engineer / Engineer's Representative requesting for clarification, furnish the same to the Engineer / Engineer's Representative within 10 (ten) days thereof. The Engineer / Engineer's Representative shall, within a period of 60 (sixty) days from the date of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension.

Provided that, when determining each extension of time under this Clause 10.5, the Engineer / Engineer's Representative shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

- 10.5.5 If the event or circumstance giving rise to the notice has a continuing effect:
- (a) a fully detailed claim shall be considered as interim;
the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Engineer / Engineer's Representative may reasonably require; and
 - (b) The Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Engineer / Engineer's Representative shall examine the same in accordance with the provisions of Clause 10.5.4 within a period of 60 (sixty) days of the receipt thereof.

10.6 Incomplete Works

In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the Employer in accordance with the provisions of Clause 10.3.2 for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Employer under this Agreement including the right to termination under Clause 23.1.

10.7 Operating Manual

No later than 60 (sixty) days prior to the Project Completion Date, the Contractor shall, in consultation with the Engineer / Engineer's Representative, evolve an Operating manual (the **"Operating Manual"**) for the Project facilities and equipment in conformity with the Specifications and Standards, safety requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Engineer / Engineer's Representative. The Engineer / Engineer's Representative shall review the Operating Manual within 15 (fifteen) days of its receipt and communicate its comments to the Contractor for necessary modifications, if any.

ARTICLE 11

11. QUALITY ASSURANCE, MONITORING AND SUPERVISION

11.1 Quality of Materials and workmanship

The Contractor shall ensure that the Construction, Materials, and workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

11.2 Quality control system

11.2.1 The Contractor shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the **“Quality Assurance Plan”** or **“QAP”**).

11.2.2 The Contractor shall, within 30 (thirty) days of the Appointed Date, submit to the Engineer / Engineer’s Representative its Quality Assurance Plan which shall include the following:

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

The Engineer / Engineer’s Representative shall convey its comments to the Contractor within a period of 21 (twenty-one) days of receipt of the QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 11.2.

11.2.3 The Contractor shall procure all documents, apparatus and instruments, fuel, consumables, water, electricity, labour, Materials, samples, and qualified personnel as are necessary for examining and testing the Project Assets and workmanship in accordance with the Quality Assurance Plan.

11.2.4 The cost of testing of Construction, Materials and workmanship under this Article 11 shall be borne by the Contractor.

11.3 Methodology

The Contractor shall, at least 30 (thirty) days prior to the commencement of the construction work at site, submit to the Engineer / Engineer's Representative for review, the methodology proposed to be adopted for executing the Works, giving details of equipment to be deployed, vessel movement near the existing berths and measures for ensuring safety. The Engineer / Engineer's Representative shall complete the review and convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.

11.4 Inspection and technical audit by the Employer

The Employer or any representative authorised by the Employer in this behalf may inspect and review the progress and quality of the FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT and issue appropriate directions to the Engineer / Engineer's Representative and the Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

11.5 External technical audit

At any time during construction, the Employer may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Employer, shall be notified to the Contractor and the Engineer / Engineer's Representative for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause 11.5, the external technical audit shall not affect any obligations of the Contractor or the Engineer / Engineer's Representative under this Agreement.

11.6 Inspection of construction records

The Employer shall have the right to inspect the records of the Contractor relating to the Works.

11.7 Monthly progress reports

During the Construction Period, the Contractor shall, no later than 10 (ten) days after the close of each month, furnish to the Employer and the Engineer / Engineer's Representative a monthly report on progress of the Works and shall promptly give such other relevant information as may be required by the Engineer / Engineer's Representative.

11.8 Inspection

11.8.1 The Engineer / Engineer's Representative and its authorised representative shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained for use in the Works; and
- (b) during production, manufacture, and construction at the Site and at the place of production, be entitled to examine, inspect, measure, and test the Materials and workmanship, and to check the progress of manufacture of Materials.

11.8.2 The Contractor shall give the Engineer / Engineer's Representative and its authorized agents access, facilities, and safety equipment for carrying out their obligations under this Agreement.

11.8.3 The Engineer / Engineer's Representative shall submit a monthly inspection report (the "**Inspection Report**") to the Employer and the Contractor bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. For the avoidance of doubt, such inspection or submission of Inspection Report by the Engineer / Engineer's Representative shall not relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever.

11.9 Samples

The Contractor shall submit the following samples of Materials and relevant information to the Engineer / Engineer's Representative for pre-construction review:

- (a) manufacturer's test reports and standard samples of manufactured Materials; and

- (b) samples of such other Materials as the Engineer / Engineer's Representative may require.

11.10 Tests

- 11.10.1 For determining that the Works conform to the Specifications and Standards, the Engineer / Engineer's Representative shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement, and in accordance with Good Industry Practice for quality assurance. The tests shall be done by the Contractor in the presence of the Engineer / Engineer's Representative on number of tests prescribed for each category or type of test for quality control by the Contractor.
- 11.10.2 In the event that results of any tests conducted under this Clause 11.10 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the Engineer / Engineer's Representative in this behalf. The Engineer / Engineer's Representative shall require the Contractor to carry out or cause to be carried out tests to determine that such remedial measures have brought the Works into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, the cost of such tests and remedial measures in pursuance thereof shall be solely borne by the Contractor.

11.11 Examination of work before covering up

In respect of the work which the Engineer / Engineer's Representative is entitled to examine, inspect, measure and/or test before it is covered up or put out of view or any part of the work is placed thereon, the Contractor shall give notice to the Engineer / Engineer's Representative whenever any such work is ready and before it is covered up. The Engineer / Engineer's Representative shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer / Engineer's Representative does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, the Contractor shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) working days" notice, to the Engineer / Engineer's Representative to conduct its inspection, measurement, or test

while the work is continuing. Provided further that in the event the Contractor receives no response from the Engineer / Engineer's Representative within a period of 3 (three) working days from the date on which the Contractor's notice hereunder is delivered to the Engineer / Engineer's Representative, the Contractor shall be entitled to assume that the Engineer / Engineer's Representative would not undertake the said inspection.

11.12 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 provisions of this Agreement, the Engineer / Engineer's Representative shall reject the Plant, Materials, design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement. If the Engineer / Engineer's Representative requires the Plant, Materials, design, or workmanship to be retested, the tests shall be repeated under the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Employer to incur any additional costs, such cost shall be recoverable by the Employer from the Contractor; and may be deducted by the Employer from any monies due to be paid to the Contractor.

11.13 Remedial work

- 11.13.1 Notwithstanding any previous test or certification, the Engineer / Engineer's Representative may instruct the Contractor to:
- (a) remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
 - (b) remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Specification and Standards; and
 - (c) execute any work which is urgently required for the safety of the Project facilities, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 21.6 shall apply.
- 11.13.2 If the Contractor fails to comply with the instructions issued by the Engineer / Engineer's Representative under Clause 11.13.1, within the time specified in the Engineer / Engineer's Representatives

notice or as mutually agreed, the Engineer / Engineer's Representative may advise the Employer to have the work executed by another agency. The cost so incurred by the Employer for undertaking such work shall, without prejudice to the rights of the Employer to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Employer from any monies due to be paid to the Contractor.

11.14 Delays during construction

Without prejudice to the provisions of Clause 10.3.2, in the event the Contractor does not achieve any of the Project Milestones or the Engineer / Engineer's Representative shall have reasonably determined that the rate of progress of Works is such that Completion of the Project is not likely to be achieved by the end of the Scheduled Completion Date, it shall notify the same to the Contractor, and the Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the Engineer / Engineer's Representative in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

11.15 Quality control records and Documents

The Contractor shall hand over to the Engineer / Engineer's Representative a copy of all its quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.2.

11.16 Video recording

During the Construction Period, the Contractor shall provide to the Employer for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour digital video and the same is to be shared through portable USB flash drive, as the case may be, covering the status and progress of Works in that quarter. The video recording shall be provided to the Employer no later than 15 (fifteen) days after the close of each quarter after the Appointed Date.

11.17 Suspension of unsafe Construction Works

11.17.1 Upon recommendation of the Engineer / Engineer's Representative to this effect, the Employer may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Engineer / Engineer's Representative, such work threatens the safety of the Users and pedestrians.

- 11.17.2 The Contractor shall, pursuant to the notice under Clause 11.17.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the Employer and thereupon carry out remedial measures to secure the safety of suspended works, the Users and pedestrians. The Contractor may by notice require the Engineer / Engineer's Representative to inspect such remedial measures forthwith and make a report to the Employer recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Engineer / Engineer's Representative, the Employer shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Employer, and the procedure set forth in this Clause 11.17 shall be repeated until the suspension hereunder is revoked.
- 11.17.3 Subject to the provisions of Clause 21.6, all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Agreement by the Employer, the Preservation Costs shall be borne by the Employer.
- 11.17.4 If suspension of Works is for reasons not attributable to the Contractor, the Engineer / Engineer's Representative shall determine any Time Extension to which the Contractor is reasonably entitled.

ARTICLE 12
12. COMPLETION CERTIFICATE

12.1 Tests on completion

- 12.1.1 At least 30 (thirty) days prior to the likely completion of the Project, or a Section thereof, the Contractor shall notify the Engineer / Engineer's Representative of its intent to subject the Project or a Section thereof, to Tests. The date and time of each of the Tests shall be determined by the Engineer / Engineer's Representative in consultation with the Contractor and notified to the Employer who may designate its representative to witness the Tests. The Contractor shall either conduct the Tests as directed by the Engineer / Engineer's Representative or provide such assistance as the Engineer / Engineer's Representative may reasonably require for conducting the Tests. In the event of the Contractor and the Engineer / Engineer's Representative failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by giving not less than 10 (ten) days' notice to the Engineer / Engineer's Representative.
- 12.1.2 All Tests shall be conducted in accordance with Schedule-K. The Engineer / Engineer's Representative shall either conduct or observe, monitor and review the Tests conducted by the Contractor, as the case may be, and review the results of the Tests to determine compliance of the Project or a Section thereof, with Specifications and Standards and if it is reasonably anticipated or determined by the Engineer / Engineer's Representative during the course of any Test that the performance of the Project or Section or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify the Defect or deficiencies. Upon completion of each Test, the Engineer / Engineer's Representative shall provide to the Contractor and the Employer copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Engineer / Engineer's Representative may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project or Section thereof with the Specifications and Standards.

12.2 Provisional Certificate

- 12.2.1 Subject to the provisions of Clause 12.2.5, upon completion of all Works forming part of the Project, save and except the Works for which Time Extension has been granted under Clause 10.5, the Engineer / Engineer's Representative shall, at the request of the Contractor, issue a provisional certificate of completion substantially in the form set forth in Schedule-L (the "**Provisional Certificate**") if the Tests for and in respect of the completed Works are successful. The Provisional Certificate shall have appended thereto a list of outstanding items of work (the "**Punch List**") that need to be completed in accordance with the provisions of this Agreement. The Contractor undertakes to complete the minor outstanding items of works in respect of those Sections of the Project for which the Provisional Certificate has been issued, within a period of 30 (thirty) days of the date of Provisional Certificate, and those parts of the Works in respect of which Time Extension has been granted, within the extended period thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all Works for which Time Extension has been granted and shall also include any minor outstanding items of work forming part of the completed Sections if such works do not materially affect the use of the completed Sections for their intended purpose. The Parties further agree that Provisional Certificate shall not be issued if the completed Works cannot be safely and reliably placed in service of the Users thereof.
- 12.2.2 Upon issue of Provisional Certificate, the provisions of Articles 14 and 17 shall apply to the completed parts of the Project and the property and ownership of all such completed Works shall vest in the Employer.
- 12.2.3 If the Engineer / Engineer's Representative determines that the Project or any completed part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the Employer and the Contractor and withhold issuance of the Provisional Certificate until the Defects or deficiencies are rectified by the Contractor and Tests are successful in accordance with this Article 12.
- 12.2.4 Notwithstanding anything to the contrary contained in Clause 12.2.3, the Employer may, at any time after receiving a report from the Engineer / Engineer's Representative under that Clause, direct the Engineer / Engineer's Representative to issue a Provisional

Certificate under Clause 12.2.1 and such direction shall be complied forthwith.

- 12.2.5 No Provisional Certificate shall be issued under the provisions of this Clause 12.2 until the Contractor has submitted valid claims for payment of at least 80% (eighty per cent) of the amount arrived at after reducing the lump sum price specified in Clause 19.1.1 by the amount attributable to works which have been withdrawn under the provisions of Clause 8.3.3. For the avoidance of doubt and by way of illustration, the Parties agree that if the Contract Price specified in Clause 19.1.1 is Rs. 105 cr. (Rs. one hundred and five crore) and the works withdrawn under Clause 8.3.3 have a value of Rs. 5 cr. (Rs. five crore), a Provisional Certificate shall not be issued until valid claims for payment of an amount of Rs. 80 cr. (Rs. eighty crore) have been submitted by the Contractor in accordance with the provisions of this Agreement. It is further agreed that all price adjustments made in pursuance of Clause 19.10 shall not be reckoned for computation of the claims for payments referred to in this Clause 12.2.5.

12.3 Completion of remaining Works

All items in the Punch List shall be completed by the Contractor in accordance with the provisions of this Agreement. For any delay in their completion other than for the reasons solely attributable to the Employer or due to Force Majeure, the Employer shall be entitled to recover Damages from the Contractor in accordance with the provisions of Clause 10.3.2 of this Agreement.

12.4 Completion Certificate

- 12.4.1 Upon completion of all Works, including the items specified in the Punch List, and the Engineer / Engineer's Representative determining the Tests to be successful, it shall forthwith issue to the Contractor and the Employer a certificate substantially in the form set forth in Schedule-L (the "**Completion Certificate**").
- 12.4.2 Upon receiving the Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works from the Site within a period of 60 (Sixty) days thereof, failing which the Employer may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from the Contractor an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Employer.

- 12.4.3 Without prejudice to the obligations of the Contractor specified in Articles 14 and 17, the property and ownership of all the completed Works forming part of the Project shall vest in the Employer.

12.5 Rescheduling of Tests

If the Engineer / Engineer's Representative certifies to the Employer and the Contractor that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Contractor shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

ARTICLE 13
13. CHANGE OF SCOPE

13.1 Change of Scope

13.1.1 The Employer may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications/alterations to the Works ("**Change of Scope**") before the issue of the Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Article 13.

13.1.2 Change of Scope shall mean:

- a) Increase or decrease the quantity of any work included in the Contract shall not be deemed to be considered as change in scope unless the quantity increases or decreases beyond 25%. For such variations, the rate specified in the contract shall be paid and no extension of time shall be allowed for such variation.
- b) change in specifications of any item of Works;
- c) omission of any work from the Scope of the Project except under Clause 8.3.3; provided that, subject to Clause 13.5, the Employer shall not omit any work under this Clause in order to get it executed by any other Employer; and / or
- d) any additional work, requiring mobilization of Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction.
- e) Execute additional work of any kind not defined in the tender necessary for the completion of the work.

13.2 Procedure for Change of Scope

13.2.1 In the event of the Employer determining that a Change of Scope is necessary, it may direct the Engineer / Engineer's Representative to issue to the Contractor a notice specifying in reasonable detail

the works and services contemplated thereunder (the “**Change of Scope Notice**”).

- 13.2.2 Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence, provide to the Employer and the Engineer / Engineer’s Representative such information as is necessary, together with preliminary documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:
 - i. breakdown of the quantities, unit rates and cost for different items of work;
 - ii. proposed design for the Change of Scope; and
 - iii. proposed modifications, if any, to the Project Completion Schedule of the Project.

For the avoidance of doubt, the Parties expressly agree that subject to the provisions of Clause 13.4.2, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope.

- 13.2.3 The Contractor’s quotation of costs for the Change of Scope shall be determined on the following principles:
- (a) At the rates and prices set out in the Contract if, in the opinion of the Engineer, with the prior approval of the Employer. The same shall be applicable.
 - (b) If the Contract does not contain any rates or prices applicable to the varied work, the rates, and prices of similar items in the Contract shall be used as the basis for arriving on such rates,
 - (c) For works not similar in nature to the Works being executed, the cost of work shall be derived by the Engineer / Engineer’s Representative in accordance with Good Industry Practice in consultation with design consultant and employer.

13.2.4 Upon reaching an agreement, the Employer shall issue an order (the “**Change of Scope Order**”) requiring the Contractor to proceed with the performance thereof. In the event that the Parties are unable to agree, the Employer may:

- (a) issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the Employer till the matter is resolved in accordance with Article 26; or
- (b) proceed in accordance with Clause 13.5.

13.2.5 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Contractor under this Article 13.

13.3 Payment for Change of Scope

Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.

13.4 Restrictions on Change of Scope

13.4.1 No Change of Scope shall be executed unless the Employer has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.

13.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 25 (Twenty-Five) per cent of the Contract Price. Any increase beyond 25% of contract price and the 25% of the quantity under the respective items of BOQ, then the new rate for such items will be at 110% of the accepted rate of such item.

For illustration:

Contract price: 100 crores

Final completion cost: 127 crores (increase 27%)

Item no. xxx: Original quantity 100 cum Accepted rate: Rs.6000/cum
Quantity on completion: 150 cum.

Then the rate for quantity beyond 125 cum (100x125%) will be Rs. (6000x 110%).

- 13.4.3 Notwithstanding anything to the contrary in this Article 13, no change made necessary because of any default of the Contractor in the performance of its obligations under this Agreement shall be deemed to be Change of Scope and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

13.5 Power of the Employer to undertake works.

- 13.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Clause 13.2, the Employer may, after giving notice to the Contractor and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding from amongst bidders who are pre-qualified for undertaking the additional work; provided that the Contractor shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Employer, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Contractor shall provide assistance and cooperation to the person who undertakes the works or services hereunder but shall not be responsible for rectification of any Defects and/ or maintenance of works carried out by other agencies.
- 13.5.2 The works undertaken in accordance with this Clause 13.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 13.5.

ARTICLE 14
14. NOT USED

This article is omitted.

ARTICLE 15
15. NOT USED

This article is omitted.

ARTICLE 16
16. NOT USED

This article is omitted.

ARTICLE 17

17. DEFECTS LIABILITY

17.1 Defects Liability Period

17.1.1 The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project or any Section thereof, till the expiry of a period of **1 (one) year** commencing from the date of Provisional Certificate (the “**Defects Liability Period**”). Provided that the Defects Liability Period shall in no case be less than **12 (twelve)** months from the date of Completion Certificate for and in respect of works for which Time Extension was granted. Provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence from the date of the Completion Certificate.

17.1.2 *Blank*

17.1.3 *Blank*

17.2 Remedying Defects

The schedule for Repair/rectification of Defects and deficiencies are given in Schedule E (annex I). The Contractor shall repair or rectify all Defects and deficiencies observed by the Engineer / Engineer’s Representative during the Defects Liability Period within the period specified in Schedule E (Annex-I) from the date of notice issued by the Engineer / Engineer’s Representative in this behalf, or within such reasonable period as may be determined by the Engineer / Engineer’s Representative at the request of the Contractor, in accordance with Good Industry Practice. All the spares pertaining to equipment/ pumps etc. supplied & commissioned by the contractor should be replaced by contractor at his own cost within the defect liability period.

17.3 Cost of remedying Defects

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Clause 17.2, including any additional testing, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

- (a) Plant, Materials or workmanship not being in accordance with this Agreement and the Specifications and Standards;
- (b) improper maintenance during modification of RoRo/Ropax facility by the Contractor; and/ or

- (c) failure by the Contractor to comply with any other obligation under this Agreement.

17.4 Contractor's failure to rectify Defects.

In the event that the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Clause 17.2, the Employer shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the Project facilities conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Employer and the Contractor, be determined by the Engineer / Engineer's Representative. The cost so determined and an amount equal to twenty percent of the cost as Damages shall be recoverable by the Employer from the Contractor and may be deducted by the Employer from any monies due to the Contractor.

17.5 Contractor to search cause.

- 17.5.1 The Engineer / Engineer's Representative may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.
- 17.5.2 In the event any Defect identified under Clause 17.5.1 is attributable to the Contractor, the Contractor shall rectify such Defect within the period specified by the Engineer / Engineer's Representative and shall bear the cost of the examination and rectification of such Defect.
- 17.5.3 In the event such Defect is not attributable to the Contractor, the Engineer / Engineer's Representative shall, after due consultation with the Employer and the Contractor, determine the costs incurred by the Contractor on such examination and notify the same to the Contractor, with a copy to the Employer, and the Contractor shall be entitled to payment of such costs by the Employer.

17.6 Extension of Defects Liability Period

The Defects Liability Period shall be deemed to be extended till the identified Defects under Clause 17.2 have been remedied.

ARTICLE 18
18. ENGINEER / ENGINEER'S REPRESENTATIVE

18.1 Appointment of the Engineer / Engineer's Representative

- 18.1.1 The Chief Engineer shall appoint an officer not less than the grade of Superintending Engineer / Executive Engineer who will act as Employer's Engineer (the "**Engineer / Employer's Engineer**").
- 18.1.2 The Engineer / Employer's Engineer should be appointed within 30 days from the date of this Agreement or before declaration of Appointed Date. The Employer shall notify the appointment or replacement of the Engineer / Employer's Engineer to the Contractor.
- 18.1.3 The Chief Engineer has appointed on approval of the board, IIT Madras as the **Engineer's Representative / Project Management Consultant (PMC)** to execute the work and supervise the construction under the guidance of Employer's Engineer and Employer. The staff of the Engineer's Representative shall include suitably qualified engineers and other professionals who are competent to assist the Engineer / Engineer's Representative to carry out its duties.

18.2 Duties and Employer of the Engineer / Engineer's Representative

- 18.2.1 The Engineer / Engineer's Representative shall perform the duties and exercise the Employer in accordance with the provisions of this Agreement, and substantially in accordance with the terms of reference ("**Terms of Reference**" or "**TOR**") set forth in Annex 1 of Schedule N, but subject to obtaining prior written approval of the Employer before determining:
- a) any Time Extension;
 - b) any additional cost to be paid by the Employer to the Contractor;
 - c) the Termination of Payment; or
- 18.2.2 No decision or communication of the Engineer / Engineer's Representative shall be effective or valid unless it is accompanied by an attested true copy of the approval of the Employer for and in respect of any matter specified in Clause 18.2.1.
- 18.2.3 The Engineer / Engineer's Representative shall submit regular periodic reports, at least once every month, to the Employer in respect of its duties and functions under this Agreement. Such reports shall

be submitted by the Engineer / Engineer's Representative within 10 (ten) days of the beginning of every month. For the avoidance of doubt, the Engineer / Engineer's Representative shall include in its report, compliance of the recommendations of the Safety Officer.

18.3 Delegation by the Engineer / Engineer's Representative

- 18.3.1 The Engineer / Engineer's Representative may, by order in writing, delegate any of his duties and responsibilities to suitably qualified and experienced personnel who are accountable to Engineer / Engineer's Representative, or may revoke any such delegation, under intimation to the Employer and the Contractor. Provided, however, that the Engineer / Engineer's Representative shall be responsible and liable for all actions and omissions of such personnel.
- 18.3.2 Any failure of the Engineer / Engineer's Representative to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Employer to reject the work, Plant or Materials, which is not in accordance with the provisions of this Agreement and the Specifications and Standards.
- 18.3.3 Notwithstanding anything stated in Clause 18.3.1 above, the Engineer / Engineer's Representative shall not delegate the Employer to refer any matter for the Employer's prior approval wherever required in accordance with the provisions of Clause 18.2.

18.4 Instructions of the Engineer / Engineer's Representative

- 18.4.1 The Engineer / Engineer's Representative may issue to the Contractor instructions for remedying any Defect. The Contractor shall take such instructions from the Engineer / Engineer's Representative, or from an assistant to whom appropriate Employer has been delegated under Clause 18.3.
- 18.4.2 The instructions issued by the Engineer / Engineer's Representative shall be in writing. However, if the Engineer / Engineer's Representative issues any oral instructions to the Contractor, it shall confirm in writing the oral instructions within 2 (two) working days of issuing them.
- 18.4.3 In case the Contractor does not receive the confirmation of the oral instruction within the time specified in Clause 18.4.2, the Contractor shall seek the written confirmation of the oral instructions from the

Engineer / Engineer's Representative. The Contractor shall obtain acknowledgement from the Engineer / Engineer's Representative of the communication seeking written confirmation. In case of failure of the Engineer / Engineer's Representative or its delegated assistant to reply to the Contractor within 2 (two) days of the receipt of the communication from the Contractor, the Contractor may not carry out the instruction.

- 18.4.4 In case of any dispute on any of the instructions issued by the delegated assistant, the Contractor may refer the dispute to the Engineer / Engineer's Representative, who shall then confirm, reverse or vary the instructions within 3 (three) working days of the dispute being referred.

18.5 Determination by the Engineer / Engineer's Representative

- 18.5.1 The Engineer / Engineer's Representative shall consult with each Party in an endeavour to reach agreement wherever this Agreement provides for the determination of any matter by the Engineer / Engineer's Representative. If such agreement is not achieved, the Engineer / Engineer's Representative shall make a fair determination in accordance with this Agreement having due regard to all relevant circumstances. The Engineer / Engineer's Representative shall give notice to both the Parties of each agreement or determination, with supporting particulars.
- 18.5.2 Each Party shall give effect to each agreement or determination made by the Engineer / Engineer's Representative in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision, direction or determination of the Engineer / Engineer's Representative, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

18.6 Blank

18.7 Representative

- 18.7.1 The Employer may, in its discretion, replace the Engineer / Engineer's Representative at any time, but only after appointment of another Engineer / Engineer's Representative in accordance with Clause 18.1.
- 18.7.2 If the Contractor has reasons to believe that the Engineer / Engineer's Representative is not discharging its duties and functions in accordance with the provisions of this Agreement, it may make a

written representation to the Employer and seek termination of the appointment of the Engineer / Engineer's Representative. Upon receipt of such representation, the Employer shall hold a tripartite meeting with the Contractor and Engineer / Engineer's Representative and make best efforts for an amicable resolution of the representation.

