

Section 8 - Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC. The clause number of the SCC is the corresponding clause number of the GCC.

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1. Definitions

The Employer is: Tamil Nadu Water Supply and Drainage Board (TWAD Board) Chief Engineer, Vellore.

The Engineer is: Executive Engineer

The Bank is: Nationalised Bank

Country of Origin: Most recent list of eligible countries as specified in Article 1.1(d) of Contract Agreement

Bank Guarantee: A bank guarantee is a promise from a bank or other lending institution that if a particular borrower defaults on a loan, the bank will cover the loss.

Bank: means a financial institution (other than Asian development Bank) licensed to receive deposits and make loans.

Contract Completion Certificate: Means the certificate issued by the Employer's Representative to the Contractor, stating the date on which Contractor completes his obligations in respect of both the Design Build and the Operation and maintenance Services.

Contract Completion Date: Means the date contained in the Contract Completion Certificate as being the date on which the Operational Services have been completed.

Design-Build: means all work to be performed by the Contractor under the Contract to Design, build, test and complete the Work.

Interim Payment Certificate: means a payment certificate issued under the Contract, other than the Final Payment Certificate..

Maintenance: running the plant to meet functional guarantee.

Maintenance Retention Fund and Maintenance Retention Guarantee: means the fund and Guarantee respectively provided for or created by deductions from each interim payment during Operation and Maintenance Services, intended for Maintenance of the Facility.

National: means any entity owned, controlled, or financially supported by the Government Employer's country.

Notice: means a written communication intended as a Notice and issued in accordance with provisions of this Contract.

Operation Services: means the Operation and Maintenance of the Facility as set out in the Operation and Maintenance Requirement.

Operation: Means the Operation and Maintenance of the facility as set out in the Operation and Maintenance Requirements.

Operational Service Period: Means the period from the date stated in Operational Acceptance Certificate to the date stated in Contract Completion Certificate.

Operational Acceptance Certificate: Operational Acceptance Certificate is the Certificate issued to the Contractor with the intention that the Contractor's liabilities related to Design-build activity are discharged at this point, save for liabilities for defects and any outstanding works. Issuance of Operational Acceptance Certificate shall be pre-requisite for the Commencement of Operational Service Activities.

Representative: mean either of the representatives as per GCC 17.

Sections: means a part of the Works specified in the Contract as a Section (if any).

Security: shall mean the same as in Clause 13 of GCC.

Unforeseeable Physical Conditions: means natural physical conditions and manmade and other physical obstructions and pollutants, which are unforeseeable by an experienced Contractor prior to bid submission and encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions

5. Law and Language

5.1 The Contract shall be interpreted in accordance with the laws of: India

5.2 The ruling language is: The English language

5.3 The language for communications is: The English language.

7. Scope of Facilities

7.3 The Contractor agrees to supply spare parts for a period of years: **5 years**.

The Contractor shall carry sufficient inventories to ensure an ex-stock supply of consumable spares for the Plant. Other spare parts and components shall be supplied as promptly as possible, but at the most within 6 months of placing the order and opening the letter of credit. In addition, in the event of termination of the production of spare parts, advance notification will be made to the Employer of the pending termination, with sufficient time to permit the Employer to procure the needed requirement. Following such termination, the Contractor will furnish to the extent possible and at no cost to the Employer the blueprints, drawings and specifications of the spare parts, if requested.

8. Time for Commencement and Completion

8.1 The Contractor shall commence work on the Facilities within 14 days from the Effective Date for determining Time for Completion as specified in the Contract Agreement.

8.2 The Time for Completion of the whole of the Facilities shall be 24 months from the Effective Date as described in the Contract Agreement.

8.3 The Time for Operation and Maintenance of the Facilities shall be **5 years** after the issue of Operational Acceptance certificate as described in the Contract Agreement.

Time for Completion for parts of the Facilities: Not Applicable.

9. Contractor's Responsibilities

Add the following sentence at the end of Sub-clause 9.1 as:

The Contractor shall also be responsible for Operation and Maintenance of the Plant for a period as stated in Sub-clause 8.3 and comply with requirements of Sub-clause 62

(Operation & Maintenance).

