



**KOLKATA METRO RAIL CORPORATION LIMITED
EAST WEST METRO PROJECT**

CONTRACT RS (3R)

**DESIGN, MANUFACTURE, SUPPLY, TESTING,
COMMISSIONING AND INTEGRATION OF PASSENGER
ROLLING STOCK (ELECTRICAL MULTIPLE UNITS), AND
TRAINING OF PERSONNEL**

TENDER DOCUMENTS

VOLUME 2

**GENERAL CONDITIONS OF CONTRACT
AND
SPECIAL CONDITIONS OF CONTRACT
(INCLUDING SCHEDULES)**

Date of Issue: January 9, 2015

**KOLKATA METRO RAIL CORPORATION LIMITED
KMRCL Bhawan (HRBC Office Complex),
Munshi Premchand Sarani,
Kolkata 700 021
India**

**KOLKATA METRO RAIL CORPORATION LIMITED
EAST WEST METRO PROJECT**

**DESIGN, MANUFACTURE, SUPPLY, TESTING,
COMMISSIONING AND INTEGRATION OF PASSENGER
ROLLING STOCK (ELECTRICAL MULTIPLE UNITS), AND
TRAINING OF PERSONNEL**

CONTRACT RS (3R)

SUMMARY OF TENDER DOCUMENTS

Volume 1

- Notice of Invitation to Tender
- Instructions to Tenderers (including Annexures)
- Eligibility Criteria Documents
- Form of Tender (including Appendices)

Volume 2

- **General Conditions of Contract**
- **Special Conditions of Contract (including Schedules)**

Volume 3

- Employer's Requirements – General Specification
- Employer's Requirements – Technical Specification

Volume 4

- Schedule of Dimensions (SOD)

Volume 5

- Tender Drawings

Volume 6

- Pricing Documents

Volume 7

- Safety, Health and Environment (SHE) Manual
- SHE Conditions of Contract

**KOLKATA METRO RAIL CORPORATION LIMITED
EAST WEST METRO PROJECT**

CONTRACT RS (3R)

**TENDER DOCUMENTS
VOLUME 2**

GENERAL CONDITIONS OF CONTRACT

**KOLKATA METRO RAIL CORPORATION LIMITED
KMRCL Bhawan (HRBC Office Complex),
Munshi Premchand Sarani,
Kolkata 700 021
India**

GENERAL CONDITIONS OF CONTRACT CONTENTS

	Page No
1 DEFINITIONS AND INTERPRETATION	
1.1 Definitions	9
1.2 Interpretation	16
1.3 Law and Language	16
1.4 Contract Agreement	16
1.5 Priority of Documents	16
1.6 Care and Supply of Construction and/or Manufacture Documents	17
1.7 Communications	17
1.8 Employer's Use of Contractor's Documents	17
1.9 Contractor's Use of Employer's Documents	17
1.10 Compliance with Statutes, Regulations and Laws	18
1.11 Joint and Several Liability	18
1.12 Severability	18
2 THE EMPLOYER	18
2.1 General Obligations	18
2.2 Access to and Possession of the Site	18
2.3 Permits, Licences or Approvals	19
2.4 Assignment by the Employer	19
3 THE ENGINEER	19
3.1 Appointment of Engineer	19
3.2 Duties and Authority of the Engineer	19
3.3 Engineer's Authority to Delegate	19
3.4 Engineer's Instructions	20
3.5 Engineer to Attempt Agreement	20
4 THE CONTRACTOR	20
4.1 General Obligations	20
4.2 Performance, Guarantees, Warranties and Undertakings	21
4.3 Representation on Works	22
4.4 Facilities for and co-ordination with others	23
4.5 Sub-contractors	25
4.6 Assignment of Contractor's and Sub-contractor's Obligations	26
4.7 Compensation for Breach	26
4.8 Setting Out	26
4.9 Site Data	27
4.10 Sufficiency of accepted Contract Amount	27
4.11 Access Route	27
4.12 Rights of Way and Facilities	28

4.13	Programmes	28
4.14	Progress Reports	28
4.15	Contractor's Equipment	29
4.16	Safety of Works	29
4.17	Protection of the Environment	30
4.18	Electricity, Water and Gas	30
4.19	Tools, Plants And Equipment Supplied By The Employer	30
4.20	Employer's Materials	31
4.21	Sheds, Stores, Yards	31
4.22	Temporary Works	31
4.23	Unforeseeable Physical Conditions	31
4.24	Access for Engineer	31
4.25	Access Road and Way Leaves	31
4.26	Contractor to keep Site Clear	31
4.27	Security of the Site	32
4.28	Contractor's Operations on Site	32
4.29	Discoveries	32
4.30	Publicity	33
4.31	Disclosure Of Relationship	33
4.32	Use Of Explosives	33
4.33	Corrupt or fraudulent practices	33
4.34	Quality assurance	34
4.35	Work by Persons Other than Contractor	34
4.36	Confidentiality of Information	35
5	DESIGN	35
5.1	General Obligations	35
5.2	Contractor's warranty of design	35
5.3	Construction and/or Manufacture Documents	36
5.4	Technical Standards and Regulations	37
5.5	Samples	37
5.6	As-Built Drawings and Documents	38
5.7	Operation and Maintenance Manuals	38
5.8	Intellectual Property Rights and Royalties	38
6	STAFF AND LABOUR	40
6.1	Engagement of Staff and Labour	40
6.2	Rates of Wages and Conditions of Labour	40
6.3	Persons in the service/ retired of Employer/Engineer	40
6.4	Labour Laws	40
6.5	Working Hours	40
6.6	Facilities for Staff and Labour	41
6.7	Health and Safety	41
6.8	Contractor's Superintendence	41

6.9	Contractor's Personnel	41
6.10	Preservation of Peace and orderly conduct	41
6.11	Labour to be Contractor's Employee	42
6.12	Report Of Accidents To Labour	42
6.13	Claim on account of violation of Labour laws	42
7	QUALITY CONTROL	42
7.1	Manner of Execution	42
7.2	Delivery to Site	42
7.3	Inspection	42
7.4	Testing	43
7.5	Rejection	43
7.6	Liability after Inspection and Testing	43
7.7	Not Used	43
7.8	Cost of Employer's Attendance Including Travel	43
7.9	Covering up of Works	44
7.10	Tests after Completion	44
7.11	Integrated testing and system commissioning	45
8	COMMENCEMENT, COMPLETION AND DELAY	46
8.1	Commencement of Works	46
8.2	Time for Completion	46
8.3	Delays	46
8.4	Extension of Time for Completion	46
8.5	Liquidated Damages for Delay	48
8.6	Rate of Progress	49
8.7	Suspension of Work	49
8.8	Consequences of Suspension	49
8.9	Resumption of Work	50
9	EMPLOYER'S TAKING OVER	50
9.1	Taking Over Certificate	50
9.2	Taking over of Parts of the Works	50
10	DEFECTS LIABILITY	51
10.1	Completion of Outstanding Work and Remedying Defects	51
10.2	Cost of Remedying Defects	51
10.3	Extension of Defect Liability Period	51
10.4	Failure to Remedy Defects	51
10.5	Removal of Defective Work	52
10.6	Further Tests	52
10.7	Right of Access	52
10.8	Contractor to Search	52
10.9	Performance Certificate	52

10.10	Unfulfilled Obligations	52
10.11	Emergency Defect Rectification	53
11	CONTRACT PRICE AND PAYMENT	53
11.1	The Contract Price	53
11.2	Advance Payments	53
11.3	Application for Interim Payment Certificate	54
11.4	Issue of Interim Payment Certificates	55
11.5	Payment- Interim and Final	55
11.6	Retention Money	56
11.7	Statement at Completion ·	56
11.8	Application for Final Payment Certificate	56
11.9	Discharge	57
11.10	Issue of Final Payment Certificate	57
11.11	Cessation of Employer's Liability	57
11.12	Calculation of Payments in Foreign Currency	57
11.13	Round off	58
11.14	Payment By Cheque and E-Payment	58
11.15	Tax Deduction at Source	58
11.16	Production of Vouchers	58
11.17	Withholding And Lien For Sums Claimed	58
11.18	Signature On Receipts For Payments	58
11.19	Post Payment Audit	59
11.20	Recovery of money due to the Employer	59
12	VARIATIONS	59
12.1	Right to Vary	59
12.2	Contractor's Variations	59
12.3	Employer's Variations	61
12.4	Variation Procedure	61
12.5	Payment in Applicable Currencies	61
13	TERMINATION OF THE CONTRACT	61
13.1	Notice to Contractor	61
13.2	Termination Of Contract Due To Contractor's Default	61
13.3	Termination by Contractor	63
13.4	Survival	65
14	RISK AND RESPONSIBILITY	65
14.1	Indemnity	65
14.2	Contractor's Care of the Works	66
14.3	Employer's Risks	66
14.4	Consequences of Employer's Risks	67
14.5	Contractor's Risks	67

14.6	Limitation of Liability	67
14.7	Ownership of Plant and Materials	67
15	INSURANCE	68
15.1	Insurance for Design	68
15.2	Insurance for Works and Contractor's Equipment	68
15.3	Insurance Against Injury to Persons and Damage to Property	68
15.4	Insurance for Workers	68
15.5	Professional Indemnity Insurance	69
15.6	General Requirements for Insurances	69
16	FORCE MAJEURE	70
16.1	Definition of Force Majeure	70
16.2	Effect of Force Majeure Event	70
16.3	Contractor's Responsibility	70
16.4	Employer's Responsibility	70
16.5	Payment to Contractor	70
16.6	Resumption of Work	71
16.7	Optional Termination, Payment and Release	71
16.8	Release from Performance under the Law	71
17	CLAIMS, DISPUTES, CONCILIATION AND ARBITRATION	71
17.1	Procedure for Claims	71
17.2	Payment for Claims	72
17.3	No Legal Action Till Dispute Settlement Procedure is Exhausted	72
17.4	Notice of Dispute.	72
17.5	Two Stages for Dispute Resolution.	72
17.6	Conciliation.	72
17.7	Conciliation Procedure	72
17.8	Termination of Conciliation Proceedings	73
17.9	Arbitration	73
17.10	Interest on Arbitration Award	74
17.11	Cost of Arbitration	74
17.12	Jurisdiction of Courts	74
17.13	Suspension of Work on Account of Arbitration	74
18	SERVICE OF NOTICES	75
18.1	Notice to Contractor	75
18.2	Notice to Employer and Engineer	75
18.3	Change of Address	75