Part IV Financial Covenants

ARTICLE 19

19. PAYMENTS

19.1 Contract Price

- 19.1.1 The Employer shall make payments to the Contractor for the Works on the basis of the price accepted by the Employer in consideration of the obligations specified in this Agreement for an amount of Rs. (Rs.) (the “**Contract Price**”), which shall be subject to adjustments in accordance with the provisions of this Agreement. The Parties further agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Completion Certificate.
- 19.1.2 The Contract Price includes all duties, taxes, royalty, and fees that may be levied in accordance with the laws and regulations in force as on the Base Date on the Contractor's equipment, Plant, Materials and supplies acquired for the purpose of this Agreement and on the services performed under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of this Agreement. However, the Contract Price is exclusive of GST which will be paid by the Employer as per the GST invoice raised by the Contractor. The contractor shall also give undertaking that the receipt of the GST shall be remitted to the Tax authorities as per the extant tax rules.
- 19.1.3 The Contract Price shall not be adjusted for any change in costs stated in Clause 19.1.2 above, except as stated in Clauses 19.10 and 19.17.
- 19.1.4 The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in this Agreement.
- 19.1.5 Unless otherwise stated in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this Agreement and all things necessary for the Construction and the remedying of any Defects in the Project facilities.
- 19.1.6 All payments under this Agreement shall be made in Indian Rupees.

- 19.1.7 Contractor / service provider / supplier etc. has to ensure timely and proper filling of GSTR 1 so that Deendayal Port Authority can avail input tax credit in timely manner. In case DPA not allowed input tax credit due to failure on part of the contractor/service provider / supplier etc., it will be a financial loss to the DPA and therefore same shall be recovered from the payment/deposit of the contractor/ service provider/ supplier.

TDS provision under GST Acts, 2017 are in force from 01.10.2018 and accordingly TDS under GST Act will be deducted @ 2 % (1% CGST and 1 % SGST or 2 % IGST) from payment / credit give to contractor/ professional and other for work order / contract exceeding Rs. 2,50,000/-

19.2 Advance Payment

Not used

19.3 Procedure for estimating the payment for the Works.

- 19.3.1 The Employer shall make interim payments to the Contractor as certified by the Engineer / Engineer's Representative for the civil works based on the monthly measurements. In Case of the Mechanical, Electrical, Firefighting works, the payments shall be released on completion of a stage, in a length, number or area as specified and valued in accordance with the unit rate assigned to these items and its stage payment specified in Schedule-H.
- 19.3.2 The Contractor shall base its claim for interim payment for the work completed till the end of the month for which the payment is claimed, valued in accordance with Clause 19.3.1, supported with necessary particulars and documents in accordance with this Agreement.
- 19.3.3 Any reduction in the Contract Price arising out of Change of Scope or the works withdrawn under Clause 8.3 shall not affect the amounts payable for the items or stage payments thereof which are not affected by such Change of Scope or withdrawal. For avoidance of doubt and by way of illustration, the Parties agree that if the amount assigned to a component is reduced from Rs. 100 crores to Rs. 80 crores owing to Change of Scope or withdrawal of work, the reduction in payment shall be restricted to relevant payments for that component only and the payment due in respect of all other items or stage payments under the component shall not be affected

in any manner. The Parties further agree that the adjustments arising out of the aforesaid modifications shall be carried out in a manner that the impact of such modifications is restricted to the said Change of Scope or withdrawal, as the case may be, and does not alter the payments due for and in respect of items or stage payments which do not form part of such Change of Scope or withdrawal.

19.4 Monthly Payment/ Progress payment Statement for Works

The Contractor shall submit a statement (the **“Monthly Payment Statement”**), in 3 copies, by the 7th (seventh) day of the month to the Engineer / Engineer’s Representative in the form set forth in Schedule-O, showing the amount calculated in accordance with Clause 19.3 to which the Contractor considers himself entitled for completed item(s) of the Works. The Monthly Payment Statement shall be accompanied with the progress reports and any other supporting documents. The Contractor shall not submit any claim for payment of incomplete part of work element. For avoidance of doubt, work element means items of work as defined in Table H-1 and H-2 in Schedule H of this agreement.

19.5 Monthly Payment for Works

- 19.5.1 Within 10 (ten) days of receipt of the Monthly Payment Statement from the Contractor pursuant to Clause 19.4, the Engineer / Engineer’s Representative shall broadly determine the amount due to the Contractor and recommend the release of the amount so determined as payment against the Monthly Payment Statement. Within 21 (twenty-one) days of the receipt of recommendation of the Engineer / Engineer’s Representative, the Employer shall make electronic payment directly to the Contractor’s bank account. However, no interest shall be paid in case of delay in payment.
- 19.5.2 Within 15 (fifteen) days of the receipt of the Monthly Payment Statement referred to in Clause 19.4, the Engineer / Engineer’s Representative shall determine and shall deliver to the Employer and the Contractor an IPC certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement. For the avoidance of doubt, the Parties agree that the IPC shall specify all the amounts that have been deducted from the Monthly Payment Statement and the reasons therefor.

- 19.5.3 In cases where there is a difference of opinion as to the value of any payment, the Engineer / Engineer's Representative's view shall prevail, and interim payments shall be made to the Contractor on this basis; provided that the foregoing shall be without prejudice to the Contractor's right to raise a Dispute.
- 19.5.4 The Engineer / Engineer's Representative may, for reasons to be recorded, withhold from payment:
- (a) the estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and the Engineer / Engineer's Representative had notified the Contractor; and
 - (b) the estimated cost of rectification of work done being not in accordance with this Agreement.
- 19.5.5 Payment by the Employer shall not be deemed to indicate the Employer's acceptance, approval, consent or satisfaction with the work done.

19.6 Blank

19.7 Blank

19.8 Blank

19.9 Time of payment

- 19.9.1 The Employer shall pay to the Contractor any amount due under any payment certificate issued by the Engineer / Engineer's Representative in accordance with the provisions of this Article 19, or in accordance with any other clause of this Agreement as follows:
- (a) Payment shall be made no later than 30 (thirty) days from the date of submission of the measured/Monthly Payment Statement by the Contractor to the Engineer / Engineer's Representative for certification in accordance with the provisions of Clause 19.4 for an IPC; provided that, in the event the IPC is not issued by the Engineer / Engineer's Representative within the aforesaid period of 30 (thirty) days, the Employer shall pay the amount shown in the Contractor's Monthly Payment Statement and any

discrepancy therein shall be added to, or deducted from, the next payment certificate issued to the Contractor; and

- (b) payment shall be made no later than 30 (thirty) days from the date of submission of the Final Payment Certificate for Works along with the discharge submitted to the Engineer / Engineer's Representative in accordance with the provisions of Clause 19.15 for certification.

19.9.2 Blank

19.10 Price adjustment for the Works (Not Applicable)

- 19.10.1 The amounts payable to the Contractor for Works shall be adjusted in accordance with the provisions of this Clause 19.10.
- 19.10.2 Subject to the provisions of Clause 19.10.3, the amounts payable to the Contractor for Works, shall be adjusted in the IPC issued by the Engineer / Engineer's Representative for the increase or decrease in the index cost of inputs for the Works, by the addition or subtraction of the amounts determined by the formulae prescribed in Clause 19.10.4.
- 19.10.3 To the extent that full compensation for any increase or decrease in costs to the Contractor is not covered by the provisions of this or other Clauses in this Agreement, the costs and prices payable under this Agreement shall be deemed to include the amounts required to cover the contingency of such other increase or decrease of costs and prices.
- 19.10.4 The Contract Price shall be adjusted for increase or decrease in rates and price of labour, cement, steel, steel plates, fuel and lubricants, and other material inputs in accordance with the principles, procedures and formulae specified below:
 - a) Price adjustment shall be applied on completion of the specified stage of the respective item of civil work in accordance with Schedule-H;
 - b) Adjustment for each item of civil work/stage shall be made separately.

- c) The following expressions and meanings are assigned to the value of the work done:

BR = Value of work done for the completion of a stage under the items (Schedule-H)

- d) Price adjustment for changes in cost shall be paid in accordance with the following formulae.

$$VBR = 0.85BR \left[\frac{PL(LI-LO)}{LO} + \frac{PF(FI-FO)}{FO} + \frac{PM(MI-MO)}{MO} + \frac{PC(CI-CO)}{CO} + \frac{PS(SI-SO)}{SO} + \frac{PSP(SPI-SPO)}{SPO} \right]$$

VBR = Increase or decrease in the cost of items during the period under consideration due to changes in the rates for relevant components as stated below.

PC, PL, PS, PSP and PM are the percentages of cement, labour, steel reinforcement, steel plates and other material respectively which shall be 10%, 30%, 20%, 30% & 5% respectively.

PF is the percentage of fuel and lubricants for the relevant items which shall be 5%.

- i. CI = Average Index for cement published by the Reserve Bank of India under “Index numbers of Wholesale Prices by Group and Sub-Groups (Monthly data) under Group (1) – Non-Metallic Mineral Products Sub-Group (C) - Cement, forming the base of calculation for index of wholesale prices during the period under consideration.
- ii. CO = Index for cement published by the Reserve Bank of India under Index numbers of Wholesale Prices by Group and Sub-Group (Monthly data) under Group (1) – Non-Metallic Mineral Products Sub-Group (C) - Cement forming the base of calculation for index of wholesale prices on the date 21 days preceding the latest date prescribed for the receipt of the Bid.
- iii. SI = Average Index for iron and steel published by the Reserve Bank of India under “Index numbers of Wholesale Prices by Group and Sub-Groups (Monthly data) under Group– Basic Metals, Alloys & Metal Products, Sub-Group (a) Basic Metals and Alloys – (2) Steel Long” forming the base of calculation for index of wholesale prices during the period under consideration.

- iv. SO = Average Index for Iron and Steel published by the Reserve Bank of India under “Index numbers of Wholesale Prices by Group and Sub-Groups (Monthly data) under Group (J) – Basic Metals, Alloys & Metal Products, Sub-Group (a) Basic Metals and Alloys – (2) Steel/Steel rods” forming the base of calculation for index of prices on the date 21 days preceding the latest date prescribed for the receipt of the Bid.
- v. FO = The price (average of the prices declared by IOC/HPCL/BPCL) of HSD for Ahmedabad on the Base Date (21 days prior to the latest date for submission of the Bid).
- vi. FI = Average Price (average of the prices declared by IOC/HPCL/BPCL) of HSD for Ahmedabad during the period under consideration.
- vii. LO=Basic Consumer Price Index for Ahmedabad Centre (Base 2001 = 100) for industrial workers declared as per the Labour Gazette, published by the Commissioner of Labour, Government of Gujarat as prevailing on the Base Date (21 days prior to the latest date for submission of the Bid).
- viii. LI = Average Consumer Price Index for Ahmedabad Centre (Base 2001 = 100) for industrial workers declared by Labour Gazette, published by the Commissioner of Labour, Government of Gujarat for the period in which the value R of work is done. If the period covered by a bill does not coincide with a calendar month, then weighted time average for the period will be taken for LI.
- ix. MO = Wholesale price index for all commodities prepared by the office of Economic Advisor, Ministry of Industry, Government of India as prevailing on the Base Date (21 days prior to the latest date for submission of the Bid).
- x. MI =Average wholesale price index for all commodities prepared by the office of Economic Advisor, Ministry of Industry, Government of India, during the period under consideration. If the period covered by a bill does not coincide with a calendar month, then weighted time average for the period will be taken for MI.
- xi. SPI = Average Index for iron and steel published by the Reserve Bank of India under “Index numbers of Wholesale Prices by Group

and Sub-Groups (Monthly data) under Group (J) – Basic Metals, Alloys & Metal Products, Sub-Group (a) Basic Metals and Alloys – (2) Steel/Steel rods” forming the base of calculation for index of wholesale prices during the period under consideration.

- xii. SPO = Average Index for Iron and Steel published by the Reserve Bank of India under “Index numbers of Wholesale Prices by Group and Sub-Groups (Monthly data) under Group (J) – Basic Metals, Alloys & Metal Products, Sub-Group (a) Basic Metals and Alloys – (2) Steel/Steel rods” forming the base of calculation for index of prices on the date 21 days preceding the latest date prescribed for the receipt of the Bid.
- e) Blank
 - f) In case an IPC relates to a month which is within 3 (three) months from the Base Date, no price adjustment shall be applicable.
 - g) The Price Variation (Escalation) Clause is applicable to only civil part of work. The other parts of works such as electrical, mechanical do not attract escalation clause and no price variation will be paid for such items of work.
 - h) For any rise or fall in costs to the contractor is not payable under this contract. The unit rates and prices quoted and included in the contract shall be deemed to be covering the prices for completion of entire work.
 - i) Contract price shall be adjusted for increase or decrease in rates and prices of labour, cement, steel reinforcement and steel plates, fuels and lubricants and other materials in accordance with the principles and procedures under this sub clause.
 - j) The price adjustment shall apply for the work done from the start date given in the contract data up to end of the initial intended completion date or extensions granted by the Employer’s Engineer and shall not apply to the work carried beyond the stipulated time for reasons attributable to the contractor.
 - k) The price adjustment shall be determined during each quarter.

19.11 Restrictions on price adjustment (Not Applicable)

Price adjustment shall be due and payable only in respect of the stages of Works for which the Stage Payment Statement has been submitted by the Contractor no later than 30 (thirty) days from the date of the applicable Project Milestone or the Scheduled Completion Date, as the case may be, including any Time Extension granted therefor in accordance with the provisions of this Agreement. For the avoidance of doubt, in the event of submission of any Stage Payment Statement after the period specified herein, price adjustment shall be applicable until the date of the respective Project Milestone or the Scheduled Completion Date, as the case may be.

19.12. Secured Advances against Materials Brought to the Site (Not Applicable)

19.12.1. The Contractor will be paid secured advance against specified manufactured materials.

The amount of advance will be 75% of the cost (as defined below) of specified manufactured materials as listed hereunder.

The payment of advance will be subject to the following conditions:

- a) The materials are required for the Permanent works.
- b) The materials are brought to the site.
- c) The cost of individual consignment of materials exceeds Rs. 10,000/-
- d) The materials are inspected, tested and approved by the Engineer or his Representative.
- e) The materials are stored in a proper and efficient manner to the satisfaction of the Engineer or his Representative.
- f) The advance is claimed by the Contractor in writing by way of a detailed statement attached to the interim bills after getting the statement duly verified by the Engineer's Representative. Contractors shall provide all necessary documents including documents related to payment details for such verification by the Engineer's Representative.
- g) The advance shall not exceed seventy-five percent (75%) of the voucher value of the manufactured materials OR seventy-five percent (75%) of the value as assessed by the Engineer OR seventy-five percent (75%) of the above material component cost in the tendered rates for the finished items of work, whichever is the lowest. Vouchers for the materials in support of price and ownership shall be submitted along with the statement mentioned in (f) above.
- h) No advance will be paid against materials supplied by the Employer.

- i) The materials against which advance is claimed shall be insured against theft/misappropriation/fire.

19.12.2. Secured advance against manufactured materials for Permanent Works will be allowed in respect of Civil Engineering materials listed below.

- Cement
- Reinforcing steel
- Structural steel

Materials on which the Contractor intends to claim Material Advance shall be procured by the Contractor at his own cost and brought to the site for permanent works subject to following additional conditions:

- (a) The Contractor will be paid secured advance for the material brought at site provided they are of approved quality; they are required for incorporation in Permanent work and quantity of such materials is reasonable bearing in mind the requirements of works.
- (b) The advance shall be claimed by way of a detailed statement attached to the interim bills and after getting the statement duly verified by the Engineer's Representative.
- (c) The advance claimed in statement should be supported by Xerox copies of vouchers in the name of the Contractor for materials procured by the Contractor.
- (d) In case if other insurance policies are not covering, the Contractor shall take separate insurance policy/policies to cover materials under advance against theft/misappropriation/fire. The premium for policies required will be reimbursed to Contractor by the DPA.
- (e) Blank

19.12.3. The advance paid through a bill will be fully recovered through the next bill in which a fresh advance will be paid for the materials then at site, subject to the conditions stipulated in the Contract.

19.12.4. No advance will be paid after ninety percent (90%) of the work is completed.

19.12.5. The materials on which advance has been paid shall not be removed from the site. In case of any such removal, no further material advance will be paid to the Contractor. Further, the removal of such materials from the site shall be treated as a criminal breach of trust.

- 19.12.6. The Contractor shall provide facilities for inspection and stock-taking of the materials whenever required by the Engineer.
- 19.12.7. The Employer will have a lien on all the materials against which advance has been paid.

19.13. Final Payment Statement

- 19.13.1. Within 60 (sixty) days after receiving the Completion Certificate under Clause 12.4, the Contractor shall submit to the Engineer / Engineer's Representative for consideration six copies of a Final Payment Statement (the "**Final Payment Statement**") for Works, with supporting documents showing in detail, in the form prescribed by the Engineer / Engineer's Representative:
- (a) the summary of Contractor's Monthly Payment claims for Works as submitted in accordance with Clause 19.4;
 - (b) the amounts received from the Employer against each claim; and
 - (c) any further sums which the Contractor considers due to it from the Employer.

If the Engineer / Engineer's Representative disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the Engineer / Engineer's Representative may reasonably require. The Engineer / Engineer's Representative shall deliver to the Employer:

- i. an IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Article 26; or
 - ii. a Final Payment Certificate in accordance with Clause 19.15 if there are no disputed items.
- 19.13.2. If the Engineer / Engineer's Representative does not prescribe the form referred to in Clause 19.13.1 within 15 (fifteen) of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

19.14. Discharge

Upon submission of the Final Payment Statement for Works under Clause 19.13, the Contractor shall give to the Employer, with a copy to the Engineer

/ Engineer's Representative, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to Clause 19.15.

19.15. Final Payment Certificate

19.15.1. Within 30 (thirty) days after receipt of the Final Payment Statement for Works under Clause 19.13, and the written discharge under Clause 19.14, and there being no disputed items of claim, the Engineer / Engineer's Representative shall deliver to the Employer, with a copy to the Contractor, a final payment certificate (the "**Final Payment Certificate**") stating the amount which, in the opinion of the Engineer / Engineer's Representative, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the Engineer / Engineer's Representative shall ascertain from the Employer all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

19.15.2. The Employer shall, in accordance with the provisions of Clause 19.9, pay to the Contractor the amount which is stated as being finally due in the Final Payment Certificate.

19.16. Blank

19.17. Change in law.

19.17.1. If as a result of Change in Law, the Contractor suffers any additional costs in the execution of the Works or in relation to the performance of its other obligations under this Agreement, the Contractor shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in cost, notify the Employer with a copy to the Engineer / Engineer's Representative of such additional cost due to Change in Law.

19.17.2. If as a result of Change in Law, the Contractor benefits from any reduction in costs for the execution of this Agreement or in

accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in cost, notify the other Party with a copy to the Engineer / Engineer's Representative of such reduction in cost due to Change in Law.

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

19.18. Correction of Interim Payment Certificates

The Engineer / Engineer's Representative may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the Engineer / Engineer's Representative.

19.19. Employer's claims

If the Employer considers itself to be entitled to any payment from the Contractor under any Clause of this Agreement, it shall give notice and particulars to the Contractor 20 (twenty) days before making the recovery from any amount due to the Contractor, and shall take into consideration the representation, if any, made by the Contractor in this behalf, before making such recovery.

19.20. Bonus for early completion (Not Applicable)

In the event that the Project Completion Date occurs prior to the Scheduled Completion Date, the Contractor shall be entitled to receive a payment of bonus equivalent to 0.25% (zero point two five per cent) of the Contract Price for every fortnight by which the Project Completion Date precedes the Scheduled Completion Date, but subject to a maximum of 5% (five per cent) of the Contract Price.

19.21. Blank

19.22. Additional Clause

- a. The contractor shall be registered under the Building and Other Constructions Workers (Regulation of Employment and Conditions of Service) Act, 1996.

- b. In the Payment terms “The payment from 2nd bill to pre-final bill, shall be released, subject to the condition that the documentary evidence (copy of paid Challan in Govt. Treasury) of the Welfare Cess @1% of the work done or as amended by Statutory Authority from time to time, paid to concerned authority is submitted for the previous bill”.
- c. In the clause of Performance Guarantee stating that “The documentary evidence (copy of paid Challan in Govt. Treasury) of Welfare cess @1% of work done or as amended by Statutory Authority from time to time, paid on final bill shall be submitted before releasing the Performance Guarantee”.

ARTICLE 20

20. INSURANCE

20.1 Insurance for Works and Maintenance

20.1.1 The Contractor shall affect and maintain at its own cost the insurances specified in Schedule-P and as per the requirements under the Applicable Laws.

20.1.2 Subject to the provisions of Clause 21.6, the Employer and the Contractor shall, in accordance with its obligations as provided for in this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Article 20 or cannot be recovered from the insurers.

20.1.3 Subject to the exceptions specified in Clause 20.1.4 below, the Contractor shall, save and except as provided for in this Agreement, fully indemnify, hold harmless and defend the Employer from and against any and all losses, damages, costs, charges and/or claims with respect to:

- (a) the death of or injury to any person; or
- (b) the loss of or damage to any property (other than the Works);

that may arise out of or in consequence of any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein.

20.1.4 Notwithstanding anything stated above in Clause 20.1.3, the Employer shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to

- (a) the use or occupation of land or any part thereof by the Employer;
- (b) the right of the Employer to execute the Works, or any part thereof, on, over, under, in or through any land;
- (c) the damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with this Agreement; and
- (d) the death of or injury to persons or loss of or damage to property resulting from any act or neglect of the Employer, its

agents, servants or other contractors, not being employed by the Contractor.

Provided that, in the event of any injury or damage as a result of the contributory negligence of the Contractor, the Employer shall be liable to indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims to the extent as may be proportionately determined to be the liability of the Employer, its servants or agents or other contractors not associated with the Contractor in such injury or damage.

20.1.5 Without prejudice to the obligations of the Parties as specified under Clauses 20.1.3 and 20.1.4, the Contractor shall maintain or effect such third-party insurances as may be required under the Applicable Laws.

20.1.6 Blank

20.2 Notice to the Employer

No later than 15 (fifteen) days after the date of this Agreement, the Contractor shall by notice furnish to the Employer, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 15 (fifteen) days of receipt of such notice, the Employer may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

20.3 Evidence of Insurance Cover

20.3.1 All insurances obtained by the Contractor in accordance with this Article 20 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Appointed Date, the Contractor shall furnish to the Employer notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Contractor to the Employer. The Contractor shall act in accordance with the directions of the Employer. Provided that the Contractor shall produce to the

Employer the insurance policies in force and the receipts for payment of the current premia.

20.3.2 The Contractor shall ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement.

20.4 Remedy for failure to insure.

If the Contractor shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Employer shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Contractor @120% of the premia paid, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor.

20.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Employer, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

20.6 Contractor's waiver

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

20.7 Cross liabilities

Any such insurance maintained or effected in pursuance of this Article 20 shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Employer as separately insured.

20.8 Accident or injury to workmen

Notwithstanding anything stated in this Agreement, it is hereby expressly agreed between the Parties that the Employer shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or Sub-contractor, save and except as for death or injury resulting from any act, omission or default of the Employer, its agents, or servants. The Contractor shall indemnify and keep indemnified the Employer from and against all such claims, proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions, or defaults for which the Employer shall be liable.

20.9 Insurance against accident to workmen

The Contractor shall affect and maintain during the Agreement such insurances as may be required to insure the Contractor's personnel and any other persons employed by it on the Project from and against any liability incurred in pursuance of this Article 20. Provided that for the purposes of this Clause 20.9, the Contractor's personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. It is further provided that, in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Clause 20.9 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the Employer is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Employer, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Employer.

20.10 Application of insurance proceeds

The proceeds from all insurance claims, except for life and injury, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project facilities and the provisions of this Agreement in respect of construction of works shall apply mutatis mutandis to the works undertaken out of the proceeds of insurance.

20.11 Compliance with policy conditions

Each Party hereby expressly agrees to fully indemnify the other Party from and against all losses and claims arising from its failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

Part V Force Majeure and Termination

ARTICLE 21

21. FORCE MAJEURE

21.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 21.2, 21.3 and 21.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

21.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Contractor, Sub-contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 21.3;
- (c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- (d) any judgement or order of any court of competent jurisdiction or statutory Employer made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Employer;

- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

21.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year;
- (d) any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

21.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 19.17;

- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

21.5 Duty to report Force Majeure Event

21.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 21 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

21.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 10 (ten) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

21.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 21.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

21.6 Effect of Force Majeure Event on the Agreement

21.6.1 Upon the occurrence of any Force Majeure after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the “**Force Majeure costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Contractor, and to the extent Force Majeure costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Employer to the Contractor for the Force Majeure events; and
- (c) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Employer to the Contractor.

For the avoidance of doubt, Force Majeure costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Contractor.

- 21.6.2 Save and except as expressly provided in this Article 21, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands, and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.
- 21.6.3 Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects.

21.7 Termination Notice for Force Majeure Event

- 21.7.1 If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 21, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

21.8 Termination Payment for Force Majeure Event

- 21.8.1 In the event of this Agreement being terminated on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 23.5.

Provided that in the event Termination occurs during the Maintenance Period, the Engineer / Engineer's Representative shall only determine the value of Works associated with Maintenance.

- 21.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include:
- (a) any sums due and payable under Clause 23.5; and

- (b) the reasonable cost, as determined by the Engineer / Engineer's Representative, of the Plant and Materials procured by the Contractor and transferred to the Employer for use in Construction or Maintenance, only if such Plant and Materials are in conformity with the Specifications and Standards;

Provided that in the event Termination occurs during the Maintenance Period, the Engineer / Engineer's Representative shall only determine the value of Works associated with Maintenance.

- 21.8.3 If Termination is on account of a Political Event, the Employer shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 23.6.2 as if it were an Employer Default.

21.9 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

21.10 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 22

22. SUSPENSION OF CONTRACTOR'S RIGHTS

22.1 Suspension upon Contractor Default

Upon occurrence of a Contractor Default, the Employer shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend carrying out of the Works or Maintenance or any part thereof, and (ii) carry out such Works or Maintenance itself or authorise any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Employer to the Contractor and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.

22.2 Employer to act on behalf of Contractor.

During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Employer for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Employer for all costs incurred during such period. The Contractor hereby licences and sub-licences respectively, the Employer or any other person authorised by it under Clause 22.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Contractor with respect to the Project and its design, engineering, construction, and maintenance, and which is used or created by the Contractor in performing its obligations under the Agreement.

22.3 Revocation of Suspension

22.3.1 In the event that the Employer shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Employer may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

22.3.2 Upon the Contractor having cured the Contractor Default within a period not exceeding 60 (sixty) days from the date of Suspension, the

Employer shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement.

22.4 Termination

- 22.4.1 At any time during the period of Suspension under this Article 22, the Contractor may by notice require the Employer to revoke the Suspension and issue a Termination Notice. The Employer shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 23.
- 22.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Employer upon occurrence of a Contractor Default.