Add the following Sub-paragraph 9.9 as:

The Contractor shall provide the following:

- I. Sufficient, properly qualified operating and maintenance personnel
- II. Shall supply and make available all raw materials, utilities, lubricants, chemicals, catalysts, other materials and facilities; and
- III. Shall perform all work and services of whatsoever nature, including those required by the Employer to properly carry out Pre-commissioning, Commissioning. Guarantee Tests and Operation and Maintenance.
- IV. Smooth and successful running of the plant for the agreed period.
- V. The contractor will be responsible for the functional guarantee of the plant during operation and maintenance period of the plant.
- VI. All costs and expenses involved in the performance of the obligations during operation and maintenance period of the plant.

11. Contract Price

11.2 “ The Contract price shall be adjusted in accordance with the provisions of Appendix 8 (Price Adjustment) to the Contract Agreement.

Tables of Adjustment Data -Table A Local Currency

Index Code	Index Description	Source of Index	Base value and Date	Bidder's Local Currency Amount	Bidder's proposed weighting
	a. Non adjustable b. Labour c. steel d. Cement- OPC e. Cement – SRC f. DI/CI Pipes g. UPVC/PVC/D WC Pipes h. Pumpset and Machineries i. Other Materials			28 days before Deadline for Bid submission	a. 0.15 b. c. d. e. f. g h. i
			Total		1.00

13. Securities

13.3.1 The amount of performance security, as a percentage of the Contract Price for the Facility or for the part of the Facility for which a separate Time for Completion is provided, shall be: **2% of the Contract price.**

(a) One for construction components including GST another for

(b) Operation and Maintenance including GST "" However both the securities should be submitted simultaneously prior to signing contract agreement ”.

13.3.2 The performance security shall be in the form of the unconditional and irrevocable Bank Guarantee as per form included in Section 9 (Contract Forms).

If the Bank issuing the Security is located outside the Employer's country, it shall have a correspondent Bank located in the territory of Employer's Country to make it enforceable.

13.3.3 (a) The performance security of construction components to be released after Defect Liability period.

(b) The performance security of operation and Maintenance to be released, 12 months after successful completion of the maintenance period of **5 years.**

18. Work Program

18.3 Progress Report

Add the following Sub-paragraph “c” as:

(c) monitoring of obligations in Sub clause 21.3.5, 22.1.1(c), 22.2.4(a), 22.2.7(d), 22.2.15, 22.2.16 and 47.

21. Procurement

21.3 Transportation

Add the following Sub-clause 21.3.5 as:

21.3.5 The Contractor shall adequately record the condition of roads, agricultural land and other infrastructure prior to starting to transport materials and construction ,and reinstate pathways, other local infrastructure, and agricultural land to at least their pre-project condition upon the completion of construction.

22. Installation

22.1 Setting Out/ Supervision

Add the Sub-clause 22.1.1 (c) as:

- 22.1.1(c) The Contractor shall comply with (i) the measures and requirements set forth in the Resettlement Plan (RP) and Indigenous People Plan (IPP) attached there to as Appendix 1 & Appendix 2, to the extent they concern impacts on affected people during construction; and (ii) any corrective or preventive actions set out in a Safeguards Monitoring Report (SMR) that the Employer will prepare from time to time to monitor implementation of (RP). The Contractor shall allocate a budget for compliance with these measures, requirements and actions.

22.2 Labour

Add the following paras at the end of Sub-clause 22.2.4(a) as:

The Contractor shall not make employment decisions based upon personal characteristics unrelated to job requirements. The contractor shall follow and implement all statutory provisions on labour (including not employing or using children as labour and equal pay for equal work), health, safety, welfare, sanitation and working conditions. The Contractor shall base the employment relationship upon equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment or retirement, and discipline. The Contractor shall provide equal wages and benefits to men and women for work of equal value or type.