GENERAL CONDITIONS OF CONTRACT

1 DEFINITIONS AND INTERPRETATION

Definitions	1.1	The following contract terms and expressions as used in the contract defined shall have the meanings assigned to them, except where the context otherwise requires. Words indicating persons or parties include corporations and other legal entities except where the context requires otherwise.
	1.1.1	Documents
	1.1.1.1	“Appendix to Form of Tender” means the completed pages in title Appendix, which are appended to and form part of the Tender.
	1.1.1.2	“Construction and/or Manufacture Documents” means all drawings, calculations, computer software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature, to be submitted by the Contractor.
	1.1.1.3	“Contract” means the written Contract Agreement, the Letter of Acceptance, General Conditions of Contract, Special Conditions of Contract, the Employer’s Requirements, the Tender, the Notice of Invitation to Tender, Instructions To Tenderers, the Contractor’s Proposal, the Schedules, Clarifications issued and such further documents which are listed in the Letter of Acceptance or Contract Agreement (if completed).
	1.1.1.4	“Contract Agreement” means the contract agreement pursuant to acceptance letter referred to in Clause 1.4. It shall also include all subsequent modifications/ amendments to record the Contract as a result of the communications or negotiation proceedings between the parties.
	1.1.1.5	“Contractor’s Proposal” means the proposal submitted by the Contractor with the Tender, as modified and accepted by the Employer and included in the Contract. Such documents may include the Contractor’s preliminary design.
	1.1.1.6	“Design Data” means all specifications, plans, drawings, details, graphs, sketches, models, levels, setting-out dimensions, calculations duly checked by the Contractor and other documents relating to the design of the Works prepared or to be prepared by or on behalf of the Contractor.
	1.1.1.7	“Drawings” means the Employer’s Drawings and the Drawings submitted by the Contractor and any modification of such drawings as any, from time to time, be furnished or for which the Engineer has issued a Notice of No Objection.

- 1.1.1.8 **“Employer’s Requirements”** means the description of the scope, standard, design criteria, specifications, drawings, programme of work, indigenisation programme (where applicable) as included in the Contract, and any alterations and modifications thereto in accordance with the Contract.
- 1.1.1.9 **“Interim Payment Schedule”** means the schedule included for each Cost Centre in the Pricing Document and accepted by the Employer to be used for interim payments in relation to achievement of milestones under that Cost Centre, as the same may be revised from time to time in accordance with Clause 11.
- 1.1.1.10 **“Letter of Acceptance”** means the formal acceptance to the Works by the Employer of the Tender.
- 1.1.1.11 **“Notice to Proceed”** means the notice issued by the Employer to the Contractor communicating the date on which the Works are to be commenced.
- 1.1.1.12 **“Safety, Health and Environmental (SHE) Manual”** means the Employer’s manual containing the requirements and conditions to be met during the execution of the Works by the Contractor.
- 1.1.1.13 **“Schedules”** means the information and data submitted with the Tender, as included in the Contract.
- 1.1.1.14 **“Tender”** means the Contractor’s Pricing Document to the Employer for the designing, execution, manufacture, and completion of the whole of Works, testing and commissioning (including Integrated Testing and Commissioning) and remedying of any defects therein, as accepted by the Letter of Acceptance.
- 1.1.1.15 **“Schedule of Milestones”** means the schedule included in each Cost Centre in the Pricing Document, describing the Milestones and stipulating dates by which the Milestones are to be achieved under that Cost Centre in order to maintain interim payments by the Employer to the Contractor in accordance with the Interim Payment Schedule for that Cost Centre, as the same may be revised from time to time in accordance with the Contract.
- 1.1.1.16 **“Special Conditions of Contract”** means any special conditions of contract issued by the Employer prior to submission of the Tender or negotiated and agreed in writing by the Employer and the Contractor prior to and conditional upon acceptance of the Tender.
- 1.1.1.17 **“Technical Leader”** means the member who has past experience of Design, Manufacture, Testing & Commissioning at site including maintenance during DLP.

- 1.1.1.18 **“Works Programme”** means the programme showing the sequence, method and timing of investigations, design, issue of No Objection Notices, execution, manufacture, delivery to site, erection, installation, testing, commissioning of the Works (including Integrated Testing and Commissioning), indigenisation (where applicable) and related activities in the form and content prescribed by the Employer’s Requirements, or any amended or varied version thereof, as submitted by the Contractor and for which the Engineer has issued a Notice of No Objection.
- 1.1.2 **Persons**
- 1.1.2.1 **“Party”** means the Employer or the Contractor as the context requires
- 1.1.2.2 **“Contractor”** means the party whose Tender has been accepted by the Employer and the legal successors in title to such party, but not (except with the consent of the Employer) any assignee of such party.
- 1.1.2.3 **“Contractor’s representative”** means the person (if any) named as such in the Contract or other person appointed from time to time by the Contractor under Clause 4.3.
- 1.1.2.4 **“Designated Contractors”** means any of the following whose activities or the works they are engaged to carry out, affect or are affected by the Works, in any way or at any time:
- (a) contractors, design consultants and utility authorities engaged on the Project from time to time by the Employer;
 - (b) sub-contractors of any tier of the contractors above; provided that the definition shall exclude the Contractor and his sub-contractors of any tier in relation to the Works.
- 1.1.2.5 **“Designer”** means the Contractor, or part of the group forming the contractor, person, firm or company or group of companies, or any replacement, carrying out the Design of Works or part thereof.
- 1.1.2.6 **“Employer”** means KOLKATA METRO RAIL CORPORATION LIMITED (KMRCL), its legal successors and assignees.
- 1.1.2.7 **“Engineer”** means General Consultant (GC) or any person/party nominated or appointed from time to time by the Employer to act as the Engineer for the purposes of the Contract and notified as such in writing to the Contractor.
- 1.1.2.8 **“General Consultant” or “GC”** means the consortium of **“MYCEL (M=AECOM, Y=YEC, C=CES, E=EGIS, L=LHPA)”** appointed by the Employer as a general consultant to the Employer or any other person appointed from time to time and notified as such to the Contractor.

- 1.1.2.9 **“Sub-contractor”** means any person named in the Contract as a sub-contractor, manufacturer or supplier for a part of the Works or any person to whom a part of the Works has been sub-contracted with the consent of the Employer and the legal successors in title to such person, but not any assignee of such person.
- 1.1.3 **Dates, Times and Periods**
- 1.1.3.1 **“Commencement Date”** means the date on which the Contractor shall commence the Works on the written instructions of the Employer contained in the Notice to Proceed or in the Letter of Acceptance.
- 1.1.3.2 **“Contract Period”** means the period from the Commencement Date to the end of final Defects Liability Period.
- 1.1.3.3 **“Day”** means a calendar day; **“Week”** means 7 calendar days and **“Year”** means 365 calendar days.
- 1.1.3.4 **“Effective Date”** means the date on which the Contract comes into force and effect.
- 1.1.3.5 **“Gazetted Holiday”** means every holiday which is observed by Kolkata Metro Rail Corporation Limited as a gazetted holiday.
- 1.1.3.6 **“General Holiday”** means Sunday, 2nd and 4th Saturdays of each month.
- 1.1.3.7 **“Key Date”** means a date identified as such in the Form of Tender – Appendix FT-1.
- 1.1.3.8 **“Milestone”** means the completion of a part of the Works or the occurrence of an event identified as such in the Schedule of Milestones.
- 1.1.3.9 **“Milestone Date”** means the date prescribed in the Schedule of Milestone by which a Milestone is to be achieved, if Interim Payments for the Cost Centre in which the Milestone is included are not to be suspended.
- 1.1.3.10 **“Stage”** means level of progress of the works identified as such and more particularly described in the Employer’s Requirements for which a Key Date for the achievement thereof is stipulated in the Contract.
- 1.1.3.11 **“Time for Completion”** means the time for completing the Works or a section or a part thereof (as the case may be), and passing the Tests on Completion, including Integrated Testing and Commissioning, as stated in the Contract, calculated from the Commencement Date.
- 1.1.4 **Tests and Completion**
- 1.1.4.1 **“Factory Tests”** means the tests required to be carried out in the factory premises on components, equipment, subsystem, system, etc. during and/or after manufacture in the factory.

- 1.1.4.2 **“Integrated Testing”** means the programme of tests performed by the Contractor at the direction of the Engineer following satisfactory completion of Contractor’s tests on his equipment, sub-systems or system to verify and confirm the compatibility and compliant performance of his equipment/ sub-system/ system with the equipment/ sub-system/ system provided by others.
- 1.1.4.3 **“Milestone Certificate”** means the certificate to be issued by the Engineer in relation to the achievement or otherwise of Milestones.
- 1.1.4.4 **“Performance Certificate”** means the certificate issued by the Engineer under Clause 10.9.
- 1.1.4.5 **“Taking Over Certificate”** means a certificate issued under Clause 9.1.
- 1.1.4.6 **“Tests on Completion”** means the tests specified in the Contract and designated as such, including Integrated Testing and any other such tests as may be agreed by the Engineer and the Contractor, or instructed as a Variation, which are to be carried out before the Works, or any Section are taken over by the Employer.
- 1.1.5 **Money and Payments**
- 1.1.5.1 **“Contract Price”** means the sum stated in the Letter of Acceptance as payable to the Contractor, subject to such additions thereto or deductions there from as may be made under the provisions of the Contract. ,
- 1.1.5.2 **“Cost”** means all expenditure properly incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.
- 1.1.5.3 **“Cost Centre Amount”** means the amount apportioned to a Cost Centre as set out in the Pricing Document, as the same may be revised from time to time in accordance with the Contract.
- 1.1.5.4 **“Final Payment Certificate”** means the payment certificate issued by the Engineer under Clause 11.10.
- 1.1.5.5 **“Final Statement”** means the agreed statement defined in Clause 11.8.
- 1.1.5.6 **“Foreign Currency”** means a freely convertible international trading currency in which part of the Contract Price is payable, but not the Local Currency.
- 1.1.5.7 **“Interim Payment Certificate”** means any payment certificate issued by the Engineer under Clause 11.4, other than the Final Payment Certificate.
- 1.1.5.8 **Local Currency”** means Indian Rupees.