ARTICLE 23
23. TERMINATION

23.1 Termination for Contractor Default

23.1.1. Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the “**Contractor Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Employer or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
- (c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-J, subject to any Time Extension, and continues to be in default for 45 (forty-five) days;
- (d) the Contractor abandons or manifests intention to abandon the PROJECT without the prior written consent of the Employer;
- (e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the Maintenance for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Engineer / Engineer’s Representative;
- (f) the Project Completion Date does not occur within the period specified in Schedule-J for the Scheduled Completion Date, or any extension thereof;

- (g) failure to complete the Punch List items within the periods stipulated therefor in Clause 12.2.1;
- (h) the Contractor fails to rectify any Defect, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Engineer / Engineer's Representative;
- (i) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Maintenance without the prior approval of the Employer;
- (j) the Contractor creates any Encumbrance in breach of this Agreement;
- (k) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;
- (l) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Project;
- (m) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Employer, a Material Adverse Effect;
- (n) a resolution for winding up of the Contractor is passed, or any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:

- i. the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
- (o) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
- (p) the Contractor submits to the Employer any statement, notice or other document, in written or electronic form, which has a material effect on the Employer's rights, obligations or interests and which is false in material particulars;
- (q) the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (r) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Employer.

23.1.2. Without prejudice to any other rights or remedies which the Employer may have under this Agreement, upon occurrence of a Contractor Default, the Employer shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Employer shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

23.1.3. After termination of this Agreement for Contractor Default, 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 Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

23.2 Termination for Employer Default

23.2.1 In the event that any of the defaults specified below shall have occurred, and the Employer fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Employer shall be deemed to be in default of this Agreement (the “**Employer Default**”) unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Employer commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;
- (b) the Employer has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;
- (c) the Employer has failed to provide, within a period of 180 (one hundred and eighty) days from the Appointed Date, the environmental clearances required for FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT.
- (d) the Employer repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- (e) the Engineer / Engineer’s Representative fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents.

23.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Employer Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Employer; provided that before issuing the Termination Notice, the Contractor shall by a notice inform the Employer of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Employer to make a representation, and may after the expiry of such 15 (fifteen) days,

whether or not it is in receipt of such representation, issue the Termination Notice.

If on the consideration of the Employer's representation or otherwise, the contractor does not issue the Termination Notice on such 15th day and prefers to continue with the project, it is deemed that the cause of action of the Termination Notice has been condoned by the Contractor. Hence, he forfeits his right to any other remedy on that count.

23.3 Termination for Employer's convenience

Notwithstanding anything stated hereinabove, the Employer may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice hereunder.

23.4 Requirements after Termination

Upon Termination of this Agreement in accordance with the terms of this Article 23, the Contractor shall comply with and conform to the following:

- (a) deliver to the Employer all Plant and Materials which shall have become the property of the Employer under this Article 23;
- (b) deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, Maintenance, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the "as built" Drawings for the Works;
- (c) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and
- (d) vacate the Site within 15 (fifteen) days.

23.5 Valuation of Unpaid Works

23.5.1 Within a period of 45 (forty-five) days after Termination under Clause 23.1, 23.2 or 23.3, as the case may be, has taken effect, the Engineer / Engineer's Representative shall proceed in accordance with Clause 18.5 to determine as follows the valuation of unpaid Works (the "**Valuation of Unpaid Works**"):

- (a) value of the completed stage of the Works, less payments already made;
- (b) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards; and
- (c) value of Maintenance, if any, for completed months, less payments already made,

and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.

23.5.2 The Valuation of Unpaid Works shall be communicated to the Employer, with a copy to the Contractor, within a period of 30 (thirty) days from the date of Termination.

23.6 Termination Payment

23.6.1 Upon Termination on account of Contractor's Default under Clause 23.1, the Employer shall:

- (a) encash and appropriate the Performance Security and Retention Money, or in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in Clause 7.1.1, as agreed pre-determined compensation to the Employer for any losses, delays and cost of completing the Works and Maintenance, if any;
- (b) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment and interest thereon; and
- (c) pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

23.6.2 Upon Termination on account of an Employer Default under Clause 23.2 or for Employer's convenience under Clause 23.3, the Employer shall:

- (a) return the Performance Security and Retention Money forthwith;
- (b) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment; and
- (c) pay to the Contractor, by way of Termination Payment, an amount equal to:
 - i. Valuation of Unpaid Works;
 - ii. the reasonable cost, as determined by the Engineer / Engineer's Representative, of the Plant and Materials procured by the Contractor and transferred to the Employer for its use, in case the Employer wishes to takeover only if such Plant and Materials are in conformity with the Specifications and Standards;
 - iii. the reasonable cost of temporary works, as determined by the Engineer / Engineer's Representative; and
 - iv. 10% (ten per cent) of the cost of the Works and Maintenance that are not commenced or not completed,

and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.

23.6.3 Termination Payment shall become due and payable to the Contractor within 30 (thirty) days of a demand being made by the Contractor to the Employer with the necessary particulars, and in the event of any delay, the Employer shall pay interest at the Base Rate plus 2% (two percent), calculated at quarterly rests, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Employer of its payment obligations in respect thereof hereunder.

23.6.4 The Contractor expressly agrees that Termination Payment under this Article 23 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and

that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

23.7 Other rights and obligations of the Parties

Upon Termination for any reason whatsoever

- (a) property and ownership in all Materials, Plant and Works and the Project shall, as between the Contractor and the Employer, vest in the Employer in whole; provided that the foregoing shall be without prejudice to Clause 23.6.
- (b) risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Employer; and
- (c) the Employer shall be entitled to restrain the Contractor and any person claiming through or under the Agreement from entering upon the Site or any part of the Project except for taking possession of materials, stores, implements, construction plants and equipment of the Contractor, which have not been vested in the Employer in accordance with the provisions of this Agreement.

23.8 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or Agreement. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

Part VI Other Provisions

ARTICLE 24
24. ASSIGNMENT AND CHARGES

24.1 Restrictions on assignment and charges

This Agreement shall not be assigned by the Contractor to any person, save and except with the prior consent in writing of the Employer, which consent the Employer shall be entitled to decline without assigning any reason.

24.2 Hypothecation of Materials or Plant

Notwithstanding the provisions of Clause 24.1, the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Contractor may, by written notice to the Employer, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Contractor in connection with the performance of the Contractor's obligations under this Agreement. The Contractor acknowledges that any such assignment by the Contractor shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement.

ARTICLE 25
24. LIABILITY AND INDEMNITY

25.1 General indemnity

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

25.2 Indemnity by the Contractor

25.2.1 Without limiting the generality of Clause 25.1, the Contractor shall fully indemnify, hold harmless and defend the Employer and the Employer Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Sub-contractors, suppliers and representatives; or
- (c) non - payment of amounts due as a result of Materials or services furnished to the Contractor or any of its Sub-contractors which are payable by the Contractor or any of its Sub-contractors.

25.2.2 Without limiting the generality of the provisions of this Article 25, the Contractor shall fully indemnify, hold harmless and defend the Employer Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which

the Employer Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Sub-contractors in performing the Contractor's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project facilities, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the Employer a licence, at no cost to the Employer, authorising continued use of the infringing work. If the Contractor is unable to secure such licence within a reasonable time, the Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

25.3 Notice and contest of claims.

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 25 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

25.4 Defence of claims

25.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and

expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 25, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

- 25.4.2 If the Indemnifying Party has exercised its rights under Clause 25.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 25.4.3 If the Indemnifying Party exercises its rights under Clause 25.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - i. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - ii. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 25.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

25.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 25, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

25.6 Survival on Termination

The provisions of this Article 25 shall survive Termination.

ARTICLE 26

26. DISPUTE RESOLUTION

26.1 Dispute Resolution

- 26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.
- 26.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business working hours to all non-privileged records, information and data pertaining to any Dispute.

26.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Engineer / Engineer’s Representative, or such other person as the Parties may mutually agree upon (the “**Conciliator**”) to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Chairman of the Employer and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) working days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) working day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 26.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to Dispute Resolution Board in accordance with the provisions of Clause 26.3

26.3 Dispute Resolution Board

In the event of the Dispute between the Parties, not resolved in accordance with 26.3 by the internal “**Conciliator**” of the Employer within the stipulated schedule agreed by both parties, provisions of Dispute resolution Board shall be used. The formation and procedure for the DR Board shall be in accordance with the agreement between parties as per SCHEDULE R.

26.4 Arbitration

- 26.4.1 Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, 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 any other thing what so ever, in any way arising out of or relating to the contract, design, drawings, specifications, estimates, instructions, order or to the condition or otherwise concerning the work or regarding the execution or failure to execute the same whether arising during the progress of work or after the completion there of as described here in after shall be referred to the Chairman for sole arbitration by himself or by any officer appointed by him.
- 26.4.2 It will be no objection to any such appointment that the arbitrator is an employee of the Board or the Government, that he had to deal with the matter to which the contract relates and that in course of his duties as an employee of the Board or the Government, he had expressed views on all or any of the matters in dispute or of different.
- 26.4.3 The arbitrator, who has been dealing with the arbitration case, being transferred or vacating his office or in the event of his death or being unable to act for any reason, the Chairman then holding the office shall arbitrate himself or appoint any officer to act as arbitrator.
- 26.4.4 It is also a term of the contract that no person other than the Chairman himself or any officer appointed by him shall act as arbitrator.
- 26.4.5 It is a term of the contract that only such question and disputes as were raised during progress of work till its completion and not there after shall be referred to arbitration. However, this would not apply to the questions and disputes relating to liabilities of parties during the guarantee period after completion of the work.

- 26.4.6 It is a term of the contract that the party invoking arbitration shall give a list of disputes with amounts of claim in respect of each said disputes along with the notice seeking appointment of arbitrator. It is also a term of the contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims/disputes in writing, as aforesaid, within 120 days of receiving the intimation from the Engineer-in-Charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Port Trust shall be discharged and released of all liabilities under the contract in respect of these claims.
- 26.4.7 It is also a term of the contract that the arbitrator shall adjudicate only such disputes/claims as referred to him by the appointing authority and give separate award against each dispute/claim referred to him. The arbitrator will be bound to give claim wise detail and speaking award and it should be supported by reasoning.
- 26.4.8 The award of the arbitrator shall be final, conclusive and binding on all the parties to the contract.
- 26.4.9 The arbitrator from time to time, with the consent of both the parties, enlarge the time for making and publishing the award.
- 26.4.10 Arbitration shall be conducted in accordance with the provision of Indian Arbitration Act, 1996 or any statutory modifications or re-enactment thereof and rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause.
- 26.4.11 It is also a term of the contract that if any fees are payable to the arbitrator, this shall be paid equally by both the parties.
- 26.4.12 It is also a term of the contract that the arbitration shall be deemed to have been entered on the reference on the date he issued the first notice to both the parties calling them to submit their statement of claims and counter statement of claims.
- 26.4.13 Venue of the arbitration shall be such place as may be fixed by the arbitrator at his sole discretion”.

26.5 Adjudication by Regulatory Employer, Tribunal or Commission

In the event of constitution of a statutory regulatory Employer, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Contractor and the Employer, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 26.4, be adjudicated upon by such regulatory Employer, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 27
27. MISCELLANEOUS

27.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Gandhidham shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

27.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

27.3 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay

beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to Base Rate plus 2 (two) percent, calculated at quarterly rests, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

27.4 Waiver

27.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

27.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

27.5 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Employer or the Engineer / Engineer's Representative of any Document or Drawing submitted by the Contractor nor any observation or inspection of the construction, of Project facilities nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Employer shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

27.6 Exclusion of implied warranties etc.

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

27.7 Survival

27.7.1 Termination shall:

- (a) not relieve the Contractor or the Employer, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

27.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

27.8 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the Request for Qualification or Tender, as the case may be, shall be deemed to form part of this Agreement and treated as such.

27.9 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining

provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

27.10 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or Employer to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

27.11 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

27.12 Successors and assigns

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

27.13 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Contractor, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to the Employer; provided that notices or other communications to be given to an address outside [Delhi] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the person as the Contractor may from time to time designate by notice to the Employer;

- (b) in the case of the Employer, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the [Chairman] of the Employer with a copy delivered to the Employer's Representative or such other person as the Employer may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in [Delhi] it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

27.14 Language

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

27.15 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

27.16 Confidentiality

The Parties shall treat the details of this Agreement 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.

27.17 Copyright and Intellectual Property rights

27.17.1 As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing this Agreement) 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 this Agreement, including replacements of any computers supplied by the Contractor:

27.17.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Employer for purposes other than those permitted under this Clause 27.17.

27.17.3 As between the Parties, the Employer shall retain the copyright and other intellectual property rights in this Agreement and other documents made by (or on behalf of) the Employer. The Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of this Agreement. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the contract.

27.18 Limitation of Liability

27.18.1 Neither Party shall be liable to the other Party 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 other Party in connection with this Agreement, save and except as provided under Articles 23 and 25.

27.18.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Articles 23 and 25, shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

ARTICLE 28

28. DEFINITIONS

28.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Advance Payment” shall have the meaning set forth in Clause 19.2;

“Affected Party” shall have the meaning set forth in Clause 21.1;

“Affiliate” means, in relation to either Party {and/or Members}, a person who controls, is controlled by, or is under the common control with such Party {or Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

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

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

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

“Appointed Date” means that date which is later of the 30th day of the date of this Agreement, the date on which the Contractor has delivered the Performance Security in accordance with the provisions of Article 7 and the date on which the Employer has provided the working front on no less than 90% (Ninety per cent) of the Project;

“AFC” or “Approved for Construction Drawings” shall have the meaning set forth in Clause 4.1.3 (b);

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

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to the Employer;

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

“Base Date” means a date preceding the Bid Due Date by 28 (Twenty-Eight) days; For avoidance of doubt, if the bid due date is 15th June 2021 then the Base Date shall be taken as 18th May 2021.

“Bid” means the documents in their entirety comprised in the bid submitted by the [selected bidder/Consortium] in response to the Tender in accordance with the provisions thereof;

“Bid Security” means the bid security provided by the Contractor to the Employer in accordance with the Tender, and which is to remain in force until substituted by the Performance Security;

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

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the Base Date;

- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive, and binding, as compared to such interpretation or application by a court of record prior to the Base Date; or

“Change of Scope” shall have the meaning set forth in Article 13;

“Change of Scope Notice” shall have the meaning set forth in Clause 13.2.1;

“Change of Scope Order” shall have the meaning set forth in Clause 13.2.4;

“Completion Certificate” shall have the meaning set forth in Clause 12.4;

“Consortium” means the consortium of entities which have formed a joint venture for implementation of this Project;

“Construction” shall have the meaning set forth in Clause 1.2.1 (f);

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

“Contract Price” means the amount specified in Clause 19.1.1;

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

“Contractor Default” shall have the meaning set forth in Clause 23.1;

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by the Employer or the Engineer / Engineer's Representative hereunder, the applicable Cure Period shall be extended by the period taken by the Employer or the Engineer / Engineer's Representative to accord their approval;

“Damages” shall have the meaning set forth in paragraph (w) of Clause 1.2.1;

“Defect” means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards, which is specified in Schedule-E;

“Defects Liability Period” shall have the meaning set forth in Clause 17.1;

“Design Consultant” means Consultant appointed by the employer to finalise the design of jetty including civil and marine structures and issue Good for Construction (GFC) drawings for the civil and marine work and modify the same to suit site conditions as and when required.

“Dispute” shall have the meaning set forth in Clause 26.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 26;

“Drawings” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-I, and shall include „as built“ drawings of the Project;

“Document” or “Documentation” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Emergency” means a condition or situation that is likely to endanger the safety or security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Employer” means Board of Trustees of Deendayal Port, a body corporate under the Major Port Trust Act, 1963, by notification No. GSR427 (E) dated 28.05.1982 issued by Government of India (as amended) acting through its Chairman, Deputy Chairman or the Chief Engineer (Civil Engineering Department) or any other officers so nominated by the Board;

“Employer Default” shall have the meaning set forth in Clause 23.2;

“Engineer or Employer’s Engineer” means an officer appointed by the Employer to act on behalf of the employer for the project execution not below the rank of Deputy Chief Engineer of DPA;

“Engineer Representative” means the Project Management Consultant (PMC) appointed by the employer. The Engineer’s Representative shall have a team of experienced professional and support staff headed by the Team Leader for the execution of the Consultancy Service under the Contract including liaising with headquarters of consultant as and when required; Engineer’s Representative means the Team Leader of the Project Management Consultant and he shall be resident at the project site and act as representative of the Engineer in Clause 18.1;

“Employer’s Representative” means such person or persons as may be authorised in writing by the Employer to act on its behalf under this Agreement and shall include any person or having Employer to exercise any rights or perform and fulfill any obligations of the Employer under this Agreement;

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 9.1;

“Final Payment Certificate” shall have the meaning set forth in Clause 19.15.1;

“Final Payment Statement” shall have the meaning set forth in Clause 19.13.1;

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 21.1;

“GFC” or “Good for Construction Drawings” shall have the meaning set forth in Clause 4.1.3 (b);

“GOI” or “Government” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Instrumentality” means any department, division or subdivision of the Government or the State Government and includes any commission, board, Employer, agency or municipal and other local Employer or statutory body including panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;

“IRC” means the Indian Roads Congress;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 25;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 25;

“Indirect Political Event” shall have the meaning set forth in Clause 21.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Article 20, and includes all insurances required to be taken out by the Contractor under Clauses 20.1 and 20.9 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Interim Payment Certificate” or **“IPC”** means the interim payment certificate issued by the Engineer / Engineer’s Representative for payment to the Contractor in respect of Contractor’s claims for payment raised in accordance with the provisions of this Agreement;

DPA” means Deendayal Port Authority;

“Lead Member” shall, in the case of a consortium, mean the member of such consortium who shall have the Employer to bind the contractor and each member of the Consortium; and shall be deemed to be the Contractor for the purposes of this Agreement;

“LOA” or **“Letter of Acceptance”** means the letter of acceptance referred to in Recital (E);

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Materials” are all the supplies used by the Contractor for incorporation in the Works of the Project;

“MOS” means the Ministry of Shipping;

Notice to proceed work (NTP) means the letter indicating the award of the project and indicating the contractor to proceed with the site work as per 10.2.2.

“Non-Political Event” shall have the meaning set forth in Clause 21.2;

“Operating Manual” shall have the meaning ascribed to it in Clause 10.7;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually;

“Performance Security” shall have the meaning set forth in Clause 7.1;

“Plant” means the apparatus and machinery intended to form or forming part of the Works;

“Political Event” shall have the meaning set forth in Clause 21.4;

“Programme” shall have the meaning set forth in Clause 10.1.3;

“Project” means the FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Assets” means all physical and other assets relating to (a) tangible assets such as civil works and equipment including foundations, electrical systems, communication systems, and administrative offices; and (b) Project Facilities situated on the Site;

“Project Completion Date” means the date on which the Provisional Certificate is issued, and, in the event, no Provisional Certificate is issued, the date on which the Completion Certificate is issued;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule-J for completion of the Project on or before the Scheduled Completion Date;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule-C;

“Project Site” means the Site comprising the area identified and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

“Project Milestone” means the project milestone set forth in Schedule-J;

“Provisional Certificate” shall have the meaning set forth in Clause 12.2;

“Punch List” shall have the meaning set forth in Clause 12.2.1;

“Quality Assurance Plan” or “QAP” shall have the meaning set forth in Clause 11.2;

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

“Retention Money” shall have the meaning set forth in Clause 7.5.1;

“Right of Way” means the constructive possession of the Site free from encroachments and encumbrances, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction and maintenance of the Project facilities in accordance with this Agreement;

“Safety Officer” shall have the meaning set forth in Clause 10.1.5;

“Scheduled Completion Date” shall be the date set forth in Clause 10.3.1;

“Scope of the Project” shall have the meaning set forth in Clause 2.1;

“Section” means a part of the Project;

“Site” shall have the meaning set forth in Clause 8.1;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Contractor to, and expressly approved by, the Employer;

“Stage Payment Statement” shall have the meaning set forth in Clause 19.4;

“Structures” means an jetty, berth, mooring dolphins, breasting dolphins, loading or unloading platform, bridges, approach trestle, buildings, as the case may be;

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

“Suspension” shall have the meaning set forth in Article 22;

“Tender document” or “TENDER” shall have the meaning set forth in Recital „D“;

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, Materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Termination” means the expiry or termination of this Agreement;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“Termination Payment” means the amount payable by either Party to the other upon Termination in accordance with Article 23;

“Terms of Reference” or “TOR” shall have the meaning set forth in Clause 18.2.1;

“Tests” means the tests set forth in Schedule-K to determine the completion of Works in accordance with the provisions of this Agreement;

“Time Extension” shall have the meaning set forth in Clause 10.5.1;

“User” means a person who travels or intends to travel on the Project facilities or any part thereof in/on any vehicle;

“Valuation of Unpaid works” shall have the meaning set forth in Clause 23.5.1;

“Works” means all works including survey and investigation, design, engineering, procurement, construction, Plant, Materials, maintenance, temporary works, and other things necessary to complete the Project in accordance with this Agreement; and

“WPI” means the wholesale price index for various commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND
DELIVERED

For and on behalf of
DEENDAYAL PORT AUTHORITY WORKS
by:

(Signature)
(Name)
(Designation)

In the presence of: 1.
2.

SIGNED, SEALED AND
DELIVERED

For and on behalf of

THE CONTRACTOR by:
(Signature)
(Name)
(Designation)

SCHEDULES
SCHEDULE – A
(See Clauses 2.1 and 8.1)
SITE OF THE PROJECT

1. The Site

- 1.1 Site of the Project shall include the land, water, seabed, existing structures, linkspan, pontoon and road works as described in Annex-I of this Schedule-A.
- 1.2 The dates of handing over the site to the Contractor are specified in Annex-II of this Schedule-A.
- 1.3 An inventory of the Site including the land, buildings, structures, road works, trees, and any other immovable property on, or attached to, the Site shall be prepared jointly by the Employer Representative and the Contractor, and such inventory shall form part of the memorandum referred to in Clause 8.2.1 of this Agreement.
- 1.4 The layout plans of the Project site are specified in Annex-III.
- 1.5 The status of the environment clearances obtained or awaited is given in Annex IV.

Annex - I
(Schedule-A)
Site

The site of the proposed works is at existing RORO/ROPAX facility at Ghogha, Gujarat. The Ghogha RORO/ROPAX facility located 19km east of Bhavnagar in the Gulf of Khambhat.

1. Site

The Site of the Project comprises fully in water located in the existing RORO/Ropax facility at Ghogha.

2. Land

The Site area of the existing RoRo/Ropax facility at Ghogha in water is 1,14,000 Sq.m (Approx. excluding turning circle area).

Annex - II
(Schedule-A)
Dates for providing Access to the site

The dates on which the Employer shall provide access to the site to the Contractor on different areas of the Site as stated below:

| Sl. No | Area | Date of providing Access |
|---------------|-------------------------|---|
| 1 | 2 | 5 |
| Work Site | 1,14,000 Sq.m (Approx.) | Within 30 days from the date of this agreement. |

The location of work site is shown in drawing IITM-DPA-GHOGHA-DWG-004.

**Annex - III
(Schedule-A)
Layout Plans**

The layout plans of the Project site are shown in drawing IITM-DPA-GHOGHA-DWG-005.

Annex - IV
(Schedule-A)
Environment Clearances

The environment clearance for the existing RoRo/Ropax facility is available.

SCHEDULE - B
(See Clause 2.1)

**FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND
MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX
FACILITY AT GHOGHA- GUJARAT**

1. Construction of the Project Facilities

The scope of works includes modification of existing pontoon, fabrication of new pontoon, construction of linkspan support frame and modification of existing linkspan as described in this Schedule-B and in Schedule-C.

The proposed modification of RoRo/Ropax facility structures are located on an area with seabed elevations varying from -1m to -6m. It is proposed to support linkspan support structure on steel pile foundations. Adequate number of piling equipment and machinery shall be planned as per the requirements specified elsewhere in the agreement.

2. Blank

3. Specifications and Standards

The Project facilities shall be designed and constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex - I
(Schedule-B)
Description of Project

1.1 Project Location

Ghogha RoRo/Ropax facility is located on the western coastline of Gulf of Khambhat just opposite to Dahej as shown in figure 1.1. The existing RoRo/Ropax facility is an independent facility with no other structures in the vicinity as shown in figure 1.2.

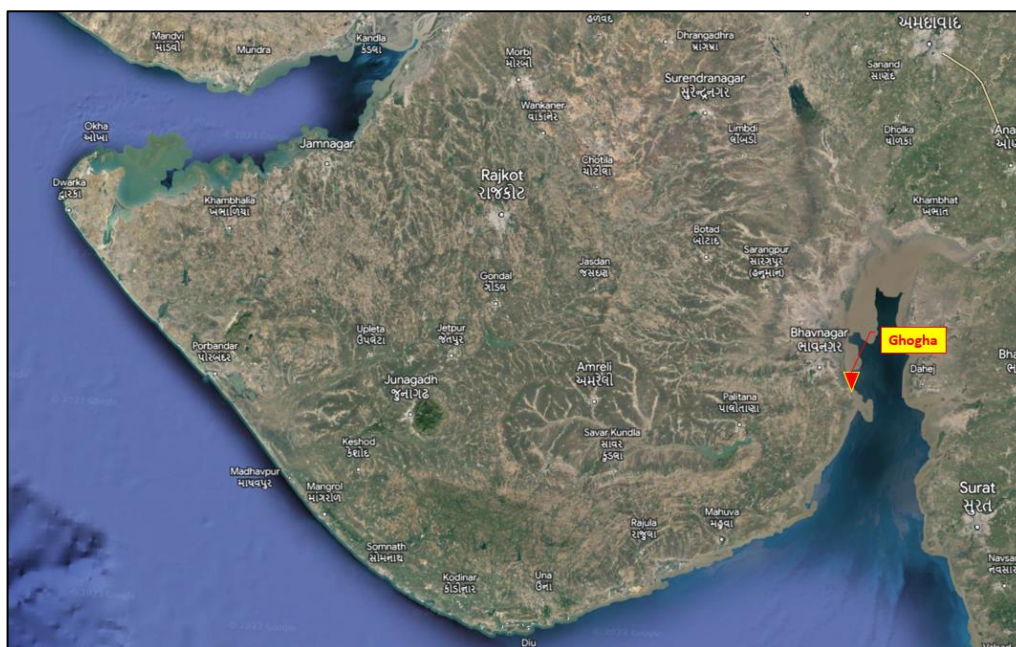


Figure 1.1 Ghogha Location



Figure 1.2 Existing RoRo/Ropax facility at Ghogha

1.2 Bathymetry

The water depth near the jetty is varying from -2m to -5m with respect to chart datum based on the bathymetry chart dated September 2020. The bathymetry chart is as shown in figure 1.3.