The Contractor shall not employ any child to perform any work including work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. "Child" means a child below the statutory minimum age specified under applicable National, provincial or local law

22.2.5 Working Hours

- (a) Normal working hours are: Eight hours between sunrise and sunset in compliance with applicable law.

22.2.7 Health and Safety

- (d) The Contractor shall throughout the contract (including the Defect Liability Period):
- (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labor (including all the Contractor's employees, all Sub-Contractors and Employer's and Project Manager's employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behavior with respect to of Sexually Transmitted

Diseases (STD)—or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular;

- (ii) provide male or female condoms for all Site staff and labor as appropriate; and
- (iii) provide for STI and HIV/AIDS screening, diagnosis, counseling and referral to a dedicated national STI and HIV/AIDS program, (unless otherwise agreed) of all Site staff and labor.

The Contractor shall include in the program to be submitted for the execution of the Facilities under Subclause 18.2 an alleviation program for Site staff and labor and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation program shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Subclause and the related specification. For each component, the program shall detail the resources to be provided or utilized and any related sub-contracting proposed. The program shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for the preparation and implementation this program shall not exceed the amount dedicated for this purpose.

22.2.8 Funeral Arrangements

Funeral arrangements: Sub-clause 22.2.8 of GCC shall prevail.

24. Completion of the Facilities

Replace the Sub-clause 24.2 with:

- 24.2 Within 7 days after issuance of the notice under GCC Subclause 24.1, the Contractor shall supply the operating and maintenance personnel, raw materials, utilities, lubricants, chemicals, catalysts, facilities, services, and other matters necessary for Precommissioning of the Facilities or any part thereof.

Pursuant to the Appendix (Scope of Works and Supply by the Employer) to the Contract Agreement, the Employer shall also provide, within the said 7-day of receipt of such notice, Electricity connection and ensure supply of Electricity required for Pre-commissioning of the Facilities or any part thereof.

- 24.3 As soon as reasonably practicable after the Electricity connection has been provided by the Employer and supply of Electricity is made by the Employer, the Contractor shall commence Pre-commissioning of the Facilities or the relevant part thereof in preparation for Commissioning, subject to GCC Subclause 25.5.

25. Commissioning and Operational Acceptance

- 25.2.2 The Guarantee Test of the Facilities shall be successfully completed within 2 months from the date of completion.

- 25.3.3 The project Manager shall, after consultation with the Employer, and within 7 days after receipt of the contractor's notice, issue a Commissioning Certificate of the Facilities along

with notice to commence the Operation and Maintenance services. The Contractor has to commence the operation and Maintenance Services within 28 days from the date of the Operational acceptance of the Facilities.”

26. Completion Time Guarantee

26.2 Applicable rate for liquidated damages: 0.05% of the Contract price per day.

Maximum deduction for liquidated damages: 10% of the Contract price.

26.3 No bonus will be given for earlier Completion of the Facilities or part thereof.

27. Defect Liability

27.1 The Defect Liability Period shall be 2 years from the date of Operational Acceptance of the Facilities (or any part thereof).

30. Limitation of Liability

30.1 (b) The multiplier of the Contract Price is: 1.25 (one point two five).

35. Unforeseen Conditions

35.1 Add the following before last para of Sub-clause 35.1 as:

In addition to notice of any Unforeseeable Physical Conditions, the Contractor shall provide the Project Manager with a written notice of any unanticipated environmental, resettlement or indigenous peoples risk, or impact that arise during construction, implementation or operation of the Project that were not considered in the Initial Environmental Examination (IEE)/ Environmental Impact Assessment (EIA), the Environmental Management Plan (EMP), the RP or the IPP, attached thereto as Appendix 1 through Appendix 5.

42. Termination

42.2 Termination for Contractor's default

Add new sub-clause 42.2.2 (e) as:

42.2.2 (e): if the contractor is in breach of the provisions stipulated in sub-clause 22.2.4 and 22.2.7, of this special conditions of contract.

45. Disputes and Arbitration

45.1 The Dispute Board shall be appointed within 28 days after the Effective Date.

The Dispute Board shall be one sole member.