- 1.1.5.9 **“Retention Money”** means the accumulated retention monies retained by the Employer under Clause 11.6
- 1.1.5.10 **“Deemed Exports”** refers to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange.
- 1.1.6 **Other Definitions**
- 1.1.6.1 **“Contractor’s Equipment”** means all machinery, apparatus, appliances, other things of whatsoever nature required for purpose of the Contract, including without limitation, Contractor’s plant and equipment, or materials to or from the Site, but does not include Plant, or Materials intended to form or forming part of the Permanent Works.
- 1.1.6.2 **“Cost Centre”** means a group of activities and/ or items of work identified as such in the Pricing Document.
- 1.1.6.3 **“Materials”** means things of all kinds (other than Plant) to be provided and incorporated in the Permanent Works by the Contractor, including the supply-only items (if any), which are to be supplied by the Contractor as specified in the Contract.
- 1.1.6.4 **“Plant”** means the machinery, equipment, and apparatus and the likes, intended to form or forming part of the Permanent Works, including the supply-only items (if any), which are to be supplied by the Contractor as specified in the Contract.
- 1.1.6.5 **“Section”** means a part of the Works specifically designated in the Appendix to Form of Tender as a Section (if any).
- 1.1.6.6 **“Site”** means the places provided by the Employer where the Works are to be executed and to which Plant, Rolling Stock and Materials are to be delivered and any other place as may be specifically designated in the Contract as forming part of the Site. Site includes Depot, where Rolling Stock will be delivered, tested and commissioned as provided in the Contract.
- 1.1.6.7 **“Variation”** means any alteration and/ or modification to the Employer’s Requirements, which is instructed by the Engineer or approved as a variation by the Engineer, in accordance with Clause 12.
- 1.1.6.8 **“Works”** means the work, both permanent and temporary, or services to be carried out, designed, manufactured, fabricated, delivered to Site, erected, installed, completed, tested, commissioned, (including Integrated Testing and Commissioning) and remedying of any defects, and/ or supplied in accordance with the Contract and include Plant, Rolling Stock and Materials and their accessories.

- 1.1.6.9 **“Permanent Works”** means the permanent works to be designed and executed in accordance with the Contract.
- 1.1.6.10 **“Temporary Works”** means all temporary works of every kind (other than Contractor’s Equipment) required for the execution and completion of the Works, and the remedying of any defects.
- 1.1.6.11 **“Project”** means Kolkata East West Metro Project.
- 1.1.6.11 **“JICA”** means Japan International Cooperation Agency.
- 1.1.6.12 **“Defects Liability Period”** means the defects liability period stated in the Special Conditions of Contract calculated from the date of taking over of whole of the Works and not any sub-section or part thereof. Provided that, if any part of the Works or sub-systems or component of that part has been replaced, renewed or repaired, the “Defects Liability Period” in respect of that part or sub-system or components of that part shall start from the date of such replacement, renewal or repair has been completed to the satisfaction of the Engineer.
- 1.1.6.13 **“Performance Guarantee”** means the Contractor shall within Twenty eight (28) days of receipt of the Letter of Acceptance provide a security for the due performance of the Contract in the amount specified in Appendix FT-1 of the Form of Tender.
- 1.1.6.14 **“Proven Design”** means the Contractor satisfies Category 1 and the Contractor or Sub-Contractors satisfy the Category 2 as indicated below:
- Category 1: (Main Equipment)
- The Contractor (Sole Contractor / Group / Joint Venture / Consortium) has carried out design, manufacture, supply, testing, commissioning and integration of at least 200 numbers of cars in the last ten years (ending 30th November, 2014) and at least 100 cars have been supplied and in service for a period of at least five years (ending 30th November, 2014) in India or in a country other than the country of manufacture in respect of the main equipment of Car Body, Bogie, Propulsion and System Integration.
- Category 2: Sub-Assemblies including Propulsion & Braking System
- The Contractor (Sole Contractor /Group / Joint Venture / Consortium) or Sub-Contractors has carried out design and manufacturing of sub-assemblies and those sub-assemblies have been in service during the preceding five years (ending 30th November, 2014) or more in respect of, Saloon / Cab Air conditioners, Saloon Doors, Propulsion

System, Brake system, Battery and Charger units, Bogie suspension items, Couplers, Gangways, Current collector assemblies, Communication system, TMS, Lighting system, Flooring and saloon furnishing including glass in similar Metro system etc.

Interpretation	<p>1.2 In the Contract except where the context requires otherwise:</p> <ul style="list-style-type: none"> (a) words indicating one gender include all genders; (b) words indicating the singular also include the plural and words indicating the plural also include the singular and (c) “written” or “in writing” means hand-written, type written, printed or electronically made and resulting in a permanent record. <p>The marginal words and other headings shall not be taken into consideration in the interpretation of these conditions</p>
Law and Language	<p>1.3 The Contracts shall be governed by the Acts and Laws of India, the rules, regulations and bye-laws of the concerned public bodies and authorities. Language of the Contract shall be English.</p>
Contract Agreement	<p>1.4 The Employer and the Contractor shall execute two Contract Agreements in the form annexed in Schedules to Special Conditions of Contract, with such modifications as may be necessary to record the Contract within 45 days from the date of issue of Letter of Acceptance by the Employer and receipt of all securities & warranties by the Employer from the contractor. The costs of stamp duties and similar charges imposed by law shall be borne by the Contractor.</p>
Priority of Documents	<p>1.5 The documents forming the Contract are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Engineer shall issue any necessary clarification or instruction to the Contractor, and the priority of the documents shall be unless otherwise specified in the Special Conditions of Contract, as follows:</p> <ul style="list-style-type: none"> (a) Contract Agreement; (b) Letter of Acceptance; (c) Form of Tender (FOT) and Appendix 1 to FOT; (d) Special Conditions of Contract including Schedules; (e) General Conditions of Contract; (f) Employer’s Requirements – Technical Specification and Drawings; (g) Employer’s Requirements – General Specification; (h) Pricing Document; (i) Safety, Health and Environment (SHE) Manual (j) Tender and Tender Addenda, if any; (k) Approved Subcontractors’ List (l) Contractor’s Proposal (as listed); and (m) Any other documents forming part of the contract.

Care and Supply of Construction and/or Manufacture Documents

- 1.6** The Construction and/or Manufacture Documents shall be in the custody and care of the Contractor during the Contract. Unless otherwise stated in the Employer's Requirements, the Contractor shall provide six copies for the use of the Engineer and assistants (as referred to in Clause 3.3).

The Contractor shall keep on Site one complete set of the documents forming the Contract, the Construction and/or Manufacture Documents, Variations, other communications given or issued from time to time and the documents/samples mentioned in Clause 5.3. The Employer, the Engineer and their assistants shall have the right to access these documents at all reasonable times.

On discovery of any technical error or defect in a document intended to be used for the purpose of Contract, the Contractor shall promptly give notice to the Engineer of such error or defect.

- Communications** **1.7** Communications between parties, unless otherwise specified shall be effective only when made in writing. A notice will be effective only when delivered.

Employer's Use of Contractor's Documents

- 1.8** 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 the Contract) to give to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

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

The 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.

Contractor's Use of Employer's Documents

- 1.9** As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Employer's Requirements and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract.

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.

- Compliance with Statutes, Regulations and Laws**
- 1.10** The Contractor shall familiarise themselves and conform to the requirement in all aspects with:
- (a) the provision of any enactment in India as applicable from time to time
 - (b) the regulations or bye-laws of any local body and utilities including, but not limited to Electricity Supply Regulation Act, Indian Electricity Rules, Pollution Control Rules..
 - (c) The Contractor shall be bound to give all notices required by statute, regulations or bye-laws, as aforesaid and to pay all fees and bills payable in respect thereof. The Contractor will arrange necessary clearances and approvals before the Work is taken up.

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

The Contractor shall indemnify the Employer against all penalties and liabilities of every kind of breach of any such enactment, laws, regulations, bye-laws or rules.

- Joint and Several Liability**
- 1.11** If the Contractor is (under applicable Laws) a joint venture, consortium, or other incorporated grouping of two or more Parties:
- a) these parties shall be deemed to be jointly and severally liable to the Employer for the performance of the Contracts;
 - b) these parties shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these parties; and the Contractor shall not alter its composition or legal status without the prior consent of the Employer.

- Severability**
- 1.12** If any clause, provision, section or part of the Contract is ruled invalid by a court of competent jurisdiction, then the parties shall:
- (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, and
 - (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations. The invalidity or enforceability of any such clause, provision, section or part shall not affect the validity or unenforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, section or part.

2 THE EMPLOYER

- General Obligations**
- 2.1** The Employer shall provide the Site to the Contractor for carrying out the Works including testing and commissioning of equipment, plant and machinery at Site in accordance with the Contract.

- Access to and Possession of the Site**
- 2.2** The Employer shall grant the Contractor right of access to, and possession of, the Site progressively for the completion of Works. Such right and possession may not be exclusive to the Contractor. The Contractor will draw/modify the schedule for completion of Works according to progressive possession/right of such sites.

If the Contractor suffers delay from failure on the part of the Employer to

grant right of access to, or possession of the Site, the Contractor shall give notice to the Engineer in a period of 28 days of such occurrence. After receipt of such notice the Engineer shall proceed to determine any extension of time to which the Contractor is entitled and shall notify the Contractor accordingly.

For any such delay in handing over of site, Contractors will be entitled to only reasonable extension of time and no monetary claims whatsoever shall be paid or entertained on this account.

**Permits,
Licences or
Approvals**

2.3

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

The rendering of such assistance by the Employer shall not be interpreted as a pretext by the Contractor as condoning of any delay or non-performance of any of the Contractors obligations. The following-up of all such applications shall be the responsibility of the Contractor.

**Assignment
by the
Employer**

2.4

The Employer shall be fully entitled without the consent of the Contractor, to assign the benefit of the Contracts or any part thereof and any interest therein or there under to any third party under intimation to the Contractor.

3

THE ENGINEER

**Appointment
of Engineer**

3.1

The Employer shall notify the Contractor in writing of the appointment and identity of the Engineer and of any replacement from time to time.

**Duties and
Authorities
of the
Engineer**

3.2

The Engineer shall carry out the duties specified in the Contract. The Engineer shall have no authority to amend the Contracts.

The Engineer may exercise the authority specified in, or necessarily to be implied from the Contracts. If the Engineer is required to obtain the specific approval of the Employer before exercising such authority, such requirements shall be as stated in Special Conditions of Contract. Any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer.

The Engineer shall have no authority to relieve the Contractor of any of his duties, obligations, or responsibilities under the Contract. Any proposal, inspection, examination, testing, consent, approval or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility, including responsibility for his errors, omissions, discrepancies, and non-compliance with Clause 5.4.