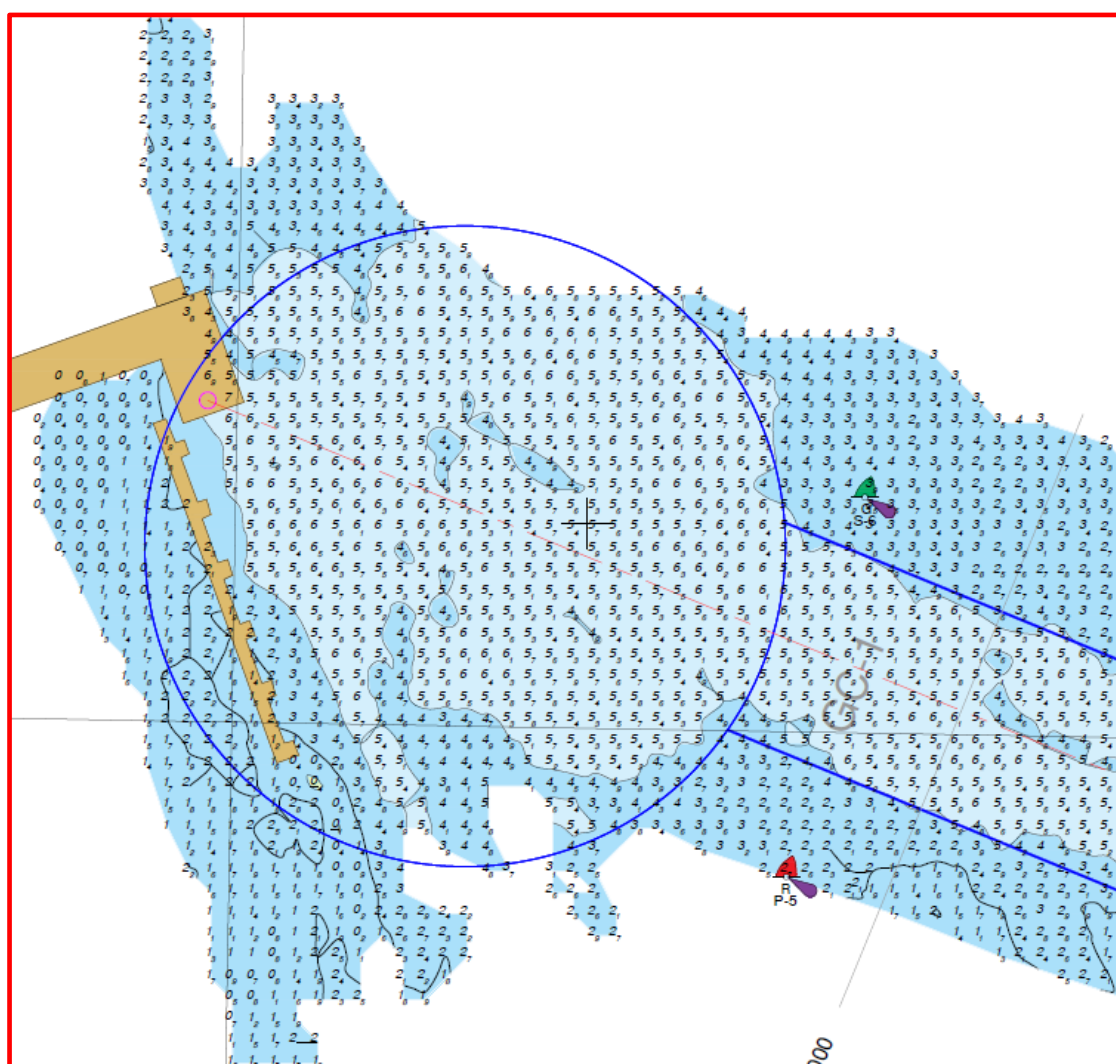


Figure 1.3 Recent bathymetry

1.3 EXISTING RORO/ROPAX FACILITY

The existing Ro-Ro berth was constructed and commissioned in 2017-18 by Gujarat Maritime Board (GMB) with a dredge depth of -5m (berth pocket, turning circle and approach channel). Since then, the vessels have been operating with a limited draft of less than 4.5m. GMB was operating RO-RO Ferry Services between Ghogha and Dahej across the Gulf of Khambhat.

The operation and maintenance of the Ghogha terminal is being handled by Deendayal Port Authority (DPA) since 2018 based on a tripartite agreement between GMB, DPA and the operator.

Deendayal port authority intend to modify the existing pontoon and Link span by replacing the new pontoon in place of the existing pontoon and also facilitate operation of the facility for turning of 40-foot containers in and out from jetty and also verify the existing pontoon and link span for the increased 40-foot container loads as requested by the Operator as they are facing constraint during the loading of containers on to the RoRo / RoPax vessel through the sharp 90 turn at the linkspan – pontoon interface.

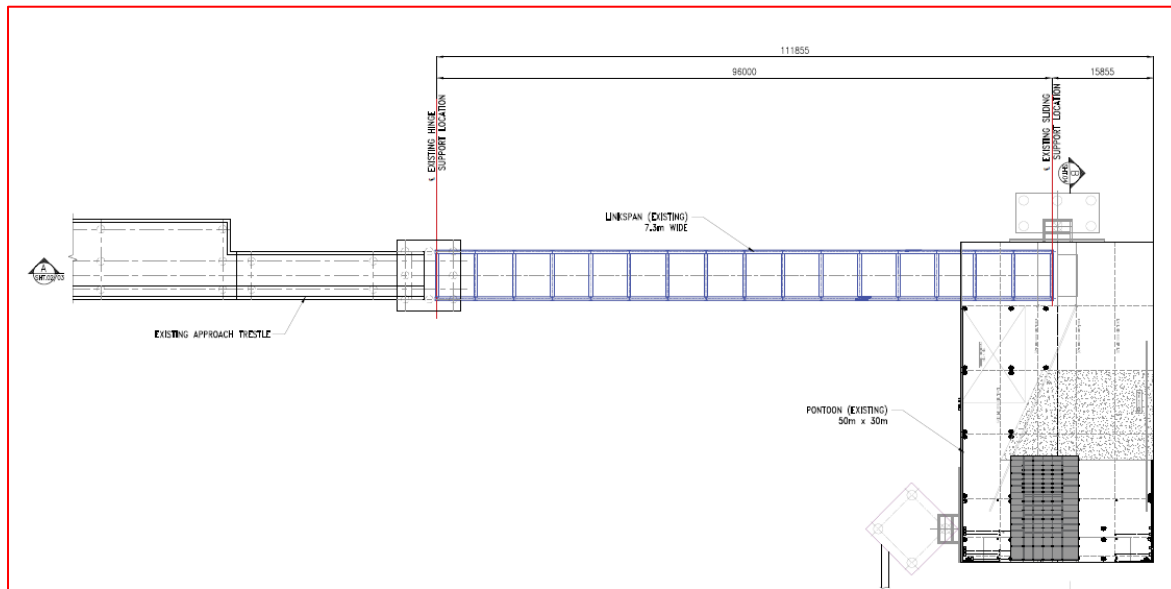


Figure 1.4 Overall layout of site proposed for modification.

The proposed modification works of the existing RoRo/RoPax facility consists of the following.

- Construction of linkspan support structure
- Fabrication of new floating pontoon
- Modification of existing pontoon
- Modification of existing steel linkspan
- Ballasting pumps and piping
- Firefighting and lighting system

1.4 SCOPE OF WORKS

1.4.1 Outline of scope

The proposed FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT includes Modification of existing pontoon, fabrication of new pontoon, construction of linkspan support frame and

modification of existing linkspan. The modification of existing RoRo/RoPax facility includes the following work elements.

- Existing Steel link span bridge modification to increase the turning radius for vehicular movement.
- New Floating pontoon to support link span sliding end for vehicular movement.
- Modification of existing pontoon to increase the turning radius for vehicular movement.
- Provision of fenders
- Provision of electrical lighting and miscellaneous works.

1.4.2 Detailed description of Scope works

Detailed description of scope of work elements is given below.

- a) Fabrication and erection of linkspan support frame including structural steel piles, tubular members and padaye arrangement for hanging the linkspan and fixing of cathodic protection on to the piles etc.
 - i) Procurement of suitable structural steel plates / pipes for the linkspan support frame of special grade as specified in the drawings and specifications and rolling to the diameter and welding to form a required length using structural welds as per AWS D1.1 using pre-qualified weld procedure.
 - ii) Driving the steel pile up to design toe level and boring into all types of strata up to design toe level including filling concrete inside with design reinforcement.
 - iii) Steel pile shall be assured with verticality requirements specified in the drawing and shall be erected after all attachments to the steel piles are attached such as anode or any other attachments.
 - iv) Painting the steel pile as per specifications with anti-corrosive painting.
 - v) Provision of cathodic protection using sacrificial anodes welded along the periphery of the steel pile as per drawings.
 - vi) Procurement of tubular members as per specifications including special through thickness plates and pipes.
 - vii) Fabrication of structural steel works shall be in accordance with drawings using full penetration butt welds in accordance with AWS D1.1 using pre-qualified weld procedure and approved welders. Profile cutting of plates shall be using suitable CNC machine and manual

- chipping and cutting is not permitted.
- viii) Assembly of linkspan support frame and dimensional check for alignment and tolerances as specified in the specifications.
 - ix) Welding and assembly of all parts of the linkspan support frame including the padeye arrangement for hanging the linkspan bridge.
 - x) Painting the complete linkspan support frame as per specifications with anti-corrosive painting.
- b) Modification of steel linkspan bridge including replacement of hinged end by sliding end complete with steel deck for transport of vehicles and pedestrians etc. The brief description of activities involved in the modification of linkspan bridge is described below.
- i) Jacking and lifting of the linkspan bridge with the help of linkspan support frame and disconnecting the linkspan from existing pontoon.
 - ii) Dismantling of the plates, built-up sections as specified in the drawings using pre-qualified procedures and approved welders.
 - iii) Procurement of structural steel as per specifications including special through thickness plates and built-up sections.
 - iv) Fabrication of truss all in accordance with drawings using full penetration butt welds in accordance with AWS D1.1 using pre-qualified weld procedure and approved welders. Profile cutting of plates shall be using suitable CNC machine and manual chipping and cutting is not permitted.
 - v) Assembly of plates and built-up sections prior to welding and dimensional check for alignment and tolerances as specified in the specifications.
 - vi) Welding and assembly of all parts of the linkspan including the replacement of hinge arrangement by sliding arrangement at the pontoon end.
 - vii) Painting the modified linkspan bridge as per specifications with anti-corrosive painting.
 - viii) Indian Register of Shipping (IRS) has been appointed as the classification society for approval of design. Hence, IRS shall be appointed by the contractor for Inspection/surveying/approval during modification, welding, and launching and commissioning and the same is under the scope of the contractor including payment to IRS for the purpose of inspection and certification, surveyor transport charges, daily inspection fee etc. shall be borne by the Contractor.
- c) Removal and towing of existing pontoon

- i) The scope includes disconnection of existing pontoon of weight 1350 MT from the guide pin piles (after securing the linkspan structure with new guide pile support), inspection, obtaining permission/approval from IRS, DNV, and/or BV. for towing to the pontoon from Ghogha to the proposed dry-docking location by the contractor including any dry transport by barge and safely storing in dry dock / repair yard suitable for the pontoon size and weight.
 - ii) The cost should include all manpower, equipment hire / rental or own such as crane, floating vessels or floating crane, barge, tugboats, trailers, hydraulic jacks etc. and all other accessories for the relocation and temporary supports beneath the pontoon etc.
 - iii) The bidder shall propose in the bid the details about the proposed yard or dry dock and transportation methodology as approved by the approving agency such as IRS, DNV, and/or BV.
 - iv) The duration of drydocking / storage shall be based on the schedule of repair for the old pontoon but shall not be less than 1 year. Any additional storage or safe keeping of the pontoon after the repair and modification shall be outside the scope of the bidder.
- d) Modification of existing steel floating pontoon including dismantling, erection of proposed members, fixing sliding arrangements, etc.
- i) Dismantling of the plates, built-up sections as specified in the drawings using pre-qualified procedures and approved welders.
 - ii) Procurement of structural steel as per specifications including special through thickness plates and pipes.
 - iii) Fabrication of truss all in accordance with drawings using full penetration butt welds in accordance with AWS D1.1 using pre-qualified weld procedure and approved welders. Profile cutting of plates shall be using suitable CNC machine and manual chipping and cutting is not permitted.
 - iv) Assembly of pontoon compartments and dimensional check for alignment and tolerances as specified in the specifications.
 - v) Welding and assembly of all parts of the pontoon including the sliding arrangement for the linkspan bridge.
 - vi) Painting the complete pontoon as per specifications with anti-corrosive painting.
 - vii) Provision of cathodic protection using sacrificial anodes welded at the bottom and inside the compartments of the pontoon as per drawings.
 - viii) Indian Register of Shipping (IRS) has been appointed as the classification society for approval of design. Hence, IRS shall be appointed by the contractor for Inspection/surveying/approval

during fabrication, welding, and launching and commissioning and the same is under the scope of the contractor including payment to IRS for the purpose of inspection and certification, surveyor transport charges, daily inspection fee etc. shall be borne by the Contractor.

- e) Fabrication and erection of new steel floating pontoon including ballast compartments, fixing sliding arrangements, fixing ballast pumps inside the compartments including interconnecting piping for each compartment etc.
 - i) Procurement of structural steel as per specifications including special through thickness plates and pipes.
 - ii) Fabrication of truss all in accordance with drawings using full penetration butt welds in accordance with AWS D1.1 using pre-qualified weld procedure and approved welders. Profile cutting of plates shall be using suitable CNC machine and manual chipping and cutting is not permitted.
 - iii) Assembly of pontoon compartments and dimensional check for alignment and tolerances as specified in the specifications.
 - iv) Welding and assembly of all parts of the pontoon including the sliding arrangement for the linkspan bridge.
 - v) Painting the complete pontoon as per specifications with anti-corrosive painting.
 - vi) Provision of cathodic protection using sacrificial anodes welded at the bottom and inside the compartments of the pontoon as per drawings.
 - vii) Indian Register of Shipping (IRS) has been appointed as the classification society for approval of design. Hence, IRS shall be appointed by the contractor for Inspection/surveying/approval during fabrication, welding, and launching and commissioning and the same is under the scope of the contractor including payment to IRS for the purpose of inspection and certification, surveyor transport charges, daily inspection fee etc. shall be borne by the Contractor.
 - viii) Launch the complete pontoon using suitable slipway selected during the initial stage of the project for fabrication as per the weight of the pontoon but not less than 1500 MT and tow it to the final location of installation including all permits for tow is under the scope of the contractor.

- f) Supply, install and commission the pumping system for ballasting and de-ballasting of pontoon compartments and lighting fixtures for the facility.
- i) Procurement of LED light fittings of suitable illumination including FRP poles and fixtures for installation on the platform, pontoon and on the link span bridge. Electrical connection for this purpose shall be taken from nearby available MCB as directed by the Engineer in-charge and shall be coordinated with DPA electrical system. Any residual engineering required to complete the lighting system shall be carried out by the contractor.
 - ii) Procurement, supply, installation, and commissioning of centrifugal pumps as per specifications and Bill of quantities including connecting piping between the compartments for ballasting and de-ballasting of water. The pumps shall be installed into the pontoon compartment. Any residual engineering required to coordinate with the pump vendors, electrical connection and piping within the pontoon shall be carried out by the contractor.
- g) Supply, install and commission the fenders and bollards involve the following.
- i) Supplying, testing, and fixing and installation of cast iron bollards of capacity 20 MT Safe Working Load as per drawings and specifications including the cost of bollard with all its accessories, all labour charges, transportation charges up to site and minor tools etc., complete.
Supplying, testing, fixing and installation of Dipti Arch fender - DAV 1000H or equivalent system including cost of fender with all its accessories, steel fender frame, PTFE facial pads (low friction), chains, anchors including all labour charges, transportation charges up to site, installation and fixing of fenders on to the face of the pontoon and minor tools etc., complete.

SCHEDULE - C
(See Clause 2.1)
Project Facilities

The project facility includes the following but not limited to the list given below.

- Linkspan support structure
- Modified linkspan
- New floating pontoon
- Modified floating pontoon.
- Ballasting pumps and piping
- Firefighting, lifesaving equipment and lighting system

SCHEDULE - D
(See Clause 2.1)
SPECIFICATIONS AND STANDARDS

All Materials, works and construction, operations shall conform to the following.

- Specifications for the materials and workmanship as listed below forms part of TENDER.
 - a) Vol. I - General conditions and scope works
 - b) Vol. II - Specification for civil and marine concrete works
 - c) Vol. III - Specification for steel Linkspan and pontoon works.
 - d) Vol. IV - Specification for fenders and bollards
 - e) Vol. V - Specification for mechanical, piping, and electrical works
 - f) Vol. VI - Tender drawings
 - g) Vol. VII - Geotechnical Report
 - h) Vol. VIII - Bathymetry Drawing
- Latest edition of relevant BIS codes and standards
- Latest edition of relevant international codes and standards
- Where the specification for a work is not given, Good Industry Practice shall be adopted to the satisfaction of the Engineer / Engineer's Representative.

The order of precedence shall be as listed above.

The Contractor shall comply with the Codes and Standards set forth in Annex-I of this Schedule-D for FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT.

Annex - I
(Schedule-D)
Codes and Standards

| Code | Description |
|-----------------------------------|---|
| Marine Facilities | |
| IS 4651 | Code of Practice for Planning and Design of Port and Harbours. |
| Part 1 | Site Investigation |
| Part 2 | Earth Pressure |
| Part 3 | Loading |
| Part 4 | General design considerations |
| Part 5 | Layout and functional requirements |
| IS 9527 | Code of design for planning and design of ports and Harbour |
| Part 3 | Sheet pile |
| Part 5 | Open pile structure |
| BS 6349 | Code of practice for maritime structures |
| Part 1 | 1-1 Code of practice for planning and design for operations |
| | 1-2 Code of practice for assessment of actions |
| | 1-3 Code of practice for geotechnical design |
| | 1-4 Code of practice for materials |
| Part 2 | Design of Quay walls, jetties and dolphins |
| Part 3 | Design of drydocks, locks, slipways and shipbuilding berth, shoplifts and dock and lock gates |
| Part 4 | Fendering and Mooring System |
| Part 5 | Code of practice for dredging and land reclamation |
| Part 6 | Design of inshore moorings and floating structures |
| Part 7 | Guide to the design and construction of breakwaters |
| Part 8 | Code of practice for the Ro-Ro Ramps, Linkspan and walkways |
| Coastal Protection Manuals | |
| CIRIA C683 | The Rock Manual (The use of rock in hydraulic engineering – 2 nd edition) |
| EM 1110-2-1100 | Coastal Engineering manual – US Army Engineer Research and Development Centre (ERDC) |
| Structural Steel Design | |
| IS 800 | General Construction in steel – Code of Practice |
| IS 2062 | Steel for General Structural Purposes |
| Loading | |
| IS 1893:2016 | Criteria for Earthquake Resistant Design of Structures. |
| Part 1 | General Provisions and Buildings |
| IS 875 | Code of Practice for Design Loads (Other than Earthquake) for Buildings and Structures – Part 3 : Wind Loads, |

| Code | Description |
|-----------------------------------|--|
| IRC 6 | Standard specifications and code of practice for roads, bridges, section II Loads and stresses |
| RC Design | |
| IS 456 | Plain and Reinforced Concrete – Code of Practice |
| Mooring | |
| OCIMF | Guidelines and Recommendations for the safe mooring of large ships at piers and sea islands |
| Fender system | |
| PIANC Guidelines | The guidelines for the design of fender system, 2002 |
| Foundation Design | |
| IS 2911 Part II | Design and construction of Pile Foundations – Concrete Piles |
| IS 14593 | Design and construction bored cast-in-situ piles founded in rocks - guidelines |
| IRC 78 | Standard Specifications and Code of Practice for road bridges Section VIII: Foundations and Substructure |
| Floating pontoon | |
| INDIAN REGISTER OF SHIPPING (IRS) | Rules and regulations for the construction and classification of steel ships, July 2020. |
| INDIAN REGISTER OF SHIPPING (IRS) | Rules and regulations for the construction and classification of inland waterway vessels, July 2020. |
| Steel Linkspan Bridge | |
| API RP 2A-WSD | Recommended Practice for Planning, Design and Constructing Fixed Offshore Platforms Working Stress Design (Oct. 2007) – 21st Edition |
| AISC | Steel Construction Manual – Allowable Stress Design - 13th Edition |
| Welding | |
| D1.1/D1.1M | Structural Welding Code – Steel |
| Cathodic protection | |
| DNV RP B401 | Recommended practice for Cathodic protection design |

Any other codes, standards applicable to the relevant scope of works as specified in residual engineering shall be considered from BIS standards (latest edition).

Codes and standards for detailed engineering for Mechanical, Electrical and Firefighting works shall be latest version of relevant Indian Standards, guidelines, international standards wherever Indian standards are not available.

SCHEDULE - E
(See Clauses 2.1 and 14.2)

MAINTENANCE REQUIREMENTS

This project does not include any maintenance requirements except those specified during the defect liability period as specified in clause 17. The schedule for repair/rectification of defects and deficiencies are specified in Annex-I.

Annex – I
(See Clause 17.2)
(Schedule-E)

Repair/rectification of defects and deficiencies

The Contractor shall repair and rectify the Defects and deficiencies specified in this Annex-I of Schedule-E within the time limit set forth in the table below.

| Sl. No | Nature of Defect or deficiency | Time limit for repair/rectification |
|--------|--|--|
| (1) | Surface cracks on steel structure such as pontoon and linkspan | 24 (twenty-four) hours |
| (2) | Leakage of water from roof / floor | 24 (twenty four) hours |
| (3) | Peeling of floor tiles | 3 (three) days |
| (4) | Damage or deterioration in kerb, parapets, handrails, and crash barriers | 3 (three) days |
| (5) | Structural cracks in beam, column, wall and slab | 7 (seven) days |
| (6) | Damage to wearing coat | 7 (seven) days |
| (7) | Gap in expansion joint | 7 (seven) days |
| (8) | Growth of vegetation affecting the structure or obstructing the waterway | 7 (seven) days |
| (9) | Leakage from pipe joints | 3 (three) days |
| (10) | Malfunction of valves water network piping | 3 (three) days |
| (11) | Malfunction of generator set | As early as possible/within 24 (twenty-four) hours |
| (12) | Malfunction of fire water pumps | As early as possible/within 24 (twenty-four) hours |
| (13) | Malfunction of potable water pumps | As early as possible/within 24 (twenty-four) hours |
| (14) | Water ingress or leakage in to building | As early as possible/within 24 (twenty-four) hours |
| (15) | Damage to doors, windows, ventilators | 3 (three) days |
| (16) | Damage to electrical lamp post, junction boxes, cope boxes, power sockets etc. | 24 (twenty-four) hours |
| (17) | Malfunction of electrical appliances | 3 (three) days |
| (18) | Damage to piles, pile muff and its components | 7 (seven) days and shall be reduced to 3 days if it is critical. |

SCHEDULE – F
(See Clause 3.1.7(a))
APPLICABLE PERMITS

1. Applicable Permits

- 1.1 The Contractor shall obtain all permits, as required under the Applicable Laws.
- 1.2 Applicable Permits, as required, relating to environmental protection and conservation shall have been procured by the Employer in accordance with the provisions of this Agreement.
- 1.3 The contractor shall refrain entering area of the site not allocated to him unless he obtains the prior written approval of the Engineer / Engineer's Representative and appropriate authorities. Should the contractor wish to make use of any adjoining or property of offices or halls, he shall first obtain the written clearance / consent of the Engineer / Engineer's Representative and then shall apply to the appropriate Authority for permission to use the area. If such permission is granted, the contractor may make use of the area thus permitted to use, but on completion shall clear away and make good any damage at his own expense and pay all costs and charges in connection therewith.
- 1.4 The contractor shall be solely responsible to obtain required permits / authorization from other agencies/ Departments for the due performance of the contract and delay if any arising thereof shall not be quoted as reason for extension of time and consequent additional cost.
- 1.5 The Contractor must comply with all operational procedures set forth by DPA Authorities as and when required at his own cost.
- 1.6 The contractor shall possess and obtain necessary license from the Labour Commissioner, Central/State Govt. for carrying out works where more than 20 persons are proposed to be engaged by the contractor.
- 1.7 The contractor shall obtain a valid license under the Central Labour (R&A) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971 (as applicable) before the commencement of the work and continue to have a valid license until the completion of the work.
- 1.8 The contractor shall make his own arrangements for obtaining all necessary licenses, permits etc., for his crafts and for the procurement of any spares that he may require during the progress of the works. The contractor shall have adequate supply of necessary spares from the very beginning to ensure that no serious delay or holdup occurs in the execution of works.

- 1.9 The Contractor shall submit prior application for entry passes to the concerned Authority for his labour and the staffs engaged in the works. The fee for passes will be borne by the contractor. Contractor shall retain the original passes obtained by them in respect of their labour and staff engaged in the Works and produces the same to the Engineer's Representative as and when called for. It should not be either destroyed or allowed to be taken by the labour/staff after its use.
- 1.10 The contractor must comply with Employees Provident Fund and miscellaneous provision act 1952 (19 of 1952) of latest.

SCHEDULE – G
(See Clauses 7.1.1 and 19.2)

FORM OF BANK GUARANTEE

Annex-I
(See Clause 7.1.1)
[Performance Security]

(To be executed on Rs.300/- non-judicial Stamp Paper)

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instruction indicated]

In consideration of the Board of Deendayal Port Authority of [insert name of port] incorporated by the Major Port Authorities Act, 2021 (hereinafter called “The Board” which expression shall unless excluded by or repugnant to the context or meaning thereof be deemed to include the Board of Deendayal Port Authority of [insert name of port], its successors and assigns) having agreed to release Performance Guarantee / Security Deposit to (hereinafter called the “Contractor”)

(Name of the contractor/s)

from the demand under the terms and condition of the contract, vide from the demand under the condition of the contract, vide’s _____ letter No _____

(Name of the Department)

Date _____ made between the contractors and the Board for execute on of _____

_____ Covered under Tender No. _____
_____ dated _____ (hereinafter called “the said contract”)

for the payment of Security Deposit in cash or Lodgement of Government Promissory Loan Notes for the due fulfilment by the said contractors of the terms and condition of the said contract, on production of a bank Guarantee for Rs. _____ (Rupees _____) only we, the _____ (Name of the Bank and Address)

_____ (hereinafter Referred to as “the Bank”) at the request of the contractors do here by undertake to pay to the Board an amount not exceeding Rs. _____ (Rupees _____) only against any loss or damage caused to or suffered by the Board by reason of any breach by the contractors of any of the terms and conditions of the said contract.