List of potential Dispute Board members is: To be notified later.

45.2 Appointment (if not agreed) to be made by: The Institution of Engineers (India), Tamil Nadu Chapter.

45.5 *For a contract with a local Contractor:*

In the case of a dispute between the Employer and the Contractor, the dispute shall be settled by arbitration in accordance with the rules of procedure of the Indian Arbitration and Conciliation Act as in force on the date of the Contract.

Place of arbitration: Chennai, State of Tamil Nadu, India.

For a contract with a foreign Contractor:

In the case of a dispute between the Employer and the Contractor, the dispute shall be settled by international arbitration conducted in accordance with the Arbitration Rules of the Singapore International Arbitration Centre. The arbitration procedure shall be administered by the Singapore International Arbitration Center.

Place of arbitration: Singapore

46. Eligibility

46.1 The Contractor shall have the nationality of an Nationalised Bank member country. The Contractor shall be deemed to have the nationality of a country if the Contractor is a citizen or is constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.

46.2 The materials, equipment and services to be supplied under the Contract shall have their origin in eligible source countries and all expenditures under the Contract will be limited to such materials, equipment, and services. At the Employer's request, the Contractor may be required to provide evidence of the origin of materials, equipment and services.

46.3 For purposes of SCC 46.2, "origin" means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or

substantial or major assembling of components, a commercially recognized product results that differs substantially in its basic characteristics or in purpose or utility from its components.

47 Protection of the Environment

The Contractor shall comply with all applicable National, provincial and local environmental laws and regulations.

The Contractor shall:

- i). establish an operational system for managing environmental impacts;
- ii). comply with the measures relevant to the contractor set forth in the EMP and any corrective or preventative actions set forth in a Safeguards Monitoring Report'
- iii). allocate the budget required to ensure that such measures are carried out. The Contractor shall submit quarterly reports on the carrying out of such measures to the Employer.

48 Operation and maintenance service requirements

The Contractor shall comply with the Operation Management Requirements as provided for in the Contract and revisions thereof, which are agreed during the Contract Period.

The Contractor shall follow the requirements of the Operation and Maintenance Plan and the operation and maintenance manuals. No significant alteration to such arrangements and methods shall be made without the prior approval of the Employer's Representative.

During the operation service, the Contractor shall be responsible for ensuring that the works remain fit for the purpose for which they are intended.

The operators and maintenance personnel for the Works, including Plant operations, shall have the appropriate experience and qualifications to perform the Operation Service. The names, with details of their qualification and experience of all operation and maintenance personnel shall be submitted to the Employer for approval, and no such personnel shall be engaged prior to receiving such approval.

49. Commencement of Operation Service

Unless otherwise stated in Employer's Requirements, the commencement of the Operation Service shall be from the date stated in the Operational Acceptance Certificate Issued under this contract.

The Operation Service shall not commence until the Design-Build of the Works or any Sections has been completed in accordance with the provisions of the contract.

Should the Operational Acceptance Certificate, or any Notice attached or pertaining thereto, contain requirement or restrictions over and above those in the Contract, the Contractor shall comply with such requirements.

The Contractor shall thereafter provide the Operation Service in compliance with the Operation Management Requirements and in accordance with the as built Documents and operation and maintenance manuals

If the Contractor wishes to modify a document, which has previously been submitted and approved, the contractor shall immediately notify the Employer's Representative, and shall subsequently submit revised document(s) to the Employer's Representative for review accompanied by a written explanation of the need for such modification.

The contractor shall not implement any proposed modification until such modification has been reviewed by the Employer's Representative, and consent to proceed has been given in writing. However, any such approval or consent, or any review shall not relieve the Contractor from any obligation or responsibility.

50. Training

The Contractor shall carry out the training of Employer's Personnel in the operation and maintenance of the Works to the required extent. The programme and scheduling of the training should be agreed with the Employer, and the Contractor shall provide experienced training staff, and all training materials as required for smooth running of the plant.