The Engineer shall copy to the Employer all communications given or received by him in accordance with the Contract.

**Engineer's
Authority to
Delegate**

3.3

- (i) The Engineer, with the prior approval of the Employer may from time to time assign and delegate authority to Engineer's representatives/assistants and may also revoke such assignments and delegations. The delegation or revocation shall be in writing and shall be applicable only after same has been notified in writing to the Contractor.
- (ii) Each Engineer's representative/assistants to whom duties have been assigned or authority has been delegated shall be authorized to issue

instructions to the Contractor to the extent defined by the delegation. Any determination, approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by an Engineer's representative/assistants shall have the same effect as though the act had been an act of the Engineer. However:

- (a) any failure to disapprove any Plant, Rolling Stock, Material, design and workmanship shall not prejudice the right of the Engineer to reject such Plant, Rolling Stock, Material, design and workmanship;
- (b) if the Contractor questions any determination or instruction of Engineer's representative/assistants, the Contractor may refer the matter to the Engineer within three days of such decision having been given, who shall confirm, reverse or vary such determination or instruction.

Engineer's Instructions

3.4

The Contractor shall comply with instructions given by the Engineer in accordance with the Contract.

The Contractor shall give reasonable notice to the Engineer of any instruction, which he considers necessary for the execution of the Works, to enable the Engineer to issue the instruction so that progress of the Works is not delayed. The Engineer shall not, however, be bound to issue any instruction which, in his opinion, is unnecessary.

No act or omission by the Engineer or Engineer's representative/assistants in the performance of any of the Engineer's duties or the exercise of any of the Engineer's powers under the Contract shall, in any way, operate to relieve the Contractor of any of the duties, responsibilities, obligations or liabilities imposed upon the Contractor by any of the provisions of the Contract.

Engineer to Attempt Agreement

3.5

When the Engineer is required to determine value, cost or extension of time, he shall consult with the Contractor and the Employer in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall determine the matter fairly, reasonably and in accordance with the Contract, with the approval of Employer.

4

THE CONTRACTOR

General Obligations

4.1

The Works as completed by the Contractor shall be wholly in accordance with the Contract and fit for the purposes for which they are intended, as defined in the Contract. The Works shall include any work which is necessary to satisfy the Employer's Requirements, the Contractor's Proposal and Schedules, or is implied by the Contract, or arises from any obligation of the Contractor, and all works not mentioned in the Contract but which may be inferred to be necessary for stability, or completion, or the safe, reliable and efficient operation of the Works.

The Contractor shall design, manufacture, execute, install, complete, test (including Integrated Testing) and commission, the Works, including providing Construction and/or Manufacture Documents, within the Time for Completion and shall remedy any defects within the Contract Period. The Contractor shall provide all superintendence, labour, Plant, Materials, Contractor's Equipment, Temporary Works and all other things, whether of a temporary or permanent nature, required in and for such design, manufacture, execution, installation, completion, testing (including

Integrated Testing) and commissioning and remedying of defects.

Before commencing design, the Contractor shall satisfy himself regarding the Employer's Requirements (including design criteria and calculations, if any) and the items of reference mentioned in Clause 4.8. The Contractor shall give notice to the Engineer of any error, fault or other defect in the Employer's Requirements or such items of reference. After receipt of such notice, the Engineer shall determine whether Clause 12 shall be applied, and shall notify the Contractor accordingly.

The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations, of all methods of construction, manufacture, and of all the Works, irrespective of any approval or consent by the Engineer.

The Contractor shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his Tender to cover all his risks, liabilities and obligations set out in or implied by the Contracts and all matters and things necessary for the proper design, manufacture, execution, installation, completion, testing (including Integrated Testing), commissioning of the Works and remedying of the Defects.

The Contractor acknowledges responsibility for ascertaining and securing at his own cost:

- (a) conditions bearing upon the proper transportation, disposal, handling and storage of materials (including but not limited to hazardous toxic substances and excavated materials);
- (b) availability of electricity, water and gas;
- (c) availability of skilled manpower;
- (d) the character of equipment and facilities needed preliminary to and during the manufacture, installation, execution, testing (including Integrated Testing), and commissioning of the Works and remedying of any defects;
- (e) the protection of the environment and adjacent structures which will be necessary preliminary to and during the manufacture, installation, execution, testing (including Integrated Testing), and commissioning of the Works and remedying of any defects;
- (f) the location of and the authorisation required for and the means of diversion of any services and facilities required for the purposes of the Works.

The Contractor shall whenever required by the Engineer, submit details of the arrangement and methods which the Contractor proposed to adopt for the execution of the Works. No alteration to these arrangements or methods shall be made without the approval of the Engineer.

Performance Guarantee, Warranties and Undertakings

Amount of Performance Guarantee

- 4.2**
- 4.2.1** (i) Within 28 days of receipt of the Letter of Acceptance, the successful Tenderer shall furnish Performance Guarantee in the form of a bank guarantee from an Indian Schedule bank (excluding Cooperative

Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule for an amount of ten per cent of the Contract price in types and proportions of currencies in which the Contract Price is payable. . The approved form provided in the “Special Conditions of Contract” or any other form approved by the Employer shall be used for Performance Guarantee. The Performance Guarantee shall be valid up to 28 days beyond the final completion of Defect Liability Period against each contract.

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

Release of Performance Guarantee

4.2.2

- (i) The whole or such portion of the Performance Guarantee amount as he may consider fit shall be liable to be forfeited by the Employer at the discretion of the Employer, in the event of any breach of Contract on the part of the Contractor.
- (ii) After completion of the entire Work, one half of each Performance Guarantee shall be released to the Contractor, on issue of last Taking Over Certificate if more than one Certificate exist, by the Engineer, in accordance with Clauses 9.1 and 9.2 of these Conditions. This shall not relieve the Contractor from his obligations and liabilities, to make good defects that may be detected during the final Defects Liability Period.
- (iii) The balance amount shall be released to the Contractor, after the expiry of the final Defect Liability Period for the entire Work.

Guarantees and Warranties

4.2.3

Within 28 days of the date of Letter of Acceptance of the Tender, the Contractor shall submit to the Employer:

- (a) An Undertaking in the approved format from a parent company, the identity of which shall have been submitted in writing to the Employer prior to acceptance of the Tender and against which the Employer shall have raised no objection.
- (b) A written Guarantee in the approved format from a parent company, the identity of which shall have been submitted in writing to the Employer prior to acceptance of the Tender and against which the Employer shall have raised no objection.
- (c) A warrantee in the approved format from the Contractor.

The formats of Performance Guarantee, Parent Company Undertaking, Parent Company Guarantee and Contractor’s Warranty are provided in the Schedule to Special Conditions of Contract.

In the event that the Contractor shall comprise two or more members, corporations acting in partnership, joint venture, consortium or otherwise each such member or corporation shall submit a parent company Undertaking and Guarantee for each of the contracts separately.

Representati on on Works

4.3

Unless the Contractor's Representative is named in the Contract, the Contractor shall, within 14 days of Notice to Proceed, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint. The Contractor shall not revoke the appointment of the Contractor's Representative without the prior consent of the Engineer. The Contractor's Representative so nominated shall have full authority to act on behalf of the Contractor. The Contractor's Representative shall give his

whole time to directing the preparation of the Construction and/or Manufacture Documents and the execution of the Works. The Contractor's Representative shall receive (on behalf of the Contractor) all notices, instructions, consents, approvals, certificates, determinations and other communications under the Contract. Whenever the Contractor's Representative is to be absent from the Site, a suitable replacement person shall be appointed, with prior consent of Engineer.

Failure on part of the Contractor to comply with these provisions shall constitute a breach of Contract leading to action under Clause 13.2.

The Contractor's Representative may delegate any of his powers, functions and authorities to any competent person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Engineer has given prior consent thereto. The Contractor's Representative and such persons shall be fluent in the language of day to day communication and the Contractor shall be bound by and fully liable for the acts or omissions of the Contractor's Representatives or any of his employees and/or delegates, agents or nominees.

**Facilities for
and
co-ordination
with Others.**

4.4

The Contractor shall not impede and shall afford all necessary facilities, access and/or services to the Employer, Engineer, Designated Contractors, utility undertakings, other relevant authorities and other contractors (whether employed by the Employer or not) who are carrying out on, or in the vicinity of, the Site, works not included in the Contract but forming part of the Project:

- (a) The Contractor shall take all reasonable steps to ensure that the Works are co-ordinated and integrated with the design, manufacture, installation execution and testing of such other works and shall in particular (but without limitation):
 - (i) comply with any direction which the Engineer may give for the integration of the design of the Works with the design of any other part of the Project;
 - (ii) consult, liaise and co-operate with those responsible for carrying out such other works, including where necessary, in the preparation of the respective designs, the preparation of co-ordinated programmes, method statements, co-ordination drawings and specifications together with arrangements of service priorities and zoning;
 - (iii) participate in Integrated Testing and Commissioning of the system with Designated Contractors and demonstrate to the satisfaction of the Engineer that the Works have been designed and constructed in a manner compatible with the works of Designated Contractors.
- (b) The Contractor shall undertake design co-ordination with other contractors who are carrying out works forming part of the Project as described in the Employer's Requirements. At the end of each such co-ordination period, the Contractor and the other contractor with whose works the interface period refers shall jointly state in

writing that their design co-ordination activities are complete and that their respective designs are integrated and can be finalised without interference with each other's designs or the designs with which their designs have already been integrated. A copy of this joint written statement shall be provided to the Engineer within 7 days of the end of the said design co-ordination period. Unless and until copies of all relevant and necessary design co-ordination statements have been submitted to the Engineer, the Engineer shall be entitled to suspend any review or further review of the Contractor's or the other contractor's design submissions. Such suspension shall not be grounds for the Contractor to claim nor shall be entitled to receive an extension of time or additional payments.