1. We, _____, do here by (Name of Bank) (Name of Branch) Undertake to pay the amount due and payable under this guarantee without any demur merely on a demand from the Board stating that the amount claimed is due by way of loss or damage caused to or which would be caused to or suffered by the Board by reason of the contractor's failure to perform the said contract. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this guarantee shall be restricted to any amount not exceeding Rs. _____ (Rupees _____) only.
2. We, _____, undertake to pay to the (Name of Bank and Branch) Board any money so demanded notwithstanding any dispute or disputes raised by the contractor(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the Contractor(s) shall have no claim against us for making such payment.
3. We, _____ further agree with the Board that the (Name of Bank and Branch) guarantee herein contained shall remain in full force and effect during the period that would be taken for performance of the said contract and that it shall continue to be enforceable till all the dues of the Board under or by virtue of the said contract have been fully paid and its claims satisfied or discharged or till the _____ (Name of the user department) of the said certifies that the terms and conditions of the said contract have been fully and properly carried out by the said Contractors and accordingly discharge this guarantee. PROVIDED HOWEVER that the Bank shall be the request of the Board but at the cost of the Contractors, renew or extend this guarantee for such further period or periods as the Board may require from time to time.
4. We, _____ further agree with the Board that the (Name of Bank and Branch) Board shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said contract or to extend the time of performance by the said contract or to extend the time of performance by the said Contractors from time to time or to postpone for any time or from time to time any of the powers exercisable by the board against the said Contractors and to forebear or enforce any of the terms and conditions relating to the said contract and we shall not be relieved from our liability by reason of any such variation or extensions being granted to the contractors or for any forbearance, act

or omission on the part of the Board or any indulgence shown by the board to the Contractors or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

5. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s).
6. It is also hereby agreed that the Courts in [**Gandhidham**] would have exclusive jurisdiction in respect of claims, if any, under this Guarantee.
7. We, _____ Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Board in writing.
8. Notwithstanding anything contained herein:
 - (a) Our liability under this Bank Guarantee shall not exceed Rs.____ (Rupees_____only);
 - (b) This Bank Guarantee shall be valid up to____; and
 - (c) We are liable to pay the guarantee amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before_(date of expiry of Guarantee).”

Date_____day of_____20

For (Name of Bank)

(Name)

Signature

**SPECIMEN BANK GUARANTEE FOR ADVANCE PAYMENT (Not
Applicable)**

(To be executed on Rs.100/- non-judicial Stamp Paper)

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instruction indicated]

In consideration of the Board of Trustees of the Port of [insert name of port] incorporated by the Major Port Trusts Act, 1963 as amended by Major Port Trust (Amendment) Act 1974 (hereinafter called "The Board" which expression shall unless excluded by or repugnant to the context or meaning thereof be deemed to include the Board of Trustees of the port of [insert name of port], its successors and assigns) having agreed to release advance payment to (hereinafter called the "contractor")

(Name of the contractor/s)

from the demand under the terms and condition of the contract, vide from the demand under the condition of the contract, vide _____'s letter No _____

(Name of the Department)

Date _____ made between the contractors and the Board for execution of

_____ covered under Tender No. _____

_____ dated _____ (hereinafter called "the said contract")

for the payment of Advance Payment in cash or Lodgement of Government Promissory Loan Notes for the due fulfilment by the said contractors of the terms and condition of the said contract, on production of _____ a _____ bank Guarantee for Rs. _____ (Rupees _____)

only we, the (Name of the Bank and Address)

_____ (Here in after

Referred to as "the Bank") at the request of the contractors do here by undertake to pay to the Board an amount not exceeding Rs. _____

_____ (Rupees _____) only against any loss or damage caused to or suffered by the Board by reason of any breach by the contractors of any of the terms and conditions of the said contract.

1. We, _____, do hereby (Name of Bank) (Name of Branch) Undertake to pay the amount due and payable under this guarantee without any demur merely on a demand from the Board stating that the amount claimed is due by way of loss or damage caused to or which

would be caused to or suffered by the Board by reason of the contractor's failure to perform the said contract. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this guarantee shall be restricted to any amount not exceeding Rs. (Rupees ____) only.

2. We, _____, undertake to pay to the (Name of Bank and Branch) Board any money so demanded notwithstanding any dispute or disputes raised by the contractor(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment there under and the Contractor(s) shall have no claim against us for making such payment.
3. We, _____ further agree with the Board that the (Name of Bank and Branch) guarantee herein contained shall remain in full force and effect during the period that would be taken for performance of the said contract and that it shall continue to be enforceable till all the dues of the Board under or by virtue of the said contract have been fully paid and its claims satisfied or discharged or till he _____ (Name of the user department) of the said certifies that the terms and conditions of the said contract have been fully and properly carried out by the said Contractors and accordingly discharge this guarantee. PROVIDED HOWEVER that the Bank shall be the request of the Board but at the cost of the Contractors, renew or extend this guarantee for such further period or periods as the Board may require from time to time.
4. We, _____ further agree with the Board that the (Name of Bank and Branch) Board shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said contract or to extend the time of performance by the said contract or to extend the time of performance by the said Contractors from time to time or to postpone for any time or from time to time any of the powers exercisable by the board against the said Contractors and to forebear or enforce any of the terms and conditions relating to the said contract and we shall not be relieved from our liability by reason of any such variation or extensions being granted to the contractors or for any forbearance, act or omission on the part of the Board or any indulgence shown by the board to the Contractors or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.
5. This guarantee will not be discharged due to the change in the

- constitution of the Bank or the Contractor(s).
6. It is also hereby agreed that the Courts in [**Ahmedabad**] would have exclusive jurisdiction in respect of claims, if any, under this Guarantee.
 7. We, __Bank lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Board in writing.
 8. Notwithstanding anything contained herein:
 - a) Our liability under this Bank Guarantee shall not exceed Rs. __ (Rupees _____ only);
 - b) This Bank Guarantee shall be valid up to __; and
 - c) We are liable to pay the guarantee amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before _ (date of expiry of Guarantee).”

Date _____ day of _____ 20

For (Name of Bank)
(Name)
Signature

Annex – II
(Schedule - G)

Form for Guarantee for Withdrawal of Retention Money

The Chief Engineer

DEENDAYAL PORT Authority

Administrative Office Building

Post Box No. 50

Gandhidham (Kutch)

Gujarat - 370201

PHONE NO: 02836- 233192

FAX NO: 02836-220050

E-MAIL ADDRESS: ce@deendayalport.gov.in & dpt.roro@gmail.com

WHEREAS:

- (A) [name and address of contractor] (hereinafter called the “**Contractor**”) has executed an agreement (hereinafter called the “Agreement”) with the The Board of Trustees, having its office at Administrative Office Building, Post Box No. 50, Gandhidham (Kutch), Gujarat – 370201, (hereinafter called the “**Employer**”) for the FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA-GUJARAT subject to and in accordance with the provisions of the Agreement.
- (B) In accordance with Clause 7.5.3 of the Agreement, the Contractor may withdraw the retention money (hereinafter called the “**Retention Money**”) after furnishing to the Employer a bank guarantee for an amount equal to the proposed withdrawal.
- (C) We, through our branch at (the “**Bank**”) have agreed to furnish this bank guarantee (hereinafter called the “**Guarantee**”) for the amount of Rs. ----- cr. (Rs. -----crore) (the “**Guarantee Amount**”).

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

1. The Bank hereby unconditionally and irrevocably undertakes to pay to the Employer, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Employer shall claim, without the Employer being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Employer, under the hand of an authorized officer that the Contractor has committed default in the due and faithful performance of all or any of its obligations for under and in accordance with the Agreement shall be conclusive, final, and binding on the Bank. The Bank further agrees that the Employer shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final, and binding on the Bank, notwithstanding any differences between the Employer and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other Employer or body, or by the discharge of the Contractor for any reason whatsoever.
3. In order to give effect to this Guarantee, the Employer shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Employer to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Employer shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Retention Money and any of the rights and powers exercisable by the Employer against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Employer, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Employer of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Employer or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Employer in respect of or relating to the Retention Money.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Employer on the Bank under this Guarantee all rights of the Employer under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect 90 (ninety) days after the date of the Completion Certificate specified in Clause 12.4 of the Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Employer in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Employer that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the Employer pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

- ii. The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

Annex – III
(Schedule - G)
(See Clause 19.2)
Form for Guarantee for Advance Payment

NOT USED

SCHEDULE - H
(See Clauses 10.1.4 and 19.3)
Contract Price

- 1.1 The Contract Price for this Agreement is **Rs 47.332 Crore**
- 1.2 Preamble to the schedule of rates and contract price

1.2.1 General Instructions

- i) This bill of quantities must be read along with the conditions of contract, technical specifications, and drawings. The Contractor shall be deemed to have examined the scope of works, drawings, specifications, conditions of contract and to have acquainted himself with the detailed descriptions to the works to be done and the way in which they are to be carried out and all factors affecting the execution of the Works and the costs thereof.
- ii) In case the work has been sectionalized, every part of it shall be deemed to be supplementary to and complementary of every other part and shall be read with it or into it so far as it may be practicable to do so.
- iii) The detailed description of work and materials given in the specifications may not necessarily be repeated in the bill of quantities.
- iv) The quantities given in the bill of quantities are approximate only and are given to provide a common basis for tendering. Payment will be made according to the actual quantities of work ordered and carried out, as measured by the Employer, and valued at the rates, and prices quoted in the bill of quantities.
- v) The Contractor shall be deemed to have visited the site before preparing his tender and to have examined for himself the conditions under which the works will proceed and all other matters affecting the carrying out of the work and cost thereof.

1.2.2 Rates and Prices to be inclusive.

- (i) Rates and prices set against items are to be all inclusive value of the finished work as described in Tender document including basic price, all taxes, duties, and all other charges excluding the goods and service tax (GST) component. The paid actual GST shall be reimbursed after submission of paid receipts by the contractor.

- (ii) Rates and prices set against items shall be the all-inclusive value of the finished work shown on the Drawings and/or described in the Specifications or which can reasonably be inferred there from and are to cover the cost of provision and operation of plant, labour, supervision, materials, erection, insurance, maintenance, overheads and profits and every incidental and contingent cost and charges whatsoever including all taxes (excluding the service tax) and duties, Customs and Import duties on plant, equipment and essential spares and every kind of Temporary Works executed or used in connection therewith (except those items in respect of which provision may have been separately made in the Bill of Quantities) and all the Contractor's obligations under the Contract and all matters and things necessary for the proper execution and completion of the Works.
- (iii) In the event of non-availability of specification for certain items in the technical specification, CPWD / IS Specification as applicable shall be followed. Should there be any details of construction or material which have not been referred to in the specification or in the bill of quantities and drawings, but the necessity for which may reasonably be implied or inferred there from, or which are usual or essential to the completion of all works in all trades, the same shall be deemed to be included in the rates and prices named by the Contractor in the bill of quantities.

1.2.3 Mode of measurement

- (i) Unless stated or billed otherwise, quantities shall be measured in accordance with IS:1200 and are net as they are furnished & fixed in the works. The rates & prices shall include whatever allowance is considered by the contractor to be necessary for waste, working area, construction slopes, batters etc.
- (ii) In case of any arithmetical errors in the calculations (Quantity x Unit Rates) in the Bill of Quantities, the quoted unit rates shall prevail. Arithmetical errors will be corrected by the Employer in the manner set out in the Instructions to Tenderers.
- (iii) The contract unit rate for the item shall be payment in full for carrying out the required operations including full compensation for furnishing all materials to be incorporated in the work including all royalties, fees, rents where necessary and all leads and lifts, all labour, tools, equipment, and incidentals to complete the work to the specifications.

1.2.4 Method of measurement

(i) Handling of steel piles and boring

Handling of steel piles including transportation, lifting and placing position and driving the pile till the specified termination level. The quantity shall be measured running meter. based on the actual length from the bottom of the driven length of pile up to seabed level.

Boring in all types of materials including clay, mud, boulders, gravel (fragmented rock), sand (dense and loose) weathered rock and strong basalt etc.

Measurement shall be made in running metre. Boring length shall be downward from the level where boring tool encounters soil till pile termination level.

(ii) Cutting, chipping & dress pile heads to the required levels

Payment shall be made in number after removal of laitance concrete up to the required line & level as shown in the drawing and satisfaction of the Engineer's Representative.

(iii) Concrete for piling works

Concrete shall be measured as the net volume shown on the drawings and ordered by the Engineer's Representative. No deductions will be made to chamfers smaller than 50 square centimetres. Section area, reinforcement, bolt holes or fittings required to be built in unless larger than 0.1 sqm, Sectional area, and 0.03 cum in volume. No extra volume will be measured for splays or fillets smaller than 50 square centimetres sectional area.

The rates for concrete shall include for all labour, plant and material, depositing, compacting, and forming construction joints, stop ends, hacking, shuttering works including centering, formworks, necessary support to concrete during deposition etc.

In case of concrete in piles, concrete actually consumed up to limit of theoretical volume obtain as per the cross section of piles shown on the drawing shall be paid. i.e., cut off level to pile termination level. If any excess quantity consumed more than theoretical or above cut-off level for overflow or extra height for any other purpose as specified elsewhere in the specification, no payment shall be made for excess consumed quantity of concrete. No separate payment shall be made for bentonite material, circulation etc.

(iv) Reinforcement for pile

Steel reinforcement will be measured by weight supplied and fixed in accordance with the drawings and specifications for piles, pile muff, beam, and slab. The weight of TMT reinforcement bars of various diameters will be calculated in accordance with the IS:1786. No extra payment shall be made for cutting, wastage, straightening short and long lengths, bending, fixing, and the provision of chairs, spacer bars or supports, binding wires, saddles forces and all the dense concrete spacer blocks etc. including preparing bending schedules from drawings. The laps provided in the reinforcement according to the drawing or as approved by Engineer's Representative shall be measured and payable in MT. The reinforcement for the pre-cast items shall be measured and paid under this item. The payment for reinforcement in a pile shall be made only after concreting for that pile is completed.

(v) Bollards and Fenders

Payment shall be made after installation testing and commissioning, in number.

(vi) Galvanized structural steel work.

Payment under this item shall be measured in M.T. The payment shall be made by measuring actual length, size at site & multiplying with standard weight / rmt / sq.m. The rate includes for fabrication in angles & plates etc. as per detailed design & drawings or as directed. The quoted rate shall include for cutting, fabricating, hoisting, erecting, fixing in position making welded connection with holdfasts etc.

(vii) Anti-corrosion paint

The painting shall be measured in Sqm after completion of Primer coat and final coats of paint in all respect applied as per the specification and Dry Film Thickness specified.

(viii) Steel Pile:

Payment under this item shall be measured in M.T. The payment shall be made by measuring actual length, size at site & multiplying with standard weight / rmt / sq.m. The rate includes for fabrication, transportation, lifting, installation of the complete guide

pin piles including welding of anodes, attachments for fenders or any other attachments.

(ix) Dismantling of members in Steel Linkspan Bridge

Payment under this item shall be measured in M.T. The payment shall be made by measuring actual length, size at site & multiplying with standard weight / rmt / sq.m of the dismantled members. This shall cover all items of linkspan bridge such as pipes, special quality pipes (through thickness property) of high strength, angles, I beam and other shapes & plates etc. as per detailed design & drawings or as directed. The quoted rate shall include dismantling and transportation and disposal of the members etc. The rate shall also include the necessary tools, equipment, for the enabling of dismantling of linkspan members continuously during contract period without interruption and no extra payment, time or any other facility will be provided in this regard. The payment for classification society approval for material inspection and day charges, transportation, inspection of material, visits during dismantling, procurement of material, assembly, welding and inspection and final classification approval etc. shall be part of the rate specified against the structural steel for linkspan bridge modification. No extra or additional payment shall be made in this regard.

(x) Structural Steel Linkspan Bridge

Payment under this item shall be measured in M.T. The payment shall be made by measuring actual length, size at site & multiplying with standard weight / rmt / sq.m. The rate includes for fabrication, transportation, lifting, installation of the members of link span bridge. This shall cover all items of linkspan bridge such as pipes, special quality pipes (through thickness property) of high strength, angles, I beam and other shapes & plates etc. as per detailed design & drawings or as directed. The quoted rate shall include cutting, fabricating, hoisting/lifting, erecting, fixing in position using anchor pins and sliding supports etc. The rate shall also include the necessary tools, equipment, workshop, monsoon cover, shed, temporary or permanent in nature for the enabling of fabrication of linkspan continuously during contract period without interruption and no extra payment, time or any other facility will be provided in this regard. The payment for classification society approval for material inspection and day charges, transportation, inspection of material, visits during procurement of material, assembly, welding and inspection and final classification approval etc. shall be part of the rate specified against the structural steel for

linkspan bridge. No extra or additional payment shall be made in this regard.

(xi) New Steel Floating Pontoon

Payment under this item shall be measured in M.T. The payment shall be made by measuring actual length, size at site & multiplying with standard weight / rmt / sq.m. The rate includes for fabrication, launching, transportation, installation of the complete floating pontoon and commissioning including ballasting the compartments. This shall cover all items of pontoon such as plates, special quality plates (through thickness property) of high strength, angles, I beam and other shapes & plates etc. as per detailed design & drawings or as directed. The quoted rate shall include for cutting, fabricating, assembling, launching, hoisting/lifting, erecting, fixing in position using guide pin piles and vertical sliding supports and fenders etc. The rate shall also include the necessary tools, equipment, workshop, monsoon cover, shed, temporary or permanent in nature for the enabling of fabrication of pontoon continuously during contract period without interruption and no extra payment, time or any other facility will be provided in this regard. The payment for classification society approval for material inspection and day charges, transportation, inspection of material, visits during procurement of material, assembly, welding and inspection and final classification approval etc. shall be part of the rate specified against the structural steel for Pontoon. No extra or additional payment shall be made in this regard.

(xii) Removal and towing of existing pontoon

The scope includes disconnection of existing pontoon of weight 1350 MT from the guide pin piles (after securing the linkspan structure with new guide pile support), inspection, obtaining permission/approval from IRS, DNV, and/or BV. for towing to the pontoon from Ghogha to the proposed dry-docking location by the contractor including any dry transport by barge and safely storing in dry dock / repair yard suitable for the pontoon size and weight. The cost should include all manpower, equipment hire / rental or own such as crane, floating vessels or floating crane, barge, tugboats, trailers, hydraulic jacks etc. and all other accessories for the relocation and temporary supports beneath the pontoon etc. The bidder shall propose in the bid the details about the proposed yard or dry dock and transportation methodology as approved by the approving agency such as IRS, DNV, and/or BV. The duration of

drydocking / storage shall be based on the schedule of repair for the old pontoon but shall not be less than 1 year. Any additional storage or safe keeping of the pontoon after the repair and modification shall be outside the scope of the bidder.

(xiii) Dismantling of members in Floating Pontoon

Payment under this item shall be measured in M.T. The payment shall be made by measuring actual length, size at site & multiplying with standard weight / rmt / sq.m. The rate includes for dismantling members in existing as per detailed design & drawings or as directed. This shall cover all items of pontoon such as plates, special quality plates (through thickness property) of high strength, angles, I beam and other shapes & plates etc. The rate shall also include the necessary tools, equipment, workshop, monsoon cover, shed, temporary or permanent in nature for the enabling of modification of pontoon continuously during contract period without interruption and no extra payment, time or any other facility will be provided in this regard. The payment for classification society approval for dismantling etc. shall be part of the rate specified against the structural steel for Pontoon. No extra or additional payment shall be made in this regard.

(xiv) Modification of existing Steel Floating Pontoon

Payment under this item shall be measured in M.T. The payment shall be made by measuring actual length, size at site & multiplying with standard weight / rmt / sq.m. The rate includes for fabrication, launching, transportation, installation of the complete floating pontoon and commissioning including ballasting the compartments. This shall cover all items of pontoon such as plates, special quality plates (through thickness property) of high strength, angles, I beam and other shapes & plates etc. as per detailed design & drawings or as directed. The quoted rate shall include for cutting, fabricating, assembling, launching, hoisting/lifting, erecting, fixing in position using guide pin piles and vertical sliding supports and fenders etc. The rate shall also include the necessary tools, equipment, workshop, monsoon cover, shed, temporary or permanent in nature for the enabling of fabrication of pontoon continuously during contract period without interruption and no extra payment, time or any other facility will be provided in this regard. The payment for classification society approval for material

inspection and day charges, transportation, inspection of material, visits during procurement of material, assembly, welding and inspection and final classification approval etc. shall be part of the rate specified against the structural steel for Pontoon. No extra or additional payment shall be made in this regard.

(xv) All other items shall be measured in the units assigned to them in the Bill of Quantities in accordance with relevant Indian Standard as brought out above.

(xvi) Part Payment for Works

(a) Part payment for all works shall be in accordance with Table H-2. Acceptance of part payment shall be certified by Engineer's Representative that the work has been completed in accordance with drawings, specifications, and contract conditions.

(b) The part payment as specified in Table H-2 for all concreted items such as concreting for piles, beams, pile muffs, deck slab and wearing coat will be released only after the concrete is laid and cured and after satisfactory test results for 7 days cube strength as specified in materials specification. The balance will be released after finishing work if any and satisfactory test results for 28 days cube strength as specified in the materials specification. If 28 days cube strength is not satisfactory, the payment made earlier will be recovered from any payments due to the contractor if respect of the execution of the work.

1.2.5 Currency

All rates in the Bill of Quantities shall be priced in Indian Rupee Currency. Payments as due under the contract shall be made by the Employer in Indian Rupees only.

1.2.6 Abbreviations

The following abbreviations are included in the specification and Bill of quantities.

| | |
|--------|-----------------------|
| B.S | British standard |
| BG | Bank Guarantee |
| Cm | Centimetres |
| Cum | Cubic Metre |
| Dia. | Diameter |
| Drg.no | Drawing. number |
| EIC | Engineer In Charge |
| EMD | Earnest Money Deposit |
| F.M | Fineness Modulus |

| | |
|-------|--------------------------------|
| GCC | General conditions of contract |
| Gm | Grams |
| H.T | High tensile/high tension |
| I.S | Indian Standard |
| Kg | Kilograms |
| Km | Kilometres |
| M | Linear metre |
| L.S. | Lump sum |
| LD | Liquidated Damages |
| Ltr. | Litre |
| M.S. | Mild Steel |
| Max. | Maximum |
| Min. | Minimum |
| Mm | Millimetres |
| MSA | Maximum size of Aggregate |
| MT | Metric Ton |
| Nos | Numbers |
| P.S. | Provisional sum |
| PBW | Part by Weight |
| Qty. | Quantity |
| RCC | Reinforced cement concrete |
| RM | Running Metre |
| Ref. | Refer |
| Rs. | Rupees |
| Sq.cm | Square centimetres |
| Sqm | Square Metre |
| Thk | Thick /Thickness |
| Wt. | Weight |

1.3 Contract Price for different components of works shall be calculated as specified below:

Table H-1 Form of Schedule of rates and contract price.