This training should be carried out during the last 1 year of the **5 years** O & M period. The employer will depute his personnel to under this training as required. This training should be sufficient enough so that the employer personnel will be in a position to smoothly operate and maintain the plant once the plant is handed over to them after completion of the **5 years** O & M period.

51 . Delays and Interruptions during the Operation Service

Delays and interruptions during the Operation Service shall be agreed and determined as follows:

(a) Delays or Interruptions caused by the Contractor

If there are any delays or interruptions during the Operation Service which are caused by the Contractor or by a cause for which the Contractor is responsible, the Contractor shall compensate the Employer an amount equivalent to 0.5% of the Annual Operation and Maintenance Cost for each calendar day of such delay. The amount of compensation due shall be mutually discussed and agreed or determined according to the requirements and the Employer shall be entitled to recover the amount due by making a corresponding deduction from the next payment due to the Contractor. However, the total amount of compensation payable by the Contractor to the Employer shall be kept at a reasonable level. There will be no extension of the period of the operation Service as a result of any such delay or interruption.

(b) Suspension by the Employer

The Project Manager may at any time during Operation Service instruct the Contractor to suspend progress of the Operation Service. During such suspension, the Contractor shall protect, store, secure and maintain the Plant against any deterioration, loss or damage.

If the need to suspend the Operation service by the Employer is due to any failure of the Contractor or circumstances for which the Contractor is responsible under the contract, the provisions under Sub-clause 56 (a) of SCC will apply.

If a suspension, which is due neither to any failure by the Contractor nor to circumstances for which the Contractor is responsible under the Contract has continued for more than two months,

the contractor may request the Project Manager's permission to proceed. If the Project Manager does not give permission within two weeks after being requested to do so, the Contractor may give Notice of termination.

After the permission or instruction to proceed is given, the Contractor and the Project Manager shall jointly examine the works. The Contractor's Representative shall make a written record of all making good required to be carried out by the Contractor. If the suspension is due neither to any failure by the Contractor nor to circumstances for which the Contractor is responsible under the Contract, the Contractor shall be entitled to be paid the Cost Plus Profit of making good the Works prior to re-commencing the Operation Service.

52. Failure to achieve functional guarantee

In the event that the Contractor fails to achieve functional guarantee required under the Contract, the Parties shall jointly establish the cause of such failure.

- (a) If the cause of the failure lies with the Employer or any of his servants or agents, then, after consultation with the Contractor, the Employer shall give written instruction to the Contractor of the measures, which the Employer requires the Contractor to take. If the Contractor suffers any additional cost as a result of the failure or the measures instructed by the Employer, the Employer, shall pay the Contractor his Cost plus Profit.
- (b) If the cause of the failure lies with the Contractor then, after due consultation with the Employer, the Contractor shall take all steps necessary to restore the output to the levels required under the Contract. If the Employer suffers any loss as a result of the failure or the measures taken by the Contractor, the Contractor, shall pay the Employer the performance damages as applicable.

Unless otherwise stated in the Contract data, if the failure continues for a period of more than one month and the Contractor is unable to fulfill and / or comply with the Functional Guarantees requirements as per Clause 1.3.4 of Section.3 , and as per treated effluent quality parameter listed in Section .6. Clause .4.11 the employer may either

- (i) Continue with the operation Service at a reduced level of compensation as given in the terms of payment.
- (ii) If the production outputs fail to reach the desired values required in the Contract Data, give Notice to the Contractor not less than one month prior to terminating the Contract. In such an event, the Employer shall be free to continue the Operation Service himself or by others.

53. Completion of Operation Service

Unless the Parties have mutually agreed to prolong the Operation Service, the Service obligation of the Contractor to operate and maintain the Plant under the, Operation Service shall cease at the end of the period stated in the Contract as the Operation Service Period.

Notwithstanding the foregoing, other services to be performed by the Contractor must be completed before the Contractor will be entitled to receive the Contract Completion Certificate in accordance with tender clauses.