- (c) The Contractor shall provide within the Site, staging, storage and unloading areas for the use of Designated Contractors, if any, who are undertaking track work, fare collection system, supply, testing and commissioning of Rolling Stock, escalators, lifts, signalling and telecommunications and traction power installation works, etc. Separate locations shall be provided for each such contractor. The exact size and location of these staging, storage and unloading areas, and the commencement date shall be co-ordinated and agreed during the design interface period with each Designated Contractor.
- (d) Any other contract which depends for its execution on the Contract or upon which the Contract is dependent for its own execution shall be identified by the Engineer as a "Designated Contract". The Contractor shall provide attendance on Designated Contractors in accordance with the Employer's Requirements and as instructed by the Engineer. The identity of the contractor for a Designated Contract may not be known before the execution of the Contract but this shall not be a ground for the Contractor to object to the subsequent appointment of a Designated Contractor.
- (e) The Contractor shall in accordance with the requirements of the Engineer co-ordinate his own Works with that of Designated Contractors through Co-ordinated Installation Programme (CIP) stated in the Employer's Requirements, or as the Engineer may require, and shall afford the Designated Contractors all reasonable opportunities for carrying out their works.
- (f) The Contractor shall afford all reasonable opportunities, for carrying out their work, to other contractors employed by the Employer and their workmen respectively and the workmen of the Employer who may be engaged on or near the Site of any work, ancillary to the Works, but, not included in the Contract and shall not cause them inconvenience.
- (g) If the Contractor shall suffer delay by reason of failure by any Designated Contractor to meet the specified installation interfacing and co-ordination, completion dates, which delay shall be caused otherwise than by fault of the Contractor, or, if compliance with sub-

clause (f) herein shall involve the Contractor in delay beyond that which could be reasonably foreseen by an experienced contractor at the time of tender, then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under the Contract.

- (h) It shall be the responsibility of the Contractor to ensure that the full extent of the Works under the Contract and the works to be carried out by Designated Contractors within the Works or, in, on, under, through and over the Site are co-ordinated and integrated in their design, manufacture, installation and construction. Such responsibility shall neither be mitigated nor in any other way affected by virtue of similar responsibilities being placed on other contractors.

The Contractor shall be deemed to have made adequate allowance in the Contract Price and in the Works Programme in respect of these obligations.

If any act or omission of the Contractor whether directly or indirectly results in the delay in the execution of the works of a Designated Contractor, the Contractor, in addition to his liability in respect of liquidated damages if they become due, shall pay to the Employer, or the Engineer may deduct from Interim Payment Certificates such amount as the Engineer shall have certified in respect of additional payments or costs to the Designated Contractor in respect of such delay.

**Sub
Contractors**

4.5

The Contractor shall not sub-contract the whole of the Works. Unless otherwise stated in the Special Conditions of Contract:

- (a) the design and manufacture of the stainless steel car-bodies, bogies, propulsion control system and systems integration must be done by the applicant or members of JV / Consortium. These items cannot be subcontracted out.
- (b) the Contractor shall not be required to obtain consent for purchases of Materials which are in accordance with the standards specified in the Contract or provisions of labour or for the sub-contracts for which the Sub-contractor is named in the Contract;
- (c) the prior consent of the Engineer shall be obtained for other proposed Sub-contractors;
- (d) not less than 28 days before the intended date of each Sub-contractor commencing work, the Contractor shall notify the Engineer of such intention; and
- (e) the Contractor shall give fair and reasonable opportunity for contractors in India to be appointed as Sub-contractors.
- (f) only those Sub-contractors, who have designed and supplied similar equipment (capacity and duty) to any metro system and have been in Revenue Service for minimum period of 5 years, can be considered for evaluation.

The Contractor shall be responsible for observance by all Sub-contractors of all the provisions of the Contract. The Contractor shall be responsible for the acts or defaults of any Sub-contractor, his representatives or employees, as fully as if they were the acts or defaults of the Contractor, his representatives or employees and nothing contained in Clause 4.5 (a) shall

constitute a waiver of the Contractor's obligations under this contract. The Contractor shall provide to the Engineer a full listing of sub-contractors with respective qualifications, experience and contacts upon request of the Engineer. (SCC 3) The Contractor shall endeavor to resolve all matters and payments amicably and speedily with the sub-contractors.

Assignment of Contractor's and Sub-contractor's Obligations

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

- (a) a charge in favour of the Contractor's bankers of any money due or to become due under the Contract, or
- (b) assignment to the Contractor's insurers (in cases where the insurers have discharged the Contractor's loss or liability) of the Contractor's right to obtain relief against any other party liable.

If a Subcontractor's obligations extend beyond the expiry date of Defects Liability Period then the Contractor shall assign the benefits of such obligations to the Employer.

In the event that a sub-contractor of any tier provides to the Contractor or any other sub-contractor a warranty in respect of Plant, Materials or services supplied in connection with the Works, or undertakes a continuing obligation of any nature whatsoever in relation to such Plant, Materials or services (including without limitation an obligation to maintain stocks of spare parts) extending for a period exceeding that of the Defects Liability Period or where there is more than one Defects Liability Period exceeding that of the latest Defects Liability Period, and if the Engineer so directs in writing within 21 days of the expiry of the Defects Liability Period or the latest Defects Liability Period (as the case may be), the Contractor shall immediately assign or obtain the assignment of the benefit of such warranty or obligation to the Employer or at the direction of the Employer, to any third party referred to in Clause 2.4.

Compensation for Breach

4.7 Any breach of Clauses 4.5 to 4.6 shall entitle the Employer to rescind the Contract under Clause 13.2 of these conditions and also render the Contractor liable for loss or damage arising due to such termination.

Setting Out

4.8

Accurate Setting Out

4.8.1 The Contractor shall be responsible for

- (a) the accurate setting out of the Works in relation to the original points, lines and levels of reference given by the Engineer in writing
- (b) the correctness of position, levels, dimensions and alignments of all parts of the Works
- (c) the provisions of all necessary instruments, equipment, apparatus and labour in connection with the foregoing responsibilities
- (d) Carefully protecting and preserving all bench marks, sight rails, pegs and other things used in setting out the Works

The checking of any setting-out or of any line or level by the Engineer shall not in any way relieve the Contractor of his responsibility for the accuracy or correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting out the Works.

Errors in Setting out

4.8.2 If at any time during the execution of the Work, an error caused by the Contractor appears in the positions, levels, dimensions or alignment of any part of the Works, the Contractor on being required to do so by the

Engineer shall, at Contractor's cost, rectify such error to the satisfaction of the Engineer.

Site Data	4.9	<p>(i) The Employer shall have made available to the Contractor with the Tender documents such relevant data in Employer's possession on hydrological and sub-surface conditions. The accuracy or reliability of the data/studies/reports and of any other information supplied at any time by the Employer or Engineer is not warranted with respect to the viability of his design and execution of Works and the Contractor shall be responsible for interpreting all such data any error, discrepancies. The Contractor shall conduct further investigations considered necessary by him at his own cost and any error, discrepancies if found in Employer's data at any stage will not constitute ground for any claim for extra time and costs.</p> <p>(ii) The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works.</p> <p>(iii) The Contractor shall also be deemed to have inspected and examined the Site, its surroundings, the above data and other available information with respect to the viability of his design and execution of Works and to have satisfied himself before submitting the Tender, as to all the relevant matters including without limitation:</p> <ul style="list-style-type: none"> (a) the form and nature of the Site, including the sub-surface conditions; (b) the hydrological and climatic conditions; (c) the extent and nature of the work, Plant, and Materials necessary for the execution and completion of the Works and the remedying of any defects; (d) the applicable laws, procedures and labour practices (e) The Contractor's requirement for access, accommodation, facilities, personnel, power, transport and other services. (f) the risk of injury or damage to property adjacent to the Site and to the occupiers of such property or any other risk.
Sufficiency of accepted Contract Amount	4.10	<p>The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price against each contract corresponding to Schedule X and Schedule Y. Unless otherwise stated in the Contract, the Contract Price shall cover all his obligations under the Contract and all things necessary for the proper design, execution and completion of the Works, testing and commissioning (including Integrated Testing and Commissioning) and remedying of any defects.</p>
Access Route	4.11	<p>The Contractor shall be deemed to have satisfied himself as to the suitability and availability of the access routes he chooses to use. The Contractor shall (as between the Parties) be responsible for the maintenance of access routes. The Contractor shall provide at his cost signs or directions, which he may consider necessary or as instructed by Engineer for the guidance of his staff, labour and others. The Contractor shall obtain any permission concessions and related easement right that may be required from the relevant authorities for the use of such routes, signs and directions.</p>

The Employer will not be responsible for any claims which may arise from the use or otherwise of any access route. The Employer does not guarantee the suitability or availability of any particular access route, and will not entertain any claim for any non-suitability or non-availability for continuous use during construction of any such route.

Rights of way and Facilities

4.12 The Employer will acquire and provide land for Permanent Works and right of way (within KMRCL's land) for access thereto over routes established by the Contractor. The Contractor shall bear all cost and charges for special or temporary rights of way which he may require including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facility outside the Site which he may require for the purpose of the Works. The Employer reserves the right to make use of these service roads/rights of way for itself or for other contractors working in the area, as and when necessary without any payment to the Contractor.

Programmes 4.13

The Contractor shall submit a detailed programme to the Engineer after receipt of the Letter of Acceptance but not later than 28 days from the date of receipt of Notice to Proceed. The Contractor shall also submit a revised programme whenever the Engineer finds that the previous programme is inconsistent with actual progress or with the Contractor's obligations.

Each programme shall include the following:

- (a) the order in which the Contractor proposes to carry out the Works (including each stage of design, procurement, manufacture, delivery to Site, construction, erection, testing and commissioning),
- (b) all major events and activities in the production of Construction or Manufacture Documents; and
- (c) the sequence of all tests specified in the Contract including Integrated Testing and Commissioning.

Unless otherwise stated in the Contract, the programmes shall be developed using precedence networking techniques, showing early start, late start, early finish and late finish dates.

No significant alteration to the programmes, or to such arrangements and methods, shall be made without obtaining consent of the Engineer. If the progress of the Works does not conform to the programmes, the Engineer may instruct the Contractor to revise the programmes, showing the modifications necessary to achieve completion within the Time for Completion.

Consent by the Engineer to Programmes shall not relieve the Contractor of any of his responsibilities or obligations under the Contract. If the Programmes indicate that a Key Date has not, or will not be met, it shall not, by itself entitle the Contractor to an extension of time in relation to such Key Date.

Progress Reports

4.14 The Contractor shall submit to the Engineer by the end of each calendar month his Monthly Progress Report which shall, amongst other things, highlight actual or potential departures from the Works Programmes and/or the Design Submission Programme and state the measures which the Contractor proposes to take in order to make good or reduce any delay.

If requested by the Engineer, the Contractor shall submit to the Engineer, at

weekly intervals, a written report as to the progress of off-Site manufacture of Plant, Rolling Stock and Materials.