The above unit rates specified above and the percentage increase or decrease as quoted by the contractor shall be used for the calculation of actual payment to the Contractor.

| No | Item Description | Quantity | Rate (In Rs) | Unit | Total Amount (In Rs) |
|----------|--|----------|--------------|------|----------------------|
| A | New Pontoon | | | | |
| A.1 | Supply, fabricate, and handle Structural steel shapes, plates, special plates and built-up sections in pontoon confirming to steel grades specified in construction drawings and specifications including profile cutting, assembling, hoisting, fixing in position, | 1,288.60 | 1,80,098.00 | MT | 23,20,74,970.94 |

| | | | | |
|--|--|--|--|--|
| <p>welding, inspection as per drawings and specification including cost of all materials, fitting charges, all labour charges, and minor tools etc. complete. The cost shall include all fabrication, minor equipment, and all labour charges etc. complete. Following clauses apply to the floating pontoon fabrication and installation.</p> <p>i. Structural steel shall comply with Project Specifications Vol-III – Clause 1.5 and the coating system shall comply with the Project Specifications Vol-III Clause 1.9.</p> <p>ii. Plan approval from classification society has been obtained by Employer including payment to Classification society for plan approval.</p> <p>iii. Contractor shall obtain classification society approval for its material, fabrication including payment to certification agency for inspection and survey, surveyors to visit, inspect and approve the materials, and fabrication.</p> <p>iv. Contractor shall arrange for the transportation of surveyors and pay for the day charges as per the number of visits required during materila inspection and fabrication.</p> <p>v. All fabrication, welding, cutting, bending of plates on site to be as per BS 5400 Part 6 / AWS D1.1 and relevant classification society (IRS/ABS/BV etc.) rules etc. including surveying/ supervision of fabrication and obtaining certification approval from</p> | | | | |
|--|--|--|--|--|

| | | | | | |
|-----|--|-------|----------------|-----|----------------|
| | <p>classification society (IRS/ABS/BV etc.).</p> <p>vi. All tests on materials + Welds (Ultrasonic, dye penetration for welds + Water tightness test).</p> | | | | |
| A.2 | <p>Loadout/launch, tow/transportation of the fabricated pontoon as per the approved scheme by Engineer and installation/commissioning at site including ballasting to final draft and setting down linkspan etc., The cost shall include all machinery and manpower for transportation of the pontoon assembly, minor equipment, installation of pontoon and all labour charges etc. complete. Following clauses apply to the floating pontoon transportation and installation.</p> <p>i. Contractor shall obtain classification society approval for its transportation and installation including payment to certification agency for inspection and survey, surveyors to visit, inspect and approve transportation and installation.</p> <p>ii. Contractor shall arrange for the transportation of surveyors and pay for the day charges as per the number of visits required during transportation and installation.</p> | 1.00 | 1,97,59,246.00 | Nos | 1,97,59,246.00 |
| A.3 | <p>Supply, fabricate and install Aluminium anodes of 95 kg net weight (GALVALUM III) as per specifications and drawings to the pontoon bottom surface and inside the compartments as per the locations indicated in the drawings using welded connections to protect the surface against corrosion. The anode characteristics,</p> | 42.00 | 70,645.00 | Nos | 29,67,090.00 |

| | | | | | |
|-----|---|-----------|------------|------|---------------|
| | design and material composition shall be all as per specifications. | | | | |
| A.4 | Supply and provide manpower for surface preparation to SA 2.5 and painting internal and external surfaces of pontoon with 4 coats of anti-corrosive epoxy painting system with minimum 750 DFT including tools, equipment, manpower, material etc. all-inclusive as per specifications. | 25,177.71 | 2,500.00 | Sq m | 62,944,277.78 |
| A.5 | Supply, and provide manpower for Non-skid Painting on the deck surfaces of pontoon of suitable specification including tools, equipment, manpower, material etc. complete. Antiskid finish shall be minimum 5.5mm Nominal Thickness using Cicol NT Slurry by ROCOL UK (or equivalent approved make) + 5.0mm compatible aggregate on top surface of the pontoon. | 1,500.00 | 6,600.00 | Sq m | 9,900,000.00 |
| A.6 | Supplying, testing, fixing and installation of Dipti Arch fender -DAV 1000H or equivalent system including cost of fender with all its accessories, steel fender frame, PTFE facial pads (low friction), chains, anchors including all labour charges, transportation charges up to site, installation and fixing of fenders on to the face of the pontoon and minor tools etc., complete. | 30.00 | 289,000.00 | m | 8,670,000.00 |
| A.7 | Supplying, transporting, fixing and installation of watertight steel manhole covers provided on the deck surfaces of pontoon as shown in drawings including the cost of manhole cover with all its accessories, cover plates, handles, bolts, all labour charges, transportation charges up to site and minor tools etc., complete. | 32.00 | 60,000.00 | Nos | 1,920,000.00 |

| | | | | | |
|----------|--|--------|-------------|---------|-------------|
| A.8 | Supplying, transporting, fixing and installation of UHMW - PE Rubber Pad as shown in drawings including the cost of Rubber Pad and all other fittings, labour charges, transportation charges up to site and minor tools etc., complete. | 4.00 | 34,484.00 | Sq m | 1,37,936.00 |
| A.9 | Supplying, transporting, storing, fabricating & erecting in position and testing/examining welded and hot dipped galvanised (120 microns) iron works made of pipes, plates, shapes, bars, strips, and rods for base plates, crash barrier, edge protection and miscellaneous works including labour charges, tools, tackle, and installation etc. complete. The cost shall include, base plate grouting, anchor bolts, etc. No separate payment will be made for these items. | 112.00 | 6,786.00 | m | 7,60,032.00 |
| A.10 | Providing, Installing, and commissioning of Centrifugal Pumps set with accessories for ballasting and de-ballasting having flow rate of 510 Cu/hr, pump head of 6 Mtr. Pump power input at duty point of 10.55 KW, Driver motor of 15 KW and rated speed of 1450 RMP. Note: a) Pump should be Kirloskar or equivalent make b) Cost include all pipeline and commissioning of pump for ballasting and de-ballasting of water in to the pontoon compartments. c) Any residual engineering required to coordinate with the pump vendors, electrical connection and piping within the pontoon shall be carried out by the contractor. | 2.00 | 2,22,600.00 | Sq m | 4,45,200.00 |
| B | Modification of existing pontoon | | | | |

| | | | | | |
|-----|---|--------|--------------|-----|----------------|
| B.1 | <p>The scope includes disconnection of existing pontoon of weight 1350 MT from the guide pin piles (after securing the linkspan structure with new guide pile support), inspection, obtaining permission/approval from IRS, DNV, and/or BV. for towing to the pontoon from Ghogha to the proposed dry-docking location by the contractor including any dry transport by barge and safely storing in dry dock / repair yard suitable for the pontoon size and weight. The cost should include all manpower, equipment hire / rental or own such as crane, floating vessels or floating crane, barge, tugboats, trailers, hydraulic jacks etc. and all other accessories for the relocation and temporary supports beneath the pontoon etc. The bidder shall propose in the bid the details about the proposed yard or dry dock and transportation methodology as approved by the approving agency such as IRS, DNV, and/or BV.</p> <p>Note: No additional payment for storage period during fabrication will be allowed. In case of storage beyond contractual period, the same may be treated separately.</p> | 1.00 | 44,98,277.00 | Nos | 44,98,277.00 |
| B.2 | <p>Supply, fabricate, transport, handle and erect in position of Structural steel shapes, plates, special plates and built-up sections in modified pontoon confirming to steel grades specified in construction drawings and specifications including profile cutting, assembling, hoisting, fixing in position, welding, inspection as per drawings and specification including cost of all materials, fitting charges, all labour charges,</p> | 146.63 | 1,80,098.00 | MT | 2,64,07,152.84 |

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|--|---|--|--|--|--|
| | <p>transportation charges and minor tools etc. complete. Following clauses apply to the floating pontoon modification.</p> <p>i. Structural steel shall comply with Project Specifications Vol-III – Clause 1.5 and the coating system shall comply with the Project Specifications Vol-III Clause 1.9.</p> <p>ii. Plan approval from classification society has been obtained by Employer including payment to Classification society for plan approval.</p> <p>iii. Contractor shall obtain classification society approval for its material and modification including payment to certification agency for inspection and survey, surveyors to visit, inspect and approve the materials and modification.</p> <p>iv. Contractor shall arrange for the transportation of surveyors and pay for the day charges as per the number of visits required during material inspection and modification.</p> <p>v. All modification, welding, cutting, bending of plates on site to be as per BS 5400 Part 6 / AWS D1.1 and relevant classification society (IRS/ABS/BV etc.) rules etc. including surveying/ supervision of modification and obtaining certification approval from classification society (IRS/ABS/BV etc.).</p> <p>vi. All tests on materials + Welds (Ultrasonic, dye penetration for welds + Water tightness test).</p> | | | | |
|--|---|--|--|--|--|

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|-----|--|-------|-------------|-----|--------------|
| B.3 | Supply, fabricate, transport, handle and erect in proposed ramp structure made of Structural steel tubular members of any diameter conforming to API 5L Grade B or its equivalent and/or Structural steel shapes, plates, anchor bolts and built up sections conforming to IS 2062 Grade BR-E250 including profile cutting, assembling, hoisting, fixing in position, welding, inspection and applying a priming coat of approved steel primer and top coat of minimum thickness as specified in the specifications made of approved paint all as per specifications and drawings including cost of all materials, fitting charges, all labour charges, transportation charges and minor tools etc. complete. The cost shall include all fabrication, transportation of the steel structure assembly in part or as a whole, lifting using floating crafts and cranes, erection and fixing on the pontoon with appropriate supporting arrangement, base plates and anchor bolts etc complete. | 9.34 | 1,40,540.00 | MT | 13,13,043.15 |
| B.4 | Providing and laying Reinforced Cement concrete of M-30 grade with 20 mm and down size graded crushed stone aggregates/ gravel in pontoon for slabs, surface application for all concrete surfaces, and including plasticizer and Bipolar as per manufacture's specification providing pockets, openings, recesses, chamfering, etc., wherever required, vibrating, tamping, curing and rendering if required to give a smooth and even surface etc. (excluding the Cost of Reinforcement) for all depths in any shape, | 89.04 | 12,488.00 | Nos | 11,11,931.52 |

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|-----|--|-------|-------------|------|--------------|
| | position and thickness etc. all complete as specified, shown and directed. | | | | |
| B.5 | Supply, deliver and transportation of CRS reinforcement steel with a minimum yield strength of 500 N/mm ² and minimum elongation of 16% or equivalent confirming to IS 1786 with corrosion resistant (CR) element for Fabrication and fixing of reinforcement cages as per drawing for cast-in-situ piles, slabs, in link span support structure and pontoon etc including cost of fabrication, fixing dowels, shear ties, cutting, bending, tying, lapping and welding in position wherever necessary with black 18 SWG annealed binding wire, all labour charges, transportation charges of all materials to Work Site, cost of binding wires, all other items including cover blocks required for the work and minor tools etc. complete. | 26.71 | 1,13,357.00 | Sq m | 30,27,992.18 |
| B.6 | Demolishing R.C.C. work manually/ by mechanical means including stacking of steel bars and disposal of unserviceable material within 50 metres lead as per direction of Engineer - in-charge. The cost of dismantling includes tools, equipment, manpower, material etc. all-inclusive as per specification. | 23.52 | 3,229.00 | Cu m | 75,946.08 |
| B.7 | Dismantling of structural steel members, plates, shapes and tubular members on the existing pontoon as per the drawings including the cost of cutting, removing, transportation and safe storage of the removed materials. The cost of dismantling includes tools, equipment, manpower, material etc. all-inclusive as per specification. The cost | 6.45 | 4,985.00 | Cu m | 32,146.30 |

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|----------|--|----------|-------------|---------|--------------|
| | also includes site visit, inspection and approval from the classification society. | | | | |
| B.8 | Supply, fabricate and install Aluminium anodes of 95 kg net weight (GALVALUM III) as per specifications and drawings to the pontoon bottom surface and inside the compartments as per the locations indicated in the drawings using welded connections to protect the surface against corrosion. The anode characteristics, design and material composition shall be all as per specifications. | 42.00 | 70,645.00 | Nos | 29,67,090.00 |
| B.9 | Supply and provide manpower for surface preparation to SA 2.5 and painting internal and external surfaces of pontoon with 4 coats of anti-corrosive epoxy painting system with minimum 750 DFT including tools, equipment, manpower, material etc. all-inclusive as per specifications. | 2,361.71 | 2,500.00 | Sq m | 59,04,277.35 |
| B.1 0 | Supply, and provide manpower for Non-skid Painting on the deck surfaces of pontoon of suitable specification including tools, equipment, manpower, material etc. complete. Antiskid finish shall be minimum 5.5mm Nominal Thickness using Cicol NT Slurry by ROCOL UK (or equivalent approved make) + 5.0mm compatible aggregate on top surface of the pontoon. | 936.00 | 6,600.00 | Sq m | 61,77,600.00 |
| B.1 1 | Supplying, testing, fixing and installation of Dipti Arch fender -DAV 1000H or equivalent system including cost of fender with all its accessories, steel fender frame, PTFE facial pads (low friction), chains, anchors including all labour charges, transportation charges up to site, installation and fixing of fenders on to the face of the | 30.00 | 2,89,000.00 | m | 86,70,000.00 |

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|----------|---|--------|-------------|-----|----------------|
| | pontoon and minor tools etc., complete. | | | | |
| B.1 2 | Supplying, transporting, fixing and installation of watertight steel manhole covers provided on the deck surfaces of pontoon as shown in drawings including the cost of manhole cover with all its accessories, cover plates, handles, bolts, all labour charges, transportation charges up to site and minor tools etc., complete. | 2.00 | 60,000.00 | Nos | 1,20,000.00 |
| B.1 3 | Supplying, transporting, storing, fabricating & erecting in position and testing/examining welded and hot dipped galvanised (120 microns) iron works made of pipes, plates, shapes, bars, strips, and rods for base plates, crash barrier , edge protection and miscellaneous works including labour charges, tools, tackle, and installation etc. complete. The cost shall include, base plate grouting, anchor bolts, etc. No separate payment will be made for these items. | 50.00 | 6,786.00 | m | 3,39,300.00 |
| C | Linkspan support structure | | | | |
| C.1 | Supply and fabricate structural steel pipe piles of 1200mm diameter with thickness and material as specified in construction drawings and specifications or its equivalent including profile cutting, assembling, welding, inspection including cost of all materials, fitting charges, all labour charges, and minor tools etc. complete. The cost shall include all transportation, handling, loading, unloading, lifting etc., for the fabricated piles at site till final position. Note: The concrete and the reinforcement for the piles are paid separately | 170.97 | 1,66,815.00 | MT | 2,85,19,670.75 |

| | | | | | |
|-----|---|--------|-------------|-----|--------------|
| C.2 | Driving of steel pile to the specified termination level and drilling and removal of soil plug inside the pile as per the construction drawing. The cost shall also include positioning the pile at the location as per construction drawings and driving below existing sea bed level to the required depth (the depth shall be as specified in the construction drawings, specifications and as directed by the Engineer in-charge or Authority Engineer) for linkspan support structure including all equipment such as jack up barge, pile driving hammer, drilling equipment for removal of soil plug etc. complete. The cost shall include the required tests to be conducted at site and laboratory as instructed by the engineer-in-charge. | 88.00 | 1,00,109.00 | m | 88,09,592.00 |
| C.3 | Providing and laying design mix concrete of RCC M40 grade in accordance with IS 456 (Latest Edition) using coarse aggregate, sand and 53 grade Portland Slag cement confirming to IS 455 for RCC piles by using tremie with hopper arrangements, excluding cost of fabrication, fixing of reinforcement, centering and shuttering, which will be paid separately, but including cost of cement, stone chips, sand, cost of all labour charges, mixing, conveying, placing, consolidation, screening and washing of coarse aggregate and sand, transportation charges of all materials to the Work Site, hire charges and running charges of batching plant, vibrator, consumables and all other equipment, cost of minor tools etc. complete. (The design mix shall be approved by laboratory | 158.17 | 18,576.00 | cum | 29,38,075.98 |

| | | | | | |
|-----|--|-------|-------------|----|--------------|
| | Approved by NABL, Govt. of India). | | | | |
| C.4 | Supply, deliver and transportation of CRS reinforcement steel with a minimum yield strength of 500 N/mm ² and minimum elongation of 16% or equivalent confirming to IS 1786 with corrosion resistant (CR) element for Fabrication and fixing of reinforcement cages as per drawing for cast-in-situ piles, slabs, in link span support structure and pontoon etc including cost of fabrication, fixing dowels, shear ties, cutting, bending, tying, lapping and welding in position wherever necessary with black 18 SWG annealed binding wire, all labour charges, transportation charges of all materials to Work Site, cost of binding wires, all other items including cover blocks required for the work and minor tools etc. complete. | 54.73 | 113,357.00 | MT | 62,03,478.24 |
| C.5 | Supply, fabricate, transport, handle and erect in position of Structural steel shapes, plates, special plates and built-up sections in link span and link span support frame confirming to steel grades specified in construction drawings and specifications including profile cutting, assembling, hoisting, fixing in position, welding, inspection and painting of priming coat and top coat as per drawings and specification including cost of all materials, fitting charges, all labour charges, transportation charges and minor tools etc. complete. The cost shall include all fabrication, transportation of the support frame assembly, minor equipment, installation of frame on to the piles and all labour charges etc. complete. | 17.39 | 1,80,098.00 | MT | 31,32,329.10 |

| | | | | | |
|-----|--|-------|-------------|-----|----------------|
| C.6 | Supply, fabricate, transport, handle and erect in position of structural steel frame made of structural steel pipes , through thickness steel tubulars, plates, special plates with through thickness quality and built-up sections conforming to steel grades specified in construction drawings and specifications including profile cutting, assembling, hoisting, fixing in position, welding, inspection as per drawings including cost of all materials, fitting charges, all labour charges, transportation charges and minor tools etc. complete. The cost shall include all fabrication, transportation of the frame assembly, minor equipment, installation of frame by lifting and placing and welding with through thickness weld and all labour charges etc. complete. | 55.77 | 2,17,396.00 | MT | 1,21,24,553.92 |
| C.7 | Supply, fabricate, install Aluminium anodes of 95 kg net weight (GALVALUM III) as per specifications and drawings to the guide pin piles as per the locations indicated in the drawings using welded connections to protect the surface against corrosion. The anode characteristics, design and material composition shall be all as per specifications. | 16.00 | 70,645.00 | Nos | 11,30,320.00 |
| C.8 | Conducting geotechnical investigation of soil at the proposed locations as per the drawings including the cost of boring through soils of various strengths and drilling through all kinds of weathered and hard rocks, collection of 90/100mm diameter and 450mm long undisturbed samples from bore holes, conducting SPT in in-situ condition and conducting laboratory experiments on the samples. The cost shall also | 2.00 | 65,000.00 | Nos | 1,30,000.00 |

| | | | | | |
|----------|--|-------|-------------|----|--------------|
| | include preparation and submission of draft report for comments and geotechnical investigation report including detailed results of laboratory studies, recommendation for foundation design etc. including the cost of jack-up barge, drilling rig, other drilling tools and accessories and personnel, minor tools etc. The cost may also include the cost of mobilisation and demobilisation of the equipment and personnel. | | | | |
| D | Modification of linkspan bridge | | | | |
| D.1 | Supply, fabricate, transport, handle and erect in position of Structural steel shapes, plates, special plates and built-up sections in linkspan modification confirming to steel grades specified in construction drawings and specifications including profile cutting, assembling, hoisting, fixing in position, welding, inspection and painting of priming coat and top coat as per drawings and specification including cost of all materials, fitting charges, all labour charges, transportation charges and minor tools etc. complete. The cost shall include all fabrication, transportation of the linkspan assembly, minor equipment, installation of members of linkspan and all labour charges etc. complete. Following clauses apply to the linkspan modification and installation. i. Structural steel shall comply with Project Specifications Vol-III – Clause 1.5 and the coating system shall comply with the Project Specifications Vol-III Clause 1.9. ii. Plan approval from classification society has been obtained by Employer | 30.45 | 1,80,098.00 | MT | 54,84,290.76 |

| | | | | | |
|-----|--|--------|-------------|---------|--------------|
| | <p>including payment to Classification society for plan approval.</p> <p>iii. Contractor shall obtain classification society approval for its material, fabrication and installation including payment to certification agency for inspection and survey, surveyors to visit, inspect and approve the material and modification.</p> <p>iv. Contractor shall arrange for the transportation of surveyors and pay for the day charges as per the number of visits required during fabrication and installation.v. All modification, welding, cutting, bending of plates on site to be as per BS 5400 Part 6 / AWS D1.1 and relevant classification society (IRS/ABS/BV etc.) rules etc. including surveying/ supervision of fabrication and obtaining certification approval from classification society (IRS/ABS/BV etc.).vi. All tests on materials + Welds (Ultrasonic, dye penetration for welds + Water tightness test).</p> | | | | |
| D.2 | <p>Dismantling of structural steel members, plates, shapes, and tubular members on the existing linkspan bridge as per the drawings including the cost of cutting, removing, transportation and safe storage of the removed materials. The cost of dismantling includes tools, equipment, manpower, material etc. all-inclusive as per specification. The cost also includes site visit, inspection, and approval from the classification society.</p> | 215.38 | 4,985.00 | MT | 10,73,670.10 |
| D.3 | <p>Supplying, transporting, fixing and installation of Ramp protector as shown in drawings including the cost of Ramp Protector and all</p> | 21.00 | 1,30,339.00 | Sq m | 27,37,119.00 |

| | | | | | |
|-------------------------------|--|------|-------------|-----|------------------------|
| | other fittings, labour charges, transportation charges up to site and minor tools etc., complete. | | | | |
| D.4 | Supply, fabricate, transport, handle and erect in position proposed trolley structure made of Structural steel shapes, plates, anchor bolts and built up sections conforming to IS 2062 Grade BR-E250 including profile cutting, assembling, hoisting, fixing in position, welding, inspection and applying a priming coat of approved steel primer and top coat of minimum thickness as specified in the specifications made of approved paint all as per specifications and drawings including cost of all materials, fitting charges, all labour charges, transportation charges and minor tools etc. complete. The cost shall include all fabrication, transportation of the steel structure assembly in part or as a whole, lifting using floating crafts and cranes, erection and fixing on the linkspan with appropriate supporting arrangement, roller plates etc complete. | 5.55 | 1,40,540.00 | MT | 7,80,025.78 |
| D.5 | Supply, fabricate, transport, handle and erect in position Hot dipped Galvanised Electro forged Grating purchased from approved manufacturer and thickness as shown in construction drawings and all as per specifications including clips, supports using steel conforming to IS 2062 Grade E250 A/B including cutting, hoisting, fixing in position and including cost of all materials, fitting charges, all labour charges, transportation charges and minor tools etc. complete. | 9.78 | 3319.00 | Sqm | 32,443.23 |
| ESTIMATED PROJECT COST | | | | | 47,33,19,078.00 |
| Add 1.5 % Contingencies | | | | | 70,99,786.17 |
| SUB TOTAL-1 | | | | | 48,04,18,864.17 |

| | |
|------------------------------------|------------------------|
| Add 2% Establishment charges | 96,08,377.28 |
| SUB TOTAL-2 | 49,00,27,241.45 |
| Say | 49,00,27,300.00 |
| CGST (9%) | 4,25,98,717.02 |
| SGST (9%) | 4,25,98,717.02 |
| TOTAL COST OF PROJECT (Say) | 57,52,24,734.04 |
| Say | 57,52,24,800.00 |

1.4 Procedure of payment for BOQ items

Table H-2 Definition of stages for partial payment

| Sl. No | Item description | Payment Procedure |
|--------|--|---|
| (1). | Steel pontoon (For items A1) | <p>Payment shall be made on supply, fabrication, and erection of pontoon as per the actual quantity completed as a unit. Payment can be divided as follows if required for intermediate payment to facilitate the cash flow.</p> <p>a) 50% upon receipt of material at yard for the fabrication as per approved material and QAP documents or part thereof.</p> <p>b) 40% upon completion of fabrication of the pontoon including testing, 3rd party inspection of fabrication.</p> <p>c) 10 % upon completion of fabrication as single unit, certification and successful commissioning at site in operational condition.</p> <p>a) The above shall be worked out based on the quoted rates by the contractor.</p> |
| (2). | Steel Linkspan Bridge (For items D1) | <p>Payment shall be made on supply, modification, and erection of linkspan bridge as per the actual quantity completed as a unit. Payment can be divided as follows if required for intermediate payment to facilitate the cash flow.</p> <p>a) 50% upon receipt of material at yard for the fabrication as per approved material and QAP documents or part thereof.</p> <p>b) 40% upon completion of modification of the linkspan bridge including testing, 3rd party inspection of fabrication as a single unit.</p> <p>c) 10 % upon certification and successful commissioning at site in operational condition.</p> <p>a) The above shall be worked out based on the quoted rates by the contractor.</p> |
| (3). | Linkspan support Piles (For items C1) | <p>Payment shall be made on supply, fabrication, and delivery of piles as per the actual quantity site.</p> <p>a) 75% upon receipt of material at yard for the fabrication as per approved material and QAP documents or part thereof.</p> |

| Sl. No | Item description | Payment Procedure |
|--------|---|--|
| | | <p>b) 25% upon delivery of pipes for piles and the frame at site.</p> <p>Payment shall be made on actual quantity of certified measurements.</p> |
| (4). | <p>Linkspan support super structure frame.</p> <p>(For items C5 & C6)</p> | <p>Payment shall be made on supply, fabrication, and delivery of assembled structure as per the actual quantity site.</p> <p>c) 50% upon receipt of material at yard for the fabrication as per approved material and QAP documents or part thereof.</p> <p>d) 25% upon fabrication and assemble of support frame as per GFC drawings.</p> <p>e) 25% upon installation of the superstructure on top of the piles.</p> <p>Payment shall be made on actual quantity of certified measurements.</p> |
| (5). | <p>Fenders, Bollards, and its Fixtures</p> <p>(For items A6 and B9)</p> | <p>Payment shall be made on supply, erection, and commissioning of items as per the rate quoted by the contractor against each item. Payment can be divided as follows if required for intermediate payment to facilitate the cash flow.</p> <p>a) 70% on Delivery of fenders, bollards and fixtures complete at site.</p> <p>b) 30% on completion of erection of all fenders, bollards, and fixtures.</p> <p>The above shall be worked out based on quoted rates by the contractor.</p> |
| (6). | <p>Ballast pumps and piping</p> <p>(For items A10)</p> | <p>Payment shall be made on supply, erection, and commissioning of items as per the rate quoted by the contractor against each item. Payment can be divided as follows if required for intermediate payment to facilitate the cash flow.</p> <p>a) 70% On Delivery of equipment, cables, and fixtures at site</p> <p>b) 30% On completion of erection and commissioning</p> <p>The above shall be worked out based on quoted rates by the contractor.</p> |
| (7). | <p>Towing and dry-docking of the existing pontoon.</p> <p>(For items B1)</p> | <p>Payment shall be made on a monthly basis provided the pontoon is maintained as per specifications, requirements and as directed by the Engineer representative.</p> <p>The above shall be worked out based on quoted rates by the contractor.</p> |
| (8). | <p>All other items of BOQ as per Table H-1</p> | <p>Payment shall be made on completion of work to the satisfactory acceptance by Engineer's Representative and/or Third-Party inspection agency / certification society inspection.</p> |
| (9). | <p>Linkspan trolley arrangement.</p> | <p>Payment shall be made on supply, fabrication, and delivery of assembled structure as per the actual quantity site.</p> |

| Sl. No | Item description | Payment Procedure |
|--------|------------------|--|
| | (For items D4) | <p>f) 50% upon receipt of material at yard for the fabrication as per approved material and QAP documents or part thereof.</p> <p>g) 25% upon fabrication and assemble of trolley arrangement as per GFC drawings.</p> <p>h) 25% upon installation of the trolley on to the linkspan.</p> <p>Payment shall be made on actual quantity of certified measurements.</p> |

SCHEDULE - I
(See Clause 10.2.3)
DRAWINGS

1. Drawings

In compliance of the obligations set forth in Clause 10.2 of this Agreement, the Employer shall furnish to the Contractor, free of cost, all Drawings for FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT. The drawings provided by Employer are good for construction and shall not be modified or altered in any form without the written approval of the Employer. The tender drawings listed in Annex-I of this schedule-I as part of the tender document and other detailed construction drawings will be issued to the contractor after the signing of this agreement and all these drawings will form part of this agreement. Revisions or changes if any to the drawings by the Engineer will be intimated to the contractor as and when such changes are required due to site conditions.

Notwithstanding the above, Contractor shall also carry out the following.

- (a) Construction enabling engineering to develop design and drawings for the construction related works as stated 10.2.3 (a) and submit to the Engineer for approval.
- (b) Residual engineering to develop design and drawings for the Mechanical, Electrical and Firefighting works as stated in 10.2.3 (b) and submit to the Engineer for approval.

2. Additional Drawings

If the Engineer / Engineer's Representative determines that for discharging its duties and functions under this Agreement, it requires any additional drawings, it may by notice provide to the Contractor additional drawings forthwith and such drawings will form part of Annex-I of this Schedule-I.

Annex - I
(Schedule - I)
List of Drawings

The drawings listed in table below are attached as part of the tender to define the scope of work elements in the project.