Pre-conditions which must be fulfilled by the Contractor before the Contract Completion Certificate will be issued are:

- a) Inspection as required
- b) Testing as required

- c) Updating Operation and Maintenance manuals providing performance records and data as required
- d) Remedying defects found during inspection

Prior to issuance of contract completion certificate a joint inspection committee will be formed for carrying out through inspection of plant with respective civil works, mechanical works, electrical works and ICA works. This committee will prepare programme for all the tests to be carried out and testing procedures to be followed which will be agreeable for both Employer and contractor. This committee needs to be formed 6 months prior to the completion of O & M period.

54. Joint Inspection Prior to Contract Completion

Not less than three months to the expiry date of the Operation Service Period, the Project Manager and the Contractor shall carry out a joint inspection of the Works and within two weeks of the completion of the joint inspection, the contractor shall submit a report on the works identifying maintenance work (excluding routine maintenance works and the correction of defects), replacements and other works required to be carried out to satisfy the requirements of the Operation and Maintenance Plan after the Contract Completion Date.

The Contractor shall submit a programme for carrying out such works during the remainder of the Operation Service Period.

Following receipt of the Contractor's report the Employer's Representative may, throughout the remainder of the Operation Service Period, instruct the Contractor to carry out all or part of the works identified in the Contractor's report. Upon satisfactory completion of the items identified in the inspection report the Employer shall instruct the Contractor to commence the Tests Prior to Contractor Completion date

55. Procedure for Test Prior to Contract Completion

The Tests Prior to Contract Completion ("Tests") are to be carried out by the Contractor who shall provide all necessary labour, materials, electricity, fuel and water, other than Tests are to be carried out in accordance with the requirement.

The Tests shall be carried out towards the end of the Operation Service. These tests include functional guarantee tests, civil works tests, mechanical and electrical works tests. The Contractor shall give Notice to Employer not less than ten days prior to the date, after which the tests shall be carried out. Unless otherwise agreed, such tests shall be commenced within ten days after this date, on the day or days determined by the Project Manager.

The results of the tests shall be compiled and evaluated by the Project Manager and the Contractor. The Contractor shall make the results of any tests, inspections or monitoring available to the Employer's Representative within 7 days of their receipt. Any effect on the results of the tests which can reasonably be shown to be due to prior use of the Works by the Contractor during the Operation Service Period shall be taken into account in assessing such result.

As soon as the Contractor has completed the tests, the Contractor shall notify the Project Manager that the works are Complete and ready for final inspection. Upon the Project Manager being satisfied that the Contractor has satisfied the requirements of the tests regarding such final inspection. The Project Manager shall notify the Employer and the Contractor prior to the issue of the Contract Completion Certificate.

56. Ownership Output and Revenue

During the Operation Service, any effluent output and revenue shall be the exclusive property of the Employer.

57. Operation & Maintenance

The sewage treatment plant so constructed by the contractor will be operated & maintained by contractor for a period of **5 years** after the steady state conditions have been achieved along with defect liability. While

activities involved in the plant operation & maintenance are given in subsequent paragraphs, it would be duty of the contractor maintaining the plant to keep the grassy lawns & flower beds in the plant area in proper condition & general upkeep of the balance area.

The contractor is also responsible for the following:

- Operating the plant with the design capacity maintaining the output quality.
- Keeping the down time of any equipment as low as possible .
- Maintaining all the plant, equipment and tools and making necessary repairs.
- Technical and administrative monitoring of the plant.

The laboratory for maintaining the overall performance of the plant & those of any individual units shall also be maintained & staffed by the contractor. He will be responsible for daily monitoring of the plant in particular & any other unit in general.

General tests such as BOD, COD suspended solids & coliform count etc., for both influent & effluent will have to be monitored on daily basis while any other test such as VSS, TSS, MLSS, ML VSS etc., may also be required to be done routinely. Contractor will be responsible for manpower, chemical consumption & replacement of any broken glass ware.

58. Gender and Development

The Contractor shall comply with the measures set forth in the gender equality and social inclusion action plan, attached thereto as Appendix [6].