The Contractor shall also submit to the Engineer such other reports as may reasonably be required by him or any relevant authority or public body.

The progress reports shall conform to the Employer's Requirements.

**Contractor's
Equipment**

4.15

- 4.15.1** All Contractor's Equipment and Temporary Works provided by the Contractor shall, when brought on to the site, be deemed to be exclusively intended for execution of the Works and not be removed without the consent in writing of the Engineer. Such consent shall not be unreasonably withheld or delayed
- 4.15.2** Upon completion of the Works the Contractor shall remove from the Site all the said Contractor's Equipment, Temporary works and his unused materials
- 4.15.3** The Employer shall not at any time be liable for the loss or damage to any of the Contractor's Equipment, Temporary Works or materials save as mentioned in Clause 14.1
- 4.15.4** In respect of any Contractor's Equipment which the Contractor shall have imported for the purpose of the Works, the Employer may assist the Contractor, where required, in procuring any necessary Government consent for re-export of the same after the completion of the Works.
- 4.15.5** The Employer may assist (but is not obligated to) the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works.

**Safety of
Works**

4.16

The Contractor shall throughout the execution of the Works including the carrying out of any testing, commissioning (including Integrated Testing and Commissioning), or remedying of any defect:

- (a) take full responsibility for the adequacy, stability, safety and security of the Works, Plant, Rolling Stock, Contractor's Equipment, Temporary Works, operations on Site and methods of manufacture, installation, construction and transportation;
- (b) have full regard for the safety of all persons on or in the vicinity of the Site (including without limitation persons to whom access to the Site has been allowed by the Contractor), comply with all relevant safety regulations, including provision of safety gear, and insofar as the Contractor is in occupation or otherwise is using areas of the Site, keep the Site and the Works (so far as the same are not completed and occupied by the Employer) in an orderly state appropriate to the avoidance of injury to all persons and shall keep the Employer indemnified against all injuries to such persons.
- (c) provide and maintain all lights, guards, fences and warning signs and watchmen when and where necessary or required by the Engineer or by laws or by any relevant authority for the protection of the Works and for the safety and convenience of the public and all persons on or in the vicinity of the Site; and
- (d) where any work would otherwise be carried out in darkness, ensure

that all parts of the Site where work is being carried out are so lighted as to ensure the safety of all persons on or in the vicinity of the Site and of such work.

Contractor is required to take note of all the necessary provisions in Employer's Safety, Health and Environment Manual (SHE Manual) and the Contractor's price shall be inclusive of all the necessary costs to meet the prescribed safety standards as specified in the Special Conditions of Contract. In the case, the Contractor fails in the above; the Employer may provide the necessary arrangements and recover the costs from the Contractor.

**Protection
of the
Environment**

4.17 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to avoid injury, damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Contractor shall ensure that air emissions, surface discharges and effluent from the Site during the Contract Period shall not exceed the values indicated in the Employer's Requirements, and shall not exceed the values prescribed by law. The Contractor shall conform to the Employer's Requirements and shall indemnify the Employer against any liability or damages or claims arising out of his operations. The Contractor shall be responsible and liable for any stoppage, closure or suspension of the works due to any contravention of statutory requirements relating to the protection of the environment and shall indemnify and keep indemnified the Employer in this regard.

The Contractor's Site Environmental Plan shall be developed from his Employer's Safety, Health and Environmental Manual (SHE Manual), as per the Employer's Requirements and the Special Conditions of Contract.

**Electricity
Water and
Gas**

4.18 The Contractor shall be responsible for making his own arrangements at his own cost to obtain supply of water, electricity or gas for the Works. The Employer where feasible may at its discretion assist the Contractor in this respect.

**Tools,
Plants And
Equipment
Supplied By
The
Employer**

4.19 Except for any specific item mentioned in the Special Conditions of Contract or in Employer's Requirements, the Contractor shall provide all tools, plants and equipment for the Works. In respect of such exceptional tools, plants or equipment committed to be provided by the Employer under terms and conditions specified in the Special Conditions of Contract, the Contractor shall take all reasonable care and shall be responsible for all damages or loss caused by him, his representatives, sub-contractors or his workmen or others while they are in his charge.

On completion of the Works, the Contractor shall hand over the unused balance of the tools, plants and equipments to the Employer in good order and repair, fair wear and tear expected, and shall be responsible for any failure to account for the same or any damage done thereto.

The decision of the Engineer as to the amount recoverable from the Contractor on this account shall be final and binding.

Employer's Materials	4.20	Except for items mentioned in the Special Conditions of Contract, the Contractor shall provide all materials for the Works. Material if any, to be provided by Employer will be done only in a phased manner as per pre-approved program, against a Bank Guarantee for the value of the Material and at terms and conditions for issue, upkeep, usage, return and recovery of such Materials as specified in Special Conditions of Contract.
Sheds, Stores, Yards	4.21	It shall be the responsibility of the Contractor to provide at his own expense the required sheds, store houses, and yards for both Permanent and Temporary Works and provide free access to the Engineer and the Engineer's Representative who will have right of inspection including that of instructing the Contractor to remove a particular material from the stores and not to use the same on the Works.
Temporary Works	4.22	All temporary works necessary for the proper execution of the Works shall be provided and maintained by the Contractor at his cost and subject to the consent of the Engineer shall be removed by Contractor at his own expense when they are no longer required and in such manner as the Engineer shall direct. In case the Contractor fails to remove the temporary works on completion the Engineer is authorized to get the same removed and recover the cost thereof from the Contractor.
Unforeseeable Physical Conditions	4.23	<p>In this Clause "physical conditions" means natural physical conditions, which the Contractor encounters at Site while executing the Works excluding climatic conditions.</p> <p>If, during the execution of the Works, the Contractor shall encounter physical conditions, which, in his opinion, could not have been reasonably foreseen by an experienced Contractor, the Contractor shall forthwith give written notice thereof to the Engineer and if, in the opinion of the Engineer, such conditions could not have been reasonably foreseen by an experienced Contractor, then the Engineer shall certify and the Employer shall pay reasonable additional cost to which the Contractor shall have been put by reason of such conditions in the following cases:</p> <ul style="list-style-type: none"> (a) for complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and (b) for any proper and reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engineer, as a result of such conditions or obstructions being encountered. <p>The decision of the Engineer as to the additional cost shall be final and binding.</p>
Access for Engineer	4.24	The Contractor shall allow the Engineer or the Engineer's assistant or any other person authorised by him, at all times access to the Site, and to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where materials or plant are being manufactured, fabricated and/or assembled for the Works. The Contractor shall ensure that sub contracts if any shall contain provisions entitling the Engineer or any person authorised by him to have such access.
Access Road and Way Leaves Contractor to keep Site	4.25	Providing access roads/ way leaves to the site will be Employer's responsibility.
	4.26	During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any

Clear		<p>Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.</p> <p>On completion of the works, the Contractor shall clear away and remove from site all Constructional Plant, surplus material and Temporary Works. He should leave the whole of the site and Works in a clean, tidy and workman like condition to the satisfaction of the Engineer.</p> <p>On completion of Work the Contractor shall also clear away the labour camps, hutments and other related installations and restore the land to its original condition to the satisfaction of the Engineer within 45 days of the physical completion of Work. The cost on account of delay in return of land and reinstatement of original condition within the stipulated time as determined by Engineer will be recovered from the Contractor's dues.</p> <p>No final payment in settlement of the accounts for Works shall be made till, in addition to any other condition necessary for such final payment, site clearance and clearances of labour camps etc shall have been effected by him. Such clearance may be made by the Engineer through any other agency at the expense of the Contractor in the event of the Contractor's failure to comply with this provision within 7 days after receiving notice to that effect from the Engineer. All expenses on such removal / clearance shall be debitable to the Contractor as loans due from the Contractor to the Employer, and the Employer shall be competent to recover the same from any other amount payable to the Contractor in any other Contract between the Employer and the Contractor from Contractor's on-account or final bills, or from Performance Guarantee amount or from any other amount payable to the Contractor in any other Contract.</p>
Security of the Site	4.27	<p>The Contractor shall be wholly responsible for security of site and Works. Unless otherwise stated in Special Conditions of Contract:</p> <ul style="list-style-type: none">(a) the Contractor shall be responsible for keeping unauthorised persons off the Site; and(b) Authorized persons shall be limited to the Employees of the Contractor, Subcontractor or persons authorized by the Engineer.
Contractor's Operations on Site	4.28	<p>The Contractor shall confine his operations to the Site, and to any additional area which may be provided to the Contractor and agreed by the Engineer as working areas. The Contractor shall take all necessary precautions to keep his personnel and equipment within the Site and such additional areas, and to keep and prohibit them from encroaching on adjacent land.</p>
Discoveries	4. 29	<p>All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest, in addition to oil and other minerals discovered on the Site shall be the absolute property of the Government of India and the Contractor shall take all the necessary precautions to prevent its workmen or its sub-contractors' workmen or any other person from removing or damaging any such article or thing and shall immediately upon discovery thereof, acquaint the Engineer of such discovery and carry out the instructions of the Engineer.</p>

Publicity	4. 30	The Contractor shall not publish or otherwise circulate alone or in conjunction with any other person, any articles, photographs or other materials relating to the Contract, the Site, the Works, the Project or any part thereof, nor impart to the press, or any radio or television network any information relating thereto, nor allow any representative of the media access to the Site, Contractor's Works Areas, or off-Site place of manufacture, or storage except with the permission, in writing, of the Employer. The Contractor shall ensure that his sub-contractors of any tier shall be bound by a like obligation and shall, if so required by the Employer, enforce the same at his own expense. The provisions of this Sub-Clause shall not exempt the Contractor from complying with any statutory provision in regard to the taking and publication of photographs.
Disclosure of Relationship	4.31	If the Contractor or any partner of the Contractor or Director of the Contractor's company is closely related to any of the Officers of the Employer or the Engineer, or alternatively, if any close relative of an officer of the Employer or the Engineer has financial interest / stake in the Contractor's firm, the same shall be disclosed by the Contractor at the time of filing his tender. Any failure to disclose the interest involved, shall entitle the Employer to rescind the Contract, without payment of any compensation to the Contractor. The Contractor shall note that he is prohibited from developing such interest during the Contract period.
Use of Explosives	4.32	Explosives if required on the Work shall be used by Contractor only with prior Approval of the Engineer and in the manner and to the extent permitted by him. The Contractor shall be responsible for safe upkeep of such explosives in a special magazine as per the law on explosives as well as for taking all the precautions in the usage of the explosives with proper license and at Contractor's cost, sole risk and responsibility. The Contractor shall hold the Employer harmless and indemnify for the above.
Corrupt or fraudulent practices	4.33	
	4.33.1	The Employer requires that the Tenderers/Contractors observe the highest standards of ethics during Tendering and execution of this Contract. In pursuance with this policy, the Employer: <ul style="list-style-type: none"> (a) defines, for the purpose of these provisions, the terms set forth below as follows: <ul style="list-style-type: none"> (i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to Employer, Engineer or any of their employees, influence in the procurement process or in Contract execution; and (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Employer, and includes collusive practice among Tenderers (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.