Table I-1 Civil/Marine Drawings

| S.No | Drawing No. | Description | Date | Rev |
|----------------|----------------------------|---|------------|-----|
| GENERAL | | | | |
| 1 | IITM-DPA-GHOGHA-DWG-001-01 | DRAWING LIST (SHEET 1 OF 2) | 01.02.2024 | A |
| 2 | IITM-DPA-GHOGHA-DWG-001-02 | DRAWING LIST (SHEET 2 OF 2) | 01.02.2024 | A |
| 3 | IITM-DPA-GHOGHA-DWG-002-01 | GENERAL NOTES (SHEET 1 OF 2) | 01.02.2024 | A |
| 4 | IITM-DPA-GHOGHA-DWG-002-02 | GENERAL NOTES (SHEET 2 OF 2) | 01.02.2024 | A |
| 5 | IITM-DPA-GHOGHA-DWG-003-01 | TYPICAL WELDING DETAILS (SHEET 1 OF 3) | 01.02.2024 | A |
| 6 | IITM-DPA-GHOGHA-DWG-003-02 | TYPICAL WELDING DETAILS (SHEET 2 OF 3) | 01.02.2024 | A |
| 7 | IITM-DPA-GHOGHA-DWG-003-03 | TYPICAL WELDING DETAILS (SHEET 3 OF 3) | 01.02.2024 | A |
| 8 | IITM-DPA-GHOGHA-DWG-004 | OVERALL LAYOUT OF EXISTING RO-RO FACILITIES | 01.02.2024 | A |
| 9 | IITM-DPA-GHOGHA-DWG-005-01 | LAYOUT AND SECTIONS OF EXISTING RO-RO FACILITIES (SHEET 1 OF 5) | 01.02.2024 | A |
| 10 | IITM-DPA-GHOGHA-DWG-005-02 | LAYOUT AND SECTIONS OF EXISTING RO-RO FACILITIES (SHEET 2 OF 5) | 01.02.2024 | A |
| 11 | IITM-DPA-GHOGHA-DWG-005-03 | LAYOUT AND SECTIONS OF EXISTING RO-RO FACILITIES (SHEET 3 OF 5) | 01.02.2024 | A |
| 12 | IITM-DPA-GHOGHA-DWG-005-04 | LAYOUT AND SECTIONS OF EXISTING RO-RO FACILITIES (SHEET 4 OF 5) | 01.02.2024 | A |
| 13 | IITM-DPA-GHOGHA-DWG-005-05 | LAYOUT AND SECTIONS OF EXISTING RO-RO FACILITIES (SHEET 5 OF 5) | 01.02.2024 | A |
| 14 | IITM-DPA-GHOGHA-DWG-006-01 | LAYOUT AND DETAILS OF EXISTING RORO JETTY WITH MODIFIED LINKSPAN AND NEW PONTOON (SHEET 1 OF 7) | 01.02.2024 | A |
| 15 | IITM-DPA-GHOGHA-DWG-006-02 | LAYOUT AND DETAILS OF EXISTING RORO JETTY WITH MODIFIED LINKSPAN AND NEW PONTOON (SHEET 2 OF 7) | 01.02.2024 | A |
| 16 | IITM-DPA-GHOGHA-DWG-006-03 | LAYOUT AND DETAILS OF EXISTING RORO JETTY WITH MODIFIED LINKSPAN AND NEW PONTOON (SHEET 3 OF 7) | 01.02.2024 | A |
| 17 | IITM-DPA-GHOGHA-DWG-006-04 | LAYOUT AND DETAILS OF EXISTING RORO JETTY WITH MODIFIED | 01.02.2024 | A |

| S.No | Drawing No. | Description | Date | Rev |
|------|----------------------------|--|------------|-----|
| | | LINKSPAN AND NEW PONTOON (SHEET 4 OF 7) | | |
| 18 | IITM-DPA-GHOGHA-DWG-006-05 | LAYOUT AND DETAILS OF EXISTING RORO JETTY WITH MODIFIED LINKSPAN AND NEW PONTOON (SHEET 5 OF 7) | 01.02.2024 | A |
| 19 | IITM-DPA-GHOGHA-DWG-006-06 | LAYOUT AND DETAILS OF EXISTING RORO JETTY WITH MODIFIED LINKSPAN AND NEW PONTOON (SHEET 6 OF 7) | 01.02.2024 | A |
| 20 | IITM-DPA-GHOGHA-DWG-006-07 | LAYOUT AND DETAILS OF EXISTING RORO JETTY WITH MODIFIED LINKSPAN AND NEW PONTOON (SHEET 7 OF 7) | 01.02.2024 | A |
| 21 | IITM-DPA-GHOGHA-DWG-007-01 | LAYOUT AND SECTIONS OF RORO JETTY WITH MODIFIED LINKSPAN/PONTOON (SHEET 1 OF 7) | 01.02.2024 | A |
| 22 | IITM-DPA-GHOGHA-DWG-007-02 | LAYOUT AND SECTIONS OF RORO JETTY WITH MODIFIED LINKSPAN/PONTOON (SHEET 2 OF 7) | 01.02.2024 | A |
| 23 | IITM-DPA-GHOGHA-DWG-007-03 | LAYOUT AND SECTIONS OF RORO JETTY WITH MODIFIED LINKSPAN/PONTOON (SHEET 3 OF 7) | 01.02.2024 | A |
| 24 | IITM-DPA-GHOGHA-DWG-007-04 | LAYOUT AND SECTIONS OF RORO JETTY WITH MODIFIED LINKSPAN/PONTOON (SHEET 4 OF 7) | 01.02.2024 | A |
| 25 | IITM-DPA-GHOGHA-DWG-007-05 | LAYOUT AND SECTIONS OF RORO JETTY WITH MODIFIED LINKSPAN/PONTOON (SHEET 5 OF 7) | 01.02.2024 | A |
| 26 | IITM-DPA-GHOGHA-DWG-007-06 | LAYOUT AND SECTIONS OF RORO JETTY WITH MODIFIED LINKSPAN/PONTOON (SHEET 6 OF 7) | 01.02.2024 | A |
| 27 | IITM-DPA-GHOGHA-DWG-007-07 | LAYOUT AND SECTIONS OF RORO JETTY WITH MODIFIED LINKSPAN/PONTOON (SHEET 7 OF 7) | 01.02.2024 | A |
| 28 | IITM-DPA-GHOGHA-DWG-008-01 | ERECTION SEQUENCE OF MODIFIED LINKSPAN AND NEW PONTOON (SHEET 1 OF 5) | 01.02.2024 | A |
| 29 | IITM-DPA-GHOGHA-DWG-008-02 | ERECTION SEQUENCE OF MODIFIED LINKSPAN AND NEW PONTOON (SHEET 2 OF 5) | 01.02.2024 | A |

| S.No | Drawing No. | Description | Date | Rev |
|--------------------|----------------------------|---|------------|-----|
| 30 | IITM-DPA-GHOGHA-DWG-008-03 | ERECTION SEQUENCE OF MODIFIED LINKSPAN AND NEW PONTOON (SHEET 3 OF 5) | 01.02.2024 | A |
| 31 | IITM-DPA-GHOGHA-DWG-008-04 | ERECTION SEQUENCE OF MODIFIED LINKSPAN AND NEW PONTOON (SHEET 4 OF 5) | 01.02.2024 | A |
| 32 | IITM-DPA-GHOGHA-DWG-008-05 | ERECTION SEQUENCE OF MODIFIED LINKSPAN AND NEW PONTOON (SHEET 5 OF 5) | 01.02.2024 | A |
| 33 | IITM-DPA-GHOGHA-DWG-009 | BORE HOLE LAYOUT | 01.02.2024 | A |
| NEW PONTOON | | | | |
| 34 | IITM-DPA-GHOGHA-DWG-101-01 | GENERAL ARRANGEMENT OF NEW PONTOON (SHEET 1 OF 3) | 01.02.2024 | A |
| 35 | IITM-DPA-GHOGHA-DWG-101-02 | GENERAL ARRANGEMENT OF NEW PONTOON (SHEET 2 OF 3) | 01.02.2024 | A |
| 36 | IITM-DPA-GHOGHA-DWG-101-03 | GENERAL ARRANGEMENT OF NEW PONTOON (SHEET 3 OF 3) | 01.02.2024 | A |
| 37 | IITM-DPA-GHOGHA-DWG-102-01 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 1 OF 16) | 01.02.2024 | A |
| 38 | IITM-DPA-GHOGHA-DWG-102-02 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 2 OF 16) | 01.02.2024 | A |
| 39 | IITM-DPA-GHOGHA-DWG-102-03 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 3 OF 16) | 01.02.2024 | A |
| 40 | IITM-DPA-GHOGHA-DWG-102-04 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 4 OF 16) | 01.02.2024 | A |
| 41 | IITM-DPA-GHOGHA-DWG-102-05 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 5 OF 16) | 01.02.2024 | A |
| 42 | IITM-DPA-GHOGHA-DWG-102-06 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 6 OF 16) | 01.02.2024 | A |
| 43 | IITM-DPA-GHOGHA-DWG-102-07 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 7 OF 16) | 01.02.2024 | A |
| 44 | IITM-DPA-GHOGHA-DWG-102-08 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 8 OF 16) | 01.02.2024 | A |
| 45 | IITM-DPA-GHOGHA-DWG-102-09 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 9 OF 16) | 01.02.2024 | A |
| 46 | IITM-DPA-GHOGHA-DWG-102-10 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 10 OF 16) | 01.02.2024 | A |
| 47 | IITM-DPA-GHOGHA-DWG-102-11 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 11 OF 16) | 01.02.2024 | A |
| 48 | IITM-DPA-GHOGHA-DWG-102-12 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 12 OF 16) | 01.02.2024 | A |
| 49 | IITM-DPA-GHOGHA-DWG-102-13 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 13 OF 16) | 01.02.2024 | A |
| 50 | IITM-DPA-GHOGHA-DWG-102-14 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 14 OF 16) | 01.02.2024 | A |
| 51 | IITM-DPA-GHOGHA-DWG-102-15 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 15 OF 16) | 01.02.2024 | A |
| 52 | IITM-DPA-GHOGHA-DWG-102-16 | FRAMING AND DETAILS OF NEW PONTOON (SHEET 16 OF 16) | 01.02.2024 | A |

| S.No | Drawing No. | Description | Date | Rev |
|------|----------------------------|---|------------|-----|
| 53 | IITM-DPA-GHOGHA-DWG-103-01 | GUIDED YOKE DETAILS (SHEET 1 OF 5) | 01.02.2024 | A |
| 54 | IITM-DPA-GHOGHA-DWG-103-02 | GUIDED YOKE DETAILS (SHEET 2 OF 5) | 01.02.2024 | A |
| 55 | IITM-DPA-GHOGHA-DWG-103-03 | GUIDED YOKE DETAILS (SHEET 3 OF 5) | 01.02.2024 | A |
| 56 | IITM-DPA-GHOGHA-DWG-103-04 | GUIDED YOKE DETAILS (SHEET 4 OF 5) | 01.02.2024 | A |
| 57 | IITM-DPA-GHOGHA-DWG-103-05 | GUIDED YOKE DETAILS (SHEET 5 OF 5) | 01.02.2024 | A |
| 58 | IITM-DPA-GHOGHA-DWG-104-01 | LINKSPAN SEATING DETAILS (SHEET 1 OF 8) | 01.02.2024 | A |
| 59 | IITM-DPA-GHOGHA-DWG-104-02 | LINKSPAN SEATING DETAILS (SHEET 2 OF 8) | 01.02.2024 | A |
| 60 | IITM-DPA-GHOGHA-DWG-104-03 | LINKSPAN SEATING DETAILS (SHEET 3 OF 8) | 01.02.2024 | A |
| 61 | IITM-DPA-GHOGHA-DWG-104-04 | LINKSPAN SEATING DETAILS (SHEET 4 OF 8) | 01.02.2024 | A |
| 62 | IITM-DPA-GHOGHA-DWG-104-05 | LINKSPAN SEATING DETAILS (SHEET 5 OF 8) | 01.02.2024 | A |
| 63 | IITM-DPA-GHOGHA-DWG-104-06 | LINKSPAN SEATING DETAILS (SHEET 6 OF 8) | 01.02.2024 | A |
| 64 | IITM-DPA-GHOGHA-DWG-104-07 | LINKSPAN SEATING DETAILS (SHEET 7 OF 8) | 01.02.2024 | A |
| 65 | IITM-DPA-GHOGHA-DWG-104-08 | LINKSPAN SEATING DETAILS (SHEET 8 OF 8) | 01.02.2024 | A |
| 66 | IITM-DPA-GHOGHA-DWG-105-01 | LAYOUT AND DETAILS OF MANHOLES AND COVERPLATES (SHEET 1 OF 6) | 01.02.2024 | A |
| 67 | IITM-DPA-GHOGHA-DWG-105-02 | LAYOUT AND DETAILS OF MANHOLES AND COVERPLATES (SHEET 2 OF 6) | 01.02.2024 | A |
| 68 | IITM-DPA-GHOGHA-DWG-105-03 | LAYOUT AND DETAILS OF MANHOLES AND COVERPLATES (SHEET 3 OF 6) | 01.02.2024 | A |
| 69 | IITM-DPA-GHOGHA-DWG-105-04 | LAYOUT AND DETAILS OF MANHOLES AND COVERPLATES (SHEET 4 OF 6) | 01.02.2024 | A |
| 70 | IITM-DPA-GHOGHA-DWG-105-05 | LAYOUT AND DETAILS OF MANHOLES AND COVERPLATES (SHEET 5 OF 6) | 01.02.2024 | A |
| 71 | IITM-DPA-GHOGHA-DWG-105-06 | LAYOUT AND DETAILS OF MANHOLES AND COVERPLATES (SHEET 6 OF 6) | 01.02.2024 | A |
| 72 | IITM-DPA-GHOGHA-DWG-106-01 | ANODE DETAILS FOR PONTOON (SHEET 1 OF 3) | 01.02.2024 | A |
| 73 | IITM-DPA-GHOGHA-DWG-106-02 | ANODE DETAILS FOR PONTOON (SHEET 1 OF 3) | 01.02.2024 | A |

| S.No | Drawing No. | Description | Date | Rev |
|---------------------------------------|----------------------------|--|------------|-----|
| 74 | IITM-DPA-GHOGHA-DWG-106-03 | ANODE DETAILS FOR PONTOON (SHEET 1 OF 3) | 01.02.2024 | A |
| 75 | IITM-DPA-GHOGHA-DWG-107-01 | LAYOUT AND DETAILS OF VENT AND BALLAST PIPING (SHEET 1 OF 3) | 01.02.2024 | A |
| 76 | IITM-DPA-GHOGHA-DWG-107-02 | LAYOUT AND DETAILS OF VENT AND BALLAST PIPING (SHEET 2 OF 3) | 01.02.2024 | A |
| 77 | IITM-DPA-GHOGHA-DWG-107-03 | LAYOUT AND DETAILS OF VENT AND BALLAST PIPING (SHEET 3 OF 3) | 01.02.2024 | A |
| 78 | IITM-DPA-GHOGHA-DWG-108-01 | LAYOUT AND DETAILS OF BALLAST/DEBALLAST PUMP (SHEET 1 OF 6) | 01.02.2024 | A |
| 79 | IITM-DPA-GHOGHA-DWG-108-02 | LAYOUT AND DETAILS OF BALLAST/DEBALLAST PUMP (SHEET 2 OF 6) | 01.02.2024 | A |
| 80 | IITM-DPA-GHOGHA-DWG-108-03 | LAYOUT AND DETAILS OF BALLAST/DEBALLAST PUMP (SHEET 3 OF 6) | 01.02.2024 | A |
| 81 | IITM-DPA-GHOGHA-DWG-108-04 | LAYOUT AND DETAILS OF BALLAST/DEBALLAST PUMP (SHEET 4 OF 6) | 01.02.2024 | A |
| 82 | IITM-DPA-GHOGHA-DWG-108-05 | LAYOUT AND DETAILS OF BALLAST/DEBALLAST PUMP (SHEET 5 OF 6) | 01.02.2024 | A |
| 83 | IITM-DPA-GHOGHA-DWG-108-06 | LAYOUT AND DETAILS OF BALLAST/DEBALLAST PUMP (SHEET 6 OF 6) | 01.02.2024 | A |
| 84 | IITM-DPA-GHOGHA-DWG-109 | FIXING DETAILS OF BOLLARDS | 01.02.2024 | A |
| 85 | IITM-DPA-GHOGHA-DWG-110-01 | LAYOUT AND DETAILS OF PONTOON CRASH BARRIER (SHEET 1 OF 2) | 01.02.2024 | A |
| 86 | IITM-DPA-GHOGHA-DWG-110-02 | LAYOUT AND DETAILS OF PONTOON CRASH BARRIER (SHEET 2 OF 2) | 01.02.2024 | A |
| 87 | IITM-DPA-GHOGHA-DWG-111 | TESTING PLAN OF TANKS AND BULKHEADS | 01.02.2024 | A |
| 88 | IITM-DPA-GHOGHA-DWG-112 | PONTOON DRAFT MARKING DETAILS | 01.02.2024 | A |
| LINKSPAN SUPPORT FRAME DETAILS | | | | |
| 89 | IITM-DPA-GHOGHA-DWG-201-01 | LAYOUT AND DETAILS OF LINKSPAN SUPPORT FRAME AND PADEYE DETAILS (SHEET 1 OF 7) | 01.02.2024 | A |
| 90 | IITM-DPA-GHOGHA-DWG-201-02 | LAYOUT AND DETAILS OF LINKSPAN SUPPORT FRAME AND PADEYE DETAILS (SHEET 2 OF 7) | 01.02.2024 | A |

| S.No | Drawing No. | Description | Date | Rev |
|---|----------------------------|--|------------|-----|
| 91 | IITM-DPA-GHOGHA-DWG-201-03 | LAYOUT AND DETAILS OF LINKSPAN SUPPORT FRAME AND PADEYE DETAILS (SHEET 3 OF 7) | 01.02.2024 | A |
| 92 | IITM-DPA-GHOGHA-DWG-201-04 | LAYOUT AND DETAILS OF LINKSPAN SUPPORT FRAME AND PADEYE DETAILS (SHEET 4 OF 7) | 01.02.2024 | A |
| 93 | IITM-DPA-GHOGHA-DWG-201-05 | LAYOUT AND DETAILS OF LINKSPAN SUPPORT FRAME AND PADEYE DETAILS (SHEET 5 OF 7) | 01.02.2024 | A |
| 94 | IITM-DPA-GHOGHA-DWG-201-06 | LAYOUT AND DETAILS OF LINKSPAN SUPPORT FRAME AND PADEYE DETAILS (SHEET 6 OF 7) | 01.02.2024 | A |
| 95 | IITM-DPA-GHOGHA-DWG-201-07 | LAYOUT AND DETAILS OF LINKSPAN SUPPORT FRAME AND PADEYE DETAILS (SHEET 7 OF 7) | 01.02.2024 | A |
| 96 | IITM-DPA-GHOGHA-DWG-202-01 | LAYOUT AND DETAILS OF STEEL PILES (SHEET 1 OF 2) | 01.02.2024 | A |
| 97 | IITM-DPA-GHOGHA-DWG-202-02 | LAYOUT AND DETAILS OF STEEL PILES (SHEET 2 OF 2) | 01.02.2024 | A |
| 98 | IITM-DPA-GHOGHA-DWG-203 | TYPICAL ANODE DETAILS FOR STEEL PILES | 01.02.2024 | A |
| MODIFICATION OF EXISTING PONTOON | | | | |
| | | | | |
| 99 | IITM-DPA-GHOGHA-DWG-300 | DEMOLITION PLAN FOR OLD PONTOON MODIFICATION | 01.02.2024 | A |
| 100 | IITM-DPA-GHOGHA-DWG-301-01 | LAYOUT AND DETAILS OF OLD PONTOON MODIFICATION (SHEET 1 OF 5) | 01.02.2024 | A |
| 101 | IITM-DPA-GHOGHA-DWG-301-02 | LAYOUT AND DETAILS OF OLD PONTOON MODIFICATION (SHEET 2 OF 5) | 01.02.2024 | A |
| 102 | IITM-DPA-GHOGHA-DWG-301-03 | LAYOUT AND DETAILS OF OLD PONTOON MODIFICATION (SHEET 3 OF 5) | 01.02.2024 | A |
| 103 | IITM-DPA-GHOGHA-DWG-301-04 | LAYOUT AND DETAILS OF OLD PONTOON MODIFICATION (SHEET 4 OF 5) | 01.02.2024 | A |
| 104 | IITM-DPA-GHOGHA-DWG-301-05 | LAYOUT AND DETAILS OF OLD PONTOON MODIFICATION (SHEET 5 OF 5) | 01.02.2024 | A |
| 105 | IITM-DPA-GHOGHA-DWG-302-01 | LINKSPAN SEATING DETAILS (SHEET 1 OF 5) | 01.02.2024 | A |
| 106 | IITM-DPA-GHOGHA-DWG-302-02 | LINKSPAN SEATING DETAILS (SHEET 1 OF 5) | 01.02.2024 | A |
| 107 | IITM-DPA-GHOGHA-DWG-302-03 | LINKSPAN SEATING DETAILS (SHEET 1 OF 5) | 01.02.2024 | A |
| 108 | IITM-DPA-GHOGHA-DWG-302-04 | LINKSPAN SEATING DETAILS (SHEET 1 OF 5) | 01.02.2024 | A |

| S.No | Drawing No. | Description | Date | Rev |
|------|----------------------------|---|------------|-----|
| 109 | IITM-DPA-GHOGHA-DWG-302-05 | LINKSPAN SEATING DETAILS (SHEET 1 OF 5) | 01.02.2024 | A |
| 110 | IITM-DPA-GHOGHA-DWG-303-01 | LAYOUT AND DETAILS OF NEW STEEL RAMP EXTENSION (SHHET 1 OF 6) | 01.02.2024 | A |
| 111 | IITM-DPA-GHOGHA-DWG-303-02 | LAYOUT AND DETAILS OF NEW STEEL RAMP EXTENSION (SHHET 2 OF 6) | 01.02.2024 | A |
| 112 | IITM-DPA-GHOGHA-DWG-303-03 | LAYOUT AND DETAILS OF NEW STEEL RAMP EXTENSION (SHHET 3 OF 6) | 01.02.2024 | A |
| 113 | IITM-DPA-GHOGHA-DWG-303-04 | LAYOUT AND DETAILS OF NEW STEEL RAMP EXTENSION (SHHET 4 OF 6) | 01.02.2024 | A |
| 114 | IITM-DPA-GHOGHA-DWG-303-05 | LAYOUT AND DETAILS OF NEW STEEL RAMP EXTENSION (SHHET 5 OF 6) | 01.02.2024 | A |
| 115 | IITM-DPA-GHOGHA-DWG-303-06 | LAYOUT AND DETAILS OF NEW STEEL RAMP EXTENSION (SHHET 6 OF 6) | 01.02.2024 | A |
| 116 | IITM-DPA-GHOGHA-DWG-401 | LINKSPAN SEATING DETAILS | 01.02.2024 | A |
| 117 | IITM-DPA-GHOGHA-DWG-402-01 | LINKSPAN MODIFICATION AND DETAILS (SHEET 1 OF 3) | 01.02.2024 | A |
| 118 | IITM-DPA-GHOGHA-DWG-402-02 | LINKSPAN MODIFICATION AND DETAILS (SHEET 2 OF 3) | 01.02.2024 | A |
| 119 | IITM-DPA-GHOGHA-DWG-402-03 | LINKSPAN MODIFICATION AND DETAILS (SHEET 3 OF 3) | 01.02.2024 | A |
| 120 | IITM-DPA-GHOGHA-DWG-403-01 | TRANSITION FLAP DETAILS (SHEET 1 OF 2) | 01.02.2024 | A |
| 121 | IITM-DPA-GHOGHA-DWG-403-02 | TRANSITION FLAP DETAILS (SHEET 2 OF 2) | 01.02.2024 | A |
| 122 | IITM-DPA-GHOGHA-DWG-501-01 | GENERAL ARRANGEMENT OF TROLLEY (SHEET 1 OF 3) | 01.02.2024 | A |
| 123 | IITM-DPA-GHOGHA-DWG-501-02 | GENERAL ARRANGEMENT OF TROLLEY (SHEET 2 OF 3) | 01.02.2024 | A |
| 124 | IITM-DPA-GHOGHA-DWG-501-03 | GENERAL ARRANGEMENT OF TROLLEY (SHEET 3 OF 3) | 01.02.2024 | A |
| 125 | IITM-DPA-GHOGHA-DWG-502 | GENERAL ARRANGEMENT OF STEEL BRIDGE | 01.02.2024 | A |

SCHEDULE - J
(See Clause 10.3.2)
PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

During Construction period, the Contractor shall comply with the requirements set forth in this Schedule-J for each of the Project Milestones and the **Scheduled Completion Date**. Within 15 (fifteen) days of the date of each Project Milestone, the Contractor shall notify the Employer of such compliance along with necessary particulars thereof.

2. Project Milestone-I

- 2.1 Project Milestone-I shall occur on the date falling on the 92nd (Ninety-two) day from the Appointed Date (the “**Project Milestone-I**”).
- 2.2 Prior to the occurrence of Project Milestone-I, the Contractor shall have completed the major procurement of materials for all items of work including linkspan modification and pontoon for the modification of RoRo/Ropax facility and submitted to the Employer duly and validly prepared Monthly Payment Statements for an amount not less than 25% (Twenty-Five per cent) of the Contract Price.

3. Project Milestone-II

- 3.1 Project Milestone-II shall occur on the date falling on the 184th (One hundred and eighty-four) day from the Appointed Date (the “**Project Milestone-II**”).
- 3.2 Prior to the occurrence of Project Milestone-II, the Contractor shall have continued with modification of RoRo/Ropax facility including fabrication of pontoon and modification of linkspan structures and submitted to the Employer duly and validly prepared Monthly Payment Statements for an amount not less than 50% (Fifty per cent) of the Contract Price.

4. Project Milestone-III

- 4.1 Project Milestone-III shall occur on the date falling on the 276th (Two hundred and seventy-six five) day from the Appointed Date (the “**Project Milestone-II**”).

- 4.2 Prior to the occurrence of Project Milestone-III, the Contractor shall have continued with modification of RoRo/Ropax facility including modification of linkspan and transportation of pontoon to the site and submitted to the Employer duly and validly prepared Monthly Payment Statements for an amount not less than 75% (Seventy-Five per cent) of the Contract Price.

5. Project Milestone-IV

- 5.1 Project Milestone-IV shall occur on the date falling on the 365th (Three hundred and sixty-five) day from the Appointed Date (the “**Project Milestone-II**”).
- 5.2 Prior to the occurrence of Project Milestone-IV, the Contractor shall have completed the modification of RoRo/Ropax facility as per approved drawings and submitted to the Employer duly and validly prepared Final Payment Statements for an amount not less than 100% (Hundred per cent) of the Contract Price.

6. Scheduled Completion Date

- 6.1 The Scheduled Completion Date shall occur on the 365th (Three hundred and sixty-five) day from the Appointed Date.
- 6.2 On or before the Scheduled Completion Date, the Contractor shall have completed construction in accordance with this Agreement.