(b) will reject the Tender for the Work or rescind the Contract if the Employer determines that the Tenderer/Contractor has engaged in corrupt or fraudulent practices.

(c) will declare a Contractor ineligible, either indefinitely or for a stated period of time, to be awarded a Contract/s if he at any time determines that the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing the Contract.

Compensation to Contractor on rescission of Contract under this clause

4.33.2 In the event of rescission of Contract under Sub-Clause 4.33.1, the Contractor shall not be entitled to any compensation whatsoever, except for the work done up to the date of rescission.

Quality Assurance

4.34 Unless otherwise stated in Special Conditions of Contract and/or Employer's Requirement, the Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. Such system shall be in accordance with the details stated in the Contract. Compliance with the quality assurance system shall not relieve the Contractor of his duties, obligations or responsibilities. Details of all procedure and compliance documents shall be submitted to the Engineer for his consent before each design and execution stage is commenced.

Work by Persons Other than Contractor

4.35 If the Contractor shall fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Engineer in accordance with the Contract within a reasonable time, the Engineer may give the Contractor 14 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by his own workmen or by other contractors. Without prejudice to any other right or remedy, all additional expenditure properly incurred by the Employer in having such work or instruction carried out shall be recoverable by the Employer from the Contractor.

If by reason of any accident or failure or other event occurring to, in, or in connection with the Works any remedial or other work shall, in the opinion of the Engineer, be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Engineer may authorise the carrying out of such remedial or other work by a person other than the Contractor. If the remedial or other work so authorised by the Engineer is work, which, in the Engineer's opinion, the Contractor was liable to do under the Contract, all expenses properly incurred in carrying out the same shall be recoverable by the Employer from the Contractor. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.

Confidentiality of Information

4.36 The Contractor shall not use or divulge, except for the purpose of the Contract or with the written permission of the Employer, any information relating to the Works or the Project provided in the Contract or otherwise provided by the Employer, or the Engineer. The Contractor shall ensure that his sub-contractors of any tier shall be bound by a like confidentiality undertaking.

The Employer and The Engineer may use any information provided by the Contractor in accordance with the Contract. The Employer shall use reasonable endeavours to ensure that the Engineer and any third party-referred to in aforesaid Clause 2.4 shall not, divulge such information except for any purpose connected with the Contract

5 DESIGN

General Obligations

5.1 The Contractor shall design and provide all necessary specifications for the Works in accordance with the site plans and Employer's requirements. Any design detail, plan, drawing, specifications, notes, annotations, and information required shall be provided in such sufficient format, details, extent, size and scale and within such time as may be required to ensure effective execution of Works and/or as otherwise required by the Engineer.

The Contractor holds himself, and his designers as having the experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Engineer at all reasonable times during the Contract Period.

The designer shall be the same entity as proposed by the Contractor at the time of Eligibility Criteria Qualification, unless otherwise approved by the Employer.

Contractor's warranty of design

- 5.2**
- (a) The Contractor shall be fully responsible, for the suitability, adequacy, integrity, durability and practicality of the Contractor's proposal.
 - (b) The Contractor warrants that the Contractor's Proposals meet the Employer's Requirements and is fit for the purpose thereof. Where there is any inadequacy, insufficiency, impracticality or unsuitability in or of the Employer's Requirements or any part thereof, the Contractor's Proposal shall take into account, address or rectify such inadequacy, insufficiency, impracticality or unsuitability at Contractor's own cost.
 - (c) The Contractor warrants that the Works have been or will be designed, manufactured, installed and otherwise constructed and to the highest standards available using proven up-to-date good practice
 - (d) The Contractor warrants that the Works will, when completed, comply with enactments and regulations relevant to the Works
 - (e) The Contractor warrants that the design of the Works and the manufacture of plant have taken or will have taken full account of the effects of the intended manufacturing and installation methods, Temporary Works and Contractor's Equipment
 - (f) The Contractor shall also provide a guarantee from the Designer for the design for suitability, adequacy, practicality of design for Employer's Requirements
 - (g) The Contractor shall indemnify the Employer against any damage, expense, liability, loss or claim, which the Employer might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or

warranty set out in this Clause.

- (h) The Contractor further specifies and is deemed to have checked and accepted full responsibility for the Contractor's Proposal and warrants absolutely that the same meets the Employer's Requirements:
 - (i) Notwithstanding that such design may be or have been prepared, developed or issued by the Employer, any of the Contractor's consultants, his sub contractors and/or his qualified personnel/persons or cause to be prepared, developed or issued by others.
 - (ii) Notwithstanding any warranties, guaranties and/or indemnities that may be or may have been submitted by any other person.
 - (iii) Notwithstanding that the same have been accepted by the Engineer.

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

Apart from the Contractor, the above warranty shall also be applicable for his designer. This warranty shall be a part of his sub contract with the designer and should be made available at the time of signing of the Agreement.

No claim for additional payment or extension of time shall be entertained and/or the Contractor shall not be relieved from any obligation/liability under the Contract, for any delay, suspension, impediment to or adverse effect upon the progress of the Works due to any mistake, inaccuracy, discrepancy or omission in or between the Contractor's, the Definitive Design and the final design, or any failure by the Contractor to prepare any Design Data or submit the same to the Engineer in due time and the Contractor shall promptly make good any such defect at his own cost.

**Construction
and/or
Manufacture
Documents** **5.3**

The Manufacture Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, documents described in Clause 5.6 (As Built Document), and Clause 5.7 (Operations and Maintenance Manuals). The Contractor shall prepare all Manufacture Documents in sufficient detail and shall also prepare any other document necessary to instruct the Contractor's personnel. The Engineer shall have the right to inspect the preparation of all these documents wherever they are being prepared.

Each of the Construction and/or Manufacture Documents shall, when considered ready for use, be submitted to the Engineer for pre-construction or pre-manufacture review. Unless otherwise stated in Employer's Requirements, each review by the Engineer shall not exceed 21 days, calculated from the date on which the Engineer receives the Manufacture Document.

The Engineer may during the review period, give notice to the Contractor that a Manufacture Document fails (to the extent stated) to comply with the Employer's Requirements, it shall be rectified, resubmitted and reviewed (and if specified, approved) in accordance with this Clause, at the Contractor's cost.

For each part of the Works, and except to the extent that the prior consent of the Engineer shall have been obtained:

- (a) In the case of a Construction and/or Manufacture Document which has (as specified) been submitted for the Engineer's approval:
 - (i) The Engineer shall give notice to the Contractor that the Construction and/or Manufacture Document is provided with no objection, with or without comments, or that it fails (to the extent stated) to comply with the Contract
 - (ii) Execution of such part of the Works shall not commence until the Engineer has provided with no objection the Construction and/or Manufacture Document; and
 - (iii) The Engineer shall be deemed to have provided with no objection the Construction and/or Manufacture Document upon the expiry of the review periods for all the Construction and/or Manufacture Documents which are relevant to the design and execution of such parts, unless the Engineer has previously notified otherwise in accordance with subparagraph (i)
- (b) construction and/or manufacture of such part of the Works shall not commence prior to the expiry of the review of the Construction and/or Manufacture Documents which are relevant to its design and execution;
- (c) construction and/or manufacture shall be in accordance with such reviewed (and if specified, approved) Construction and/or Manufacture Documents; and
- (d) if the Contractor wishes to modify any design or document which has previously been submitted for such pre-construction and/or pre-manufacture review, the Contractor shall immediately notify the Engineer, and based on Engineer's approval shall subsequently submit revised documents to the Engineer in accordance with the above procedure.

If the Engineer instructs that further Construction and/or Manufacture Documents are necessary for carrying out the Works, the Contractor shall promptly and at Contractor's cost prepare such documents,

Errors omissions, ambiguities, inconsistencies, inadequacies and other defects if found at any stage in any construction and/or manufacture documents, then shall be rectified by the Contractor at his own cost and any approval, consent or review (under this Clause or otherwise) by the Employer/Engineer of the Manufacture and Construction Documents under this Clause shall not relieve the Contractor from any obligations or responsibility under the Contract.

Technical Standards and Regulations	5.4	The design, the Construction and/or Manufacture Documents, the execution and the completed Works (including remedying of defects therein) shall comply with the specifications, technical standards, building construction, safety and environmental regulations and other standards specified in the Employer's Requirements applicable to the Works or defined by the applicable laws and regulations
Samples	5.5	<p>The Contractor shall submit at his own cost the following samples and relevant information to the Engineer for pre-construction and/or pre-manufacture review in accordance with the procedure for Construction and/or Manufacture Documents described in Clause 5.3:</p> <ul style="list-style-type: none"> (a) manufacturer's standard samples of Materials, (b) samples (if any) specified in the Employer's Requirements.

Each sample shall be labelled as to origin and intended use in the Works.

As-Built Drawings and Documents

5.6

The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact "as-built" locations, sizes and details of the Works as executed, with cross references to relevant specifications and data sheets. These records shall be kept on the Site and shall be used exclusively for the purposes of this Clause. Six copies shall be submitted to the Engineer prior to the commencement of the Tests on Completion.

In addition, the Contractor shall prepare and submit to the Engineer "as-built drawings" of the Works, showing all Works as executed. The drawings shall be prepared as the Works proceed, and shall be submitted to the Engineer for his inspection. The Contractor shall obtain the consent of the Engineer as to their size, the referencing system, and other pertinent details.

Prior to the issue of any Taking Over Certificate, the Contractor shall submit to the Engineer one microfiche copy, one full-size original copy and six printed copies of the relevant "as-built drawings", and any further Construction and/or Manufacture Documents specified in the Employer's Requirements. The Works shall not be considered to be completed for the purposes of Taking Over under Clause 9.1 until such documents have been submitted to the Engineer.