7. Extension of time

Upon extension of any or all the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE - K

(See Clause 12.1.2)

Tests on Completion

1. Schedule for Tests

- 1.1 The Contractor shall, no later than 30 (thirty) days prior to the likely completion of construction of any works of the structure or part thereof, notify the Engineer / Engineer's Representative and the Employer of its intent to subject the works or part thereof to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Engineer / Engineer's Representative and the Employer detailed inventory and particulars of all works and equipment forming part of Works.
- 1.2 The Contractor shall notify the Engineer / Engineer's Representative of its readiness to subject the items to tests at any time after 10 (ten) days from the date of such notice, and upon receipt of such notice, the Engineer / Engineer's Representative shall, in consultation with the Contractor, determine the date and time for each Test and notify the same to the Employer who may designate its representative to witness the Tests. The Engineer / Engineer's Representative shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule-K.

2. Tests

- 2.1 The Engineer / Engineer's Representative shall direct the contractor to conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement. The physical tests shall include the following as required by codes and standards.
 - Concrete Cube Tests
 - Tests on aggregates
 - Tests on reinforcement
 - Tests on cement
 - Tests on steel plates
 - Tests relevant for fenders, bollards etc.
 - All other tests specified elsewhere in the workmanship and materials specification, drawings and scope of works.

All expenses related to the above tests shall form part of the contract price and no additional payment will be made to the contractor.

2.2 Blank

2.3 Blank

2.4 Other tests: The Engineer / Engineer's Representative may require the Contractor to carry out or cause to be carried additional tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

2.5 Environmental audit: The Engineer / Engineer's Representative shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.6 Safety Audit: The Engineer / Engineer's Representative shall carry out, or cause to be carried out, a safety audit to determine conformity of the Project with the safety requirements and Good Industry Practice.

3. Agency for conducting Tests.

All Tests set forth in this Schedule-K shall be conducted by the Contractor using specialised agency to be approved by Engineer / Engineer's Representative or such other agency or person as it may specify in consultation with the Employer.

4. Completion Certificate

Upon successful completion of All Tests, the Engineer / Engineer's Representative shall issue the Completion Certificate in accordance with the provisions of Article 12.

SCHEDULE - L

(See Clause 12.2 and 12.4)

PROVISIONAL CERTIFICATE

1. I, (Name of the Engineer / Engineer's Representative), acting as the Engineer / Engineer's Representative, under and in accordance with the Agreement dated (the **"Agreement"**), for FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT, Gujarat (the **"Project"**) through (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.
2. Works that are incomplete on account of Time Extension have been specified in the Punch List appended hereto, and the Contractor has agreed and accepted that it shall complete all such works in the time and manner set forth in the Agreement. In addition, certain minor works are incomplete, and these are not likely to cause material inconvenience to the Users of the Project or affect their safety. The Contractor has agreed and accepted that as a condition of this Provisional Certificate, it shall complete such minor works within 30 (thirty) days hereof. These minor works have also been specified in the aforesaid Punch List.
3. In view of the foregoing, I am satisfied that the Project facilities can be safely and reliably placed in service of the Users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into operation on this the day of 2024.

ACCEPTED, SIGNED, SEALED

SIGNED, SEALED AND

AND DELIVERED

DELIVERED

For and on behalf of

For and on behalf of

CONTRACTOR by:

Engineer / Engineer's Representative by

(Signature)

(Signature)

COMPLETION CERTIFICATE

1. I, (Name of the Engineer / Engineer's Representative), acting as the Engineer / Engineer's Representative, under and in accordance with the Agreement dated (the "**Agreement**"), for FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT. (the "**Project**") through (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, and the Project is hereby declared fit for entry into operation on this the day of 2024.

SIGNED, SEALED AND DELIVERED

For and on behalf of
the Engineer / Engineer's Representative by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE - M
(See Clauses 14.6, 15.2 and 19.7)
PAYMENT REDUCTION FOR NON-COMPLIANCE

Blank

SCHEDULE - N
(See Clause 18.1.1)

SELECTION OF ENGINEER / ENGINEER'S REPRESENTATIVE

1. Contract Management Framework (CMF)

The execution of FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT will be based on the following Contract Management Framework (CMF). The framework consists of the following arrangement.

- a) The Deendayal Port Authority (DPA) will administer the project. As a representative of Board of Trustees of DPA, a body corporate under Major Port Trust Act 1963 by nomination No. GSR427 (E) dated 8.05.1982 issued by Government of India (as amended) acting through its Chairman, Deputy Chairman or the Chief Engineer (Civil Department) or any other officers so nominated by the Board.
- b) To administer the Contracts under the Project, DPA will be the contractual employer; the Employer has a Project Implementation Unit (PIU) to be in-charge for the contract. This PIU is headed by a Chief Engineer (Civil Engineering Department) assisted by appropriate professional and support staff. The Chief Engineer (Civil Department) will act on behalf of the “**Employer**”.
- c) The Chief Engineer on approval of the Board, may appoint Deputy Chief Engineer or Superintending Engineer of DPA as the **Employer's Engineer** for the project.
- d) Department of Ocean Engineering, IIT Madras has been appointed by the Employer as the **Engineer's Representative (Design Consultant and Project Management Consultant)** for the project for design and supervision of the modification works of RoRo/RoPax facility at Ghogha.
- e) The **Engineer's Representative** will make the necessary measurements and control the quality of works. The Engineer shall make all engineering decisions required during the implementation of the Contract. However, the Engineer Representative shall seek prior approval of the Employer/Engineer with regard to the following;
 - i. Variation order with financial implications.
 - ii. Variations in work quantities which attract for fixation of rates.
 - iii. Sanction of additional items, sums or costs and variations of rates and prices.
 - iv. Approval of subletting of any part of works.
 - v. Approval of any extension of contractual time limits.
 - vi. Stopping and/or termination of the Contract for Works.

2. Blank

3. Terms of Reference

The Terms of Reference for the Employers' Engineer (the "**TOR**") shall substantially conform with Annex 1 to this Schedule N.

4. Blank

Annex – I
(Schedule - N)

**TERMS OF REFERENCE FOR ENGINEER / ENGINEER'S
REPRESENTATIVE**

1. Scope

- 1.1 These Terms of Reference (the “**TOR**”) for the Engineer / Engineer’s Representative are being specified pursuant to the Agreement dated (the “**Agreement**”), which has been entered into between DPA represented by The Chairman (the “**Employer**”) and (the “**Contractor**”) for FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 The **TOR** shall apply to FABRICATION, INSTALLATION OF NEW PONTOON AND REPAIR AND MAINTENANCE OF EXISTING PONTOON FOR RORO/ROPAX FACILITY AT GHOGHA- GUJARAT.

2. Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. General

- 3.1 The Engineer / Engineer’s Representative shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

- 3.2 The Engineer / Engineer's Representative shall perform the duties and exercise the Employer in accordance with the provisions of this Agreement, but subject to obtaining prior written approval of the Employer before determining:
- (a) any Time Extension;
 - (b) any additional cost to be paid by the Employer to the Contractor;
 - (c) the Termination of Payment; or
 - (d) Blank**
- 3.3 The Engineer / Engineer's Representative shall submit regular periodic reports, at least once every month, to the Employer in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Engineer / Engineer's Representative within 10 (ten) days of the beginning of every month.
- 3.4 The Engineer / Engineer's Representative shall inform the Contractor of any delegation of its duties and responsibilities to its suitably qualified and experienced personnel; provided, however, that it shall not delegate the Employer to refer any matter for the Employer's prior approval in accordance with the provisions of Clause 18.2.
- 3.5 The Engineer / Engineer's Representative shall aid and advise the Employer on any proposal for Change of Scope under Article 13.
- 3.6 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Engineer / Engineer's Representative shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

4. Construction Period

- 4.1 During the Construction Period, the Engineer / Engineer's Representative shall review the Drawings furnished by the Contractor along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys, and the recommendations of the Safety Officer in accordance with the provisions of Clause 10.1.6. The Engineer / Engineer's Representative shall complete such review and send its observations to the Employer and the Contractor within 15 (fifteen) days of receipt of such Drawings; provided, however that in case of a major structure, the aforesaid period of 15 (fifteen) days may be extended up to 30 (thirty) days. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

- 4.2 The Engineer / Engineer's Representative shall review any revised Drawings sent to it by the Contractor and furnish its comments within 10 (ten) days of receiving such Drawings.
- 4.3 The Engineer / Engineer's Representative shall review the Quality Assurance Plan submitted by the Contractor and shall convey its comments to the Contractor within a period of 21 (twenty-one) days stating the modifications, if any, required thereto.
- 4.4 The Engineer / Engineer's Representative shall complete the review of the methodology proposed to be adopted by the Contractor for executing the Works and convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.
- 4.5 Blank**
- 4.6 The Engineer / Engineer's Representative shall review the monthly progress report furnished by the Contractor and send its comments thereon to the Employer and the Contractor within 7 (seven) days of receipt of such report.
- 4.7 The Engineer / Engineer's Representative shall inspect the Construction Works and shall submit a monthly Inspection Report bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. In particular, the Engineer / Engineer's Representative shall include in its Inspection Report, the compliance of the recommendations made by the Safety Officer.
- 4.8 The Engineer / Engineer's Representative shall conduct the pre-construction review of manufacturer's test reports and standard samples of manufactured Materials, and such other Materials as the Engineer / Engineer's Representative may require.
- 4.9 For determining that the Works conform to Specifications and Standards, the Engineer / Engineer's Representative shall require the Contractor to carry out, or cause to be carried out, tests at such time and frequency and in such manner as specified in the Agreement and in accordance with Good Industry Practice for quality assurance.
- 4.10 The Engineer / Engineer's Representative shall test check at least 20 (twenty) percent of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Engineer / Engineer's Representative in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Contractor for its own quality assurance in accordance with Good Industry Practice.

- 4.12 In the event that results of any tests conducted under Clause 11.10 establish any Defects or deficiencies in the Works, the Engineer / Engineer's Representative shall require the Contractor to carry out remedial measures.
- 4.13 The Engineer / Engineer's Representative may instruct the Contractor to execute any work which is urgently required for the safety of the Project, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 21.6 shall apply.
- 4.14 In the event that the Contractor fails to achieve any of the Project Milestones, the Engineer / Engineer's Representative shall undertake a review of the progress of construction and identify potential delays, if any. If the Engineer / Engineer's Representative shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Contractor to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Contractor, the Engineer / Engineer's Representative shall review the same and send its comments to the Employer and the Contractor forthwith.
- 4.15 The Engineer / Engineer's Representative shall obtain from the Contractor a copy of all the Contractor's quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.4.
- 4.16 Engineer / Engineer's Representative may recommend to the Employer suspension of the whole or part of the Works if the work threatens the safety of the Users and pedestrians. After the Contractor has carried out remedial measure, the Engineer / Engineer's Representative shall inspect such remedial measures forthwith and make a report to the Employer recommending whether or not the suspension hereunder may be revoked.
- 4.17 In the event that the Contractor carries out any remedial measures to secure the safety of suspended works and Users, and requires the Engineer / Engineer's Representative to inspect such works, the Engineer / Engineer's Representative shall inspect the suspended works within 3 (three) days of receiving such notice, and make a report to the Employer forthwith, recommending whether or not such suspension may be revoked by the Employer.

- 4.18 The Engineer / Engineer's Representative shall carry out, or cause to be carried out, all the tests specified in Schedule-K and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.18 and all matters incidental thereto, the Engineer / Engineer's Representative shall act under and in accordance with the provisions of Article 12 and Schedule-K.

5. Coordination with Design Consultant

- 5.1 The Engineer / Engineer's Representative shall request the Design Consultant for any modification to the structures such as pile foundation required during execution due to ground conditions or any unforeseen circumstances. The Design Consultant may verify and modify if possible.
- 5.2 The Engineer / Engineer's Representative shall report any deviation to the permanent structures during construction to the notice of the Design Consultant immediately.
- 5.3 The Engineer's Representative shall coordinate with the contractor for the Vendor data related information and pass on the same thing to the Consultant for incorporation into civil design in a timely manner to avoid construction delay.
- 5.4 The Engineer's Representative shall obtain clearance from the Design Consultant for items affecting the structural and foundation integrity prior to approving any submission from Contractor.

5.5 Blank

6. Determination of costs and time

- 6.1 The Engineer / Engineer's Representative shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 6.2 The Engineer / Engineer's Representative shall determine the period of time Extension that is required to be determined by it under the Agreement.
- 6.3 The Engineer / Engineer's Representative shall consult each Party in every case of determination in accordance with the provisions of Clause 18.5.

7. Payments

- 7.1 The Engineer / Engineer's Representative shall withhold payments for the affected works for which the Contractor fails to revise and resubmit the Drawings to the Engineer / Engineer's Representative in accordance with the provisions of Clause 10.2.3 (d).
- 7.2 Engineer / Engineer's Representative shall - (a) within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 19.4, determine the amount due to the Contractor and recommend the release of 90 (ninety) percent of the amount so determined as part payment, pending issue of the Interim Payment Certificate; and (b) within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in Clause 19.4, deliver to the Employer and the Contractor an Interim Payment Certificate certifying the amount due and payable to the Contractor, after adjustments in accordance with the provisions of Clause 19.10.
- 7.3 The Engineer / Engineer's Representative shall, within 15 (fifteen) days of receipt of the Monthly Maintenance Statement from the Contractor pursuant to Clause 19.6, verify the Contractor's monthly statement and certify the amount to be paid to the Contractor in accordance with the provisions of the Agreement.
- 7.4 The Engineer / Engineer's Representative shall certify final payment within 30 (thirty) days of the receipt of the final payment statement of Maintenance in accordance with the provisions of Clause 19.16.

8. Other duties and functions

The Engineer / Engineer's Representative shall perform all other duties and functions as specified in the Agreement.

9. Miscellaneous

- 9.1 A copy of all communications, comments, instructions, Drawings or Documents sent by the Engineer / Engineer's Representative to the Contractor pursuant to this TOR, and a copy of all the test results with comments of the Engineer / Engineer's Representative thereon, shall be furnished by the Engineer / Engineer's Representative to the Employer forthwith.

- 9.2 The Engineer / Engineer's Representative shall retain at least one copy each of all Drawings and Documents received by it, including "as-built" Drawings, and keep them in its safe custody.
- 9.3 Within 90 (ninety) days of the Project Completion Date, the Engineer / Engineer's Representative shall obtain a complete set of as-built Drawings, in 2 (two) hard copies and in digital copy of the same in portable USB flash drive or in such other medium as may be acceptable to the Employer, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities; and shall hand them over to the Employer against receipt thereof.
- 9.4 The Engineer / Engineer's Representative, if called upon by the Employer or the Contractor or both, shall mediate and assist the Parties in arriving at an amicable settlement of any Dispute between the Parties.
- 9.5 The Engineer / Engineer's Representative shall inform the Employer and the Contractor of any event of Contractor's Default within one week of its occurrence.

SCHEDULE - O
(See Clauses 19.4.1, 19.6.1, and 19.8.1)
Forms of Payment Statements

1. Monthly Payment Statement for Works

The Monthly Payment Statement for Works shall state:

- (a) the estimated amount for the Works executed in accordance with Clause 19.3.1 subsequent to the last claim;
- (b) amounts reflecting adjustments in price for the aforesaid claim;
- (c) the estimated amount of each Change of Scope Order executed subsequent to the last claim;
- (d) amounts reflecting adjustment in price, if any, for (c) above in accordance with the provisions of Clause 13.2.3 (a);
- (e) total of (a), (b), (c) and (d) above;
- (f) Deductions:
 - i. Any amount to be deducted in accordance with the provisions of the Agreement except taxes;
 - ii. Any amount towards deduction of taxes; and
 - iii. Total of (i) and (ii) above.
- (g) Net claim: (e) – (f) (iii);
- (h) The amounts received by the Contractor up to the last claim:
 - i. For the Works executed (excluding Change of Scope orders);
 - ii. For Change of Scope Orders, and
 - iii. Taxes deducted.

2. Monthly Maintenance Payment Statement

The monthly Statement for Maintenance Payment shall state:

- (a) the monthly payment admissible in accordance with the provisions of the Agreement;
- (b) the deductions for maintenance work not done;
- (c) net payment for maintenance due, (a) minus (b);
- (d) amounts reflecting adjustments in price under Clause 19.12; and
- (e) amount towards deduction of taxes

3. Contractor's claim for Damages

Note: The Contractor shall submit its claims in a form acceptable to the Employer.

SCHEDULE - P
(See Clause 20.1)
INSURANCE

1. Insurance during Construction Period

1.1 The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Completion Certificate, the following insurances for any loss or damage occurring on account of Non Political Event of Force Majeure, malicious act, accidental damage, explosion, fire and terrorism:

- (a) insurance of Works, Plant and Materials and an additional sum of 15 (fifteen) per cent of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
- (b) Insurance for the Contractor's equipment and Documents brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

1.2 The insurance under paragraph 1.1 (a) and (b) above shall cover the Employer and the Contractor against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

2. Insurance for Contractor's Defects Liability

The Contractor shall effect and maintain insurance cover for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and which arises from a cause occurring prior to the issue of the Completion Certificate. The Contractor shall also maintain other insurances for maximum sums as may be required under the Applicable Laws and in accordance with Good Industry Practice.

3. Insurance against injury to persons and damage to property

- 3.1 The Contractor shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraphs 1 and 2 of this Schedule or to any person (except persons insured under Clause 20.9), which may arise out of the Contractor's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount stated below with no limit on the number of occurrences. The insurance cover shall be not less than: Rs. 5,00,000.0
- 3.2 The insurance shall be extended to cover liability for all loss and damage to the Employer's property arising out of the Contractor's performance of this Agreement excluding:
- (a) the Employer's right to have the construction works executed on, over, under, in or through any land, and to occupy this land for the Works; and
 - (b) Damage which is an unavoidable result of the Contractor's obligations to execute the Works.

4. Insurance to be in joint names.

The insurance under paragraphs 1 to 3 above shall be in the joint names of the Contractor and the Employer.

SCHEDULE - Q SECURITY

1. The CONTRACTOR is bound by the Official Secrets Act 1923 and, in its connection any other statutory Act/ Law/ Amendment in force and the information given is to be treated as strictly confidential and is not to be disclosed to any person or persons not concerned therein. The CONTRACTOR shall be responsible to ensure that all persons employed by him in the execution of any work in connection with this Contract are fully aware of the provisions of the Official Secrets Act 1923/ Law/ Amendment in force and have undertaken to comply with the same.
2. The CONTRACTOR shall also ensure secrecy of design, construction, equipment, and documentation and shall carry out all or any instructions given by the ENGINEER / ENGINEER'S REPRESENTATIVE in this respect. Should the ENGINEER / ENGINEER'S REPRESENTATIVE desire to check up the security measures which have been provided, or will be adopted to achieve security, the CONTRACTOR shall produce necessary evidence to establish the same.
3. In giving any information to SUB –CONTRACTORS, the CONTRACTOR shall furnish to the SUB –CONTRACTORS only such information as may be necessary for carrying out the respective work entrusted to them.
4. The security of the equipment, men and material in the CONTRACTOR'S premises is the CONTRACTOR'S responsibility.
5. The security of the equipment, men and material in the ENGINEER / ENGINEER'S REPRESENTATIVE premises is the Customer's responsibility.

**(ENGINEER / ENGINEER'S REPRESENTATIVE)
(CONTRACTOR)**

SCHEDULE R
DISPUTES REVIEW BOARD AGREEMENT

(To be executed on Rs100/- non-judicial Stamp Paper)

THIS AGREEMENT made and entered into this..... Day of
.....2024

..... Between..... (“The Employer/Board”)
and..... (“The contractor”), and the Disputes Review
Board (“the DR Board”) consisting of one/three DR Board Members,
(Members from either party,
I.e., contractor and Employer/Board)

(1)

..... (2)

..... (3)

..... [Note: Delete whatever is not
applicable]

WITNESSETH, that

WHEREAS the Employer/Board and the contractor have contracted for the
execution of Project name)

(the “Contract”) and WHEREAS, the contract provides for the
establishment and operation of the DR Board NOW THEREFORE, the parties
hereto agree as follows:

1. The parties agree to the establishment and operation of the DR Board in
accordance with this DR Board Agreement.
2. Expect for providing the services required hereunder, the DR Board
Members should not give any advice to either party or to the Nodal Officer
or his nominee concerning conduct of the works.

The DR Board Members:

- (a) Shall have no financial interest in any party to the contract or the
Nodal Officer or his nominee, or a financial interest in the contract,
except for payment for services on the DR Board.
- (b) Shall have had no previous employment by, or financial ties to, any
party to the contract, or the Nodal Officer or his nominee, expect for
fee-based consulting services on other projects, all of which must be
disclosed prior to appointment to the DR Board.
- (c) Shall have disclosed in writing to the parties prior to signature of
this Agreement any all recent or close professional or personal
relationships with any director, officer, or employee of any party to
the Nodal Officer or his nominee, and any and all prior involvement
in the project to which the contract relates;
- (d) Shall not, while a DR Board Member be employed whether as a
consultant or otherwise by either party to the contract, or the Nodal

- Officer or his nominee, except as a DR Board Member.
- (e) Shall not, while a DR Board Member, engage in discussion or make any agreement with any party to the contract, or with the Nodal Officer or his nominee, regarding employment whether as a consultant or otherwise either after the contract is completed or after services as a DR Board Members.
 - (f) Shall be and remain impartial and independent of the parties and shall disclose in writing to the Employer/Board, the contractor, the Nodal Officer, or his nominee, and one another any fact or circumstances which might be such to cause either the Port or the contractor to question the continued existing of the impartiality and independence required of DR Board Members.
- 3. Except for its participation in the DR Board activities as provided in the contract and in this Agreement none of the Employer / Board, the contractor, the Nodal Officer or his nominee, and one another any fact or circumstances which might be such to cause either the Employer/Board or the contractor to question the continued existence of the impartiality and independence required of DR Board Members.
 - 4. The contractor shall:
 - a) Furnish to each DR Board Member one copy of all documents which the DR Board may request including contract document, progress report, variation orders, and other document, pertinent to the performance of the contract.
 - b) In co-operation with the Employer/Board, co-ordinate the site visits of the DR Board, including conference facilities and secretarial and copying services.
 - 5. The DR Board shall serve throughout the operation of the contract. It shall begin operation following execution of this Agreement and shall terminate its activities after issuance of the taking over certificate and the DR Board's issuance of its Recommendation on all disputes referred to it.
 - 6. DR Board Member shall not assign or subcontract any of their work under this Agreement.
 - 7. The DR Board Members are independent and not employees or agents of either the Employer/Board or the Contractor.
 - 8. The DR Board Members are absolved of any personal or professional liability arising from the activities and the Recommendations of the DR Board.
 - 9. Fees and expenses of the DR Board Member[s] shall be agreed to and shared equally by the Employer/Board and the Contractor. If the DR Board requires special services, such as accounting, data research and the like, both the parties must agree, and cost shall be shared by them as mutual agreed.

10. DR Board's site visit:
 - a. The DR Board shall visit the site and meet with representative of the Employer/Both and the contractor and the nodal officer or his nominee at regular intervals, at times of critical construction events, and at the request of either party. The timing of site visit agreement shall be fixed by the DR Board
 - b. Site meeting shall consist of an informal discussion of the status of construction of the works followed by an inspection of the work, both attended by personal from the employer/Board, the contractor and the nodal officer or his nominee.
 - c. If request by either parties or the DR Board, the employer/Board will prepare minutes of the meeting and circulate them for comments of the parties and the nodal officer or his nominee.
11. Procedure for disputes referred to the DR Board:
 - a) If either party objects to any action or inaction of the other party or the Nodal Officer or his nominee, the objecting party may file a written Notice of Dispute to the other party with a copy to the Nodal Officer or his nominee stating that it is given pursuant to clause [number] and stating clearly and in detail the basis of the dispute.
 - b) The party receiving the Notice of Dispute will consider it and respond in writing within 7 days after receipt.
 - c) This response shall be final and conclusive on the subject, unless a written appeal to the response is filed with the responding party within 7 days of receiving the response. Both parties are encouraged to pursue the matter further to attempt to settle the dispute. When it appears that the dispute cannot be resolved without the assistance of the DR Board either party may refer the dispute to the DR Board by written Request for Recommendation to the Board, the other party & the Nodal Officer or his nominee stating that it is made pursuant to [insert relevant clause no.]
 - d) The Request for recommendation shall state clearly and detail the specific issues of the dispute to be considered by the DR Board.
 - e) When a dispute is referred to the DR Board, and the DR Board is satisfied that the dispute requires the DR Board's assistance, the DR Board shall decide when to conduct a hearing on dispute. The DR Board may request that written documentation and arguments from both parties be submitted to each DR Board Members before the hearing begins. The parties shall submit insofar as possible agreed statements of the relevant facts.
 - f) During the hearing, the contractor, the Employer/ Board, the Nodal Officer or his nominee shall each have ample opportunity to be heard and to offer evidence.

The DR Board's Recommendation for resolution of the dispute will be given in writing, to the Employer/ Board, the contractor and the Nodal Officer or his nominee as soon as possible, and in any event not more than 28 days after the DR Board's final hearing on the dispute.

12. Conduct of Hearing:

- a) Normally hearing will be conducted at the sites, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the DR Board. Private sessions of the DR Board may be held at any location convenient to the DR Board.
- b) The Employer/ Board, the Nodal Officer or his nominee and contractor shall have representatives at all hearing.
- c) During the hearing, no DR Board Member shall express any opinion concerning the merit of any facet of the case.
- d) After the hearing is concluded, the DR Board shall meet privately to formulate its Recommendation. All DR Board deliberation shall be conducted in private, with all individual views kept strictly confidential. The DR Board's Recommendations, together with an explanation of its reasoning shall be submitted in writing to both parties and t the Nodal Officer or his nominee. The pertinent contract provision, applicable laws and regulations, and the facts and circumstances involved in the dispute.

The DR Board shall make every effort to reach a unanimous Recommendation. If this proves impossible, the majority shall decide, and the dissenting member any prepare a written minority report for submission to both parties.

[Notes: Delete if it is one member DR Board]

13. If during the contract period, the Employer/ Board and the contractor are of the opinion that the Disputes Review Board is not performing its function properly, the Employer/ Board and the contractor may together disband the Disputes Review Board. In such an event, the disputes shall refer to Arbitration straight away.

The Employer/Board and the contractor shall jointly sing a notice specifying that the DR Board shall stand disbanded with effect from the date specified in the notice. The notice shall be posted by a registered letter with AD or delivery of the letter, even if he refuses to do so.

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