Operation and Maintenance Manuals

5.7

The Contractor shall prepare, and submit to the Engineer, Operation and Maintenance Manuals in accordance with the Employer's Requirements and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Works. The Works shall not be considered to be completed until such Operation and Maintenance Manuals have been submitted to the Engineer and received his consent.

Intellectual Property Rights and Royalties

5.8

The Contractor shall indemnify the Employer and the Engineer from and against all claims and proceedings on account of infringement (or alleged infringement) of any patent rights, registered designs, copyright, design, trademark, trade name, know-how or other intellectual property rights in respect of the Works, the Contractor's Equipment, machines, work method, or Plant, or Materials, or anything whatsoever required for the Works and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. The Contractor shall pay all traffic surcharges and other royalties, licence fees, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials, machine, process, systems, work methods, or the Contractor's Equipment required for the Works. The Contractor shall, in the event of infringement of Intellectual Property Rights, rectify, modify or replace at his own cost the Works, Plant or materials or anything whatsoever required for the Works so that infringement no more exist or in the alternative shall procure necessary rights/license so that there is no infringement of Intellectual Property Rights.

The Contractor shall be promptly notified of any claim under this Clause made against the Employer. The Contractor shall, at his cost, conduct negotiations for the settlement of such claim, and any litigation or arbitration that may arise from it. The Employer or the Engineer shall not make any admission which might be prejudicial to the Contractor, unless the Contractor has failed to take over the conduct of the negotiations, litigation or arbitration within a reasonable time after having been so requested. In the event of the Contractor failing to act at the

Engineer's notice, the Employer shall be at full liberty to deduct any such amount of pending claim from any amount due to the Contractor under this Contract or any other Contract between the Employer and the Contractor.

Insofar as the patent, copyright or other intellectual property rights in any Plant, Design Data, plans, calculations, drawings, documents, Materials, know-how and information relating to the Works shall be vested in the Contractor, the Contractor shall grant to the Employer, his successors and assignees a royalty-free, non-exclusive and irrevocable licence to use and reproduce any of the works, designs or inventions incorporated and referred to in such Plant, documents or Materials and any such know-how and information for all purposes relating to the Works (including without limitation the design, manufacture, installation, reconstruction, Testing, commissioning, completion, reinstatement, extension, repair and operation of the Works) for the Employer's own use.

If any patent, registered design or software is developed by the Contractor specifically for the Works, the title thereto shall vest in the Employer and the Contractor shall grant to the Employer a non-exclusive irrevocable and royalty-free licence to use, repair, copy, modify, enhance, adapt and translate in any form such Software for Employer's own use.

If the Contractor uses proprietary software for the purpose of storing or utilising records the Contractor shall obtain at his own expense the grant of a licence or sub-licence to use such software in favour of the Employer and shall pay such licence fee or other payment as the grantor of such licence may require provided that the use of such software under the licence may be restricted to use relating to the design, construction, reconstruction, manufacture, completion, reinstatement, extension, repair and operation of the Works or any part thereof.

The Contractor's permission referred to above shall be given, inter alia, to enable the Employer to disclose (under conditions of confidentiality satisfactory to the Contractor) programmes and documentation for a third party to undertake the performance of services for the Employer in respect of such programmes and documentation.

If any software is developed under the Contract or used by the Contractor for the purposes of storing or utilising records over which the Contractor or a third party holds title or other rights, the Contractor shall permit or obtain for the Employer (as the case may require) the right to use and apply that Software free of additional charge (together with any modifications, improvements and developments thereof) for the purpose of the design, manufacture, installation, reconstruction, testing, commissioning, completion, reinstatement, extension, repair, modification or operation of the Works, or any part thereof, or for the purpose of any Dispute.

The Employer reserves the right to use other Software on or in connection with the Works.

6 STAFF AND LABOUR

Engagement of Staff and Labour	6.1	The Contractor shall make his own arrangements for the engagement of staff and labour at his own cost. The Contractor shall, if required by the Employer, deliver to the Engineer or to his office; a return in detail, in such form and at such intervals as the Employer may prescribe, showing the number of labour employed in different categories by the Contractor on the Site.
Rates of Wages and Conditions of Labour	6.2	<p>Full compliance of statutory requirements apart, the Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or the industry where the work is carried out.</p> <p>The Contractor shall comply with all labour regulations and their impact on the cost and build up the same in the Contract Price. During the Contract Period no extra amount in this regard shall be payable to the Contractor, for whatsoever reason including any revision of rates payable to the labour due to revision of rates payable in Minimum Wages Act.</p> <p>Labour provided by the Contractor, either directly or through sub-contractors, for the exclusive use of the Employer or the Engineer, shall, for the purpose of this Clause, be deemed to be employed by the Contractor. In the event of default being made in the payment of any money in respect of wages of any person employed by the Contractor or any of its sub-contractors of any tier in and for carrying out of this Contract and if a claim therefore is filed in the office of the Labour Authorities and proof thereof is furnished to the satisfaction of the Labour Authorities, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to the said Labour Authorities and any sums so paid shall be recoverable by the Employer from the Contractor.</p>
Persons in the service/retired of Employer/Engineer	6.3	<p>a) The Contractor shall not recruit or attempt to recruit, staff and labour from amongst the Employer and the Engineer's personnel during the Contract period.</p> <p>b) The Contractor either at the tendering stage or during construction stage will not employ any retired employee of Employer or Engineer of the Employer in any capacity unless such employee has completed at least two years post retirement period or has obtained the no-objection certificate from Employer for being employed with the Contractor. It will be responsibility of the Contractor to collect the Employer's no objection certification from such retired employee and submit the same back to the Employer.</p> <p>In case of non compliance of above, in addition to any or several of the courses, referred in Sub-Clauses 13.2.1 and 13.2.2 being adopted by the Employer the Contractor on Termination of the Contract for the aforesaid reasons will have no claim whatsoever against the Employer except for actual value of the Work executed till the time of Termination.</p>
Labour Laws	6.4	In dealing with labour and employees, the Contractor and his Sub-Contractors (including piece rate and petty Contractors) shall comply fully with all laws and statutory regulations pertaining to engagement, payment and upkeep of the labour in India.
Working Hours	6.5	<p>The Contractor, if required, shall carry out work during night hours or in shifts, unless specifically provided otherwise in the Contract. No increase in rates or extra payments shall be admissible for night work.</p> <p>The Contractor shall provide adequate lighting and safety arrangements.</p>

Facilities for Staff and Labour	6.6	The Contractor shall provide and maintain all necessary accommodation and welfare facilities as stipulated in the Employer's Requirements for his (and his Sub- contractor's) staff and labour. The Contractor shall also provide the facilities specified in the Employer's Requirements, for the Employer's and Engineer's personnel. All accommodation shall be maintained in a clean and sanitary condition, by the Contractor at his cost.
Health and Safety	6.7	<p>Precaution shall be taken by the Contractor to ensure the health and safety of his staff and labour. The Contractor shall, in collaboration with and to the requirements of the local health authorities, ensure that medical staff, first aid facilities, sick bay and ambulance service are available at the accommodation and on the Site at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as per the Engineer's requirement and will ensure complete compliance with relevant clauses of Employer's Health, Safety and Environment Manual (SHE Manual).</p> <p>The Contractor's Site Safety Plan shall be developed from his Outline Safety Plan as per Employer's Requirements and SHE Manual of the Employer.</p> <p>The Contractor shall appoint a member of his staff at the Site to be responsible for maintaining the safety, and protection against accidents, of personnel on the Site. This person shall be qualified for his work and shall have the authority to issue instructions and take protective measures to prevent accidents.</p>
Contractor's Superintendence	6.8	The Contractor shall provide all necessary superintendence during the design and execution of the Works, and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. Such superintendence shall be provided by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe execution of the Works.
Contractor's Personnel	6.9	<p>The Contractor shall employ (or cause to be employed) only persons who are careful and appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative, who in the opinion of the Engineer:</p> <ul style="list-style-type: none"> (a) persists in any misconduct, (b) is incompetent or negligent in the performance of his duties, (c) fails to conform with any provisions of the Contract, or (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.
Preservation of Peace and orderly conduct	6.10	<p>6.10.1 The Contractor shall be responsible for preservation of peace and orderly conduct at the site and its neighbourhood by Contractor's employees, Representatives, petty contractors, Sub-Contractors etc. In case, deployment of a Special Police Force becomes necessary at or near Site, during the tenure of Works, the expenses for the same shall be borne by the Contractor.</p>

	6.10.2	The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour, and to preserve peace and protection of persons and property in the neighbourhood of the Works against such conduct.
Labour to be Contractor's Employee	6.11	If, the Contractor directly or through petty contractors or Sub-Contractors supplies any labour to be used wholly or partly under the direct orders and control of the Engineer or the Employer, whether in connection with any work being executed by the Contractor or otherwise for the purposes of the Employer, such labour shall, for the purpose of this clause, be deemed to be persons employed by the Contractor
Report of Accidents To Labour	6.12	The Contractor shall be responsible for safety of all employees, employed by him on Works, directly or through petty contractors or Sub-Contractors, and shall report accidents to any of them, however and wherever occurring on Works, to the Engineer and shall make every arrangement to render all possible assistance and to provide prompt and proper medical attention. The compensation for affected Workers or their relatives shall be paid by the Contractor in such cases with utmost expedition in accordance with the Workmen's Compensation Act.
Claim` on account of violation of Labour laws	6.13	The Contractor shall be solely accountable for violation of any labour law by it, its petty contractors or Sub-Contractors and will pay any such claim/damage to the authorities forthwith on demand. If any moneys shall, as a result of any instructions, directions or decisions from the Authorities or claim or application made under any of the labour laws or regulations, be directed to be paid by the Employer, such moneys shall be deemed to be moneys payable to the Employer by the Contractor and he will pay the same to the Employer forthwith on demand, without demur and without asking for any reasons/explanations from the Employer. On failure of the Contractor to repay the Employer any moneys paid or to be paid by it as aforesaid within seven days after the same shall have been demanded, the Employer shall be entitled to recover the amount from any moneys due or accruing to the Contractor under this or any other Contract between the Employer and the Contractor.

7 QUALITY CONTROL

Manner of Execution	7.1	All Plant, Rolling Stock, and Materials to be supplied shall be manufactured, and all work to be done shall be executed, in the manner set out in the Contract. Where the manner of manufacture and execution is not set out in the Contract, the work shall be executed in a proper, workmanlike and careful manner, with properly equipped facilities and non-hazardous Materials, and in accordance with modern recognized good practice.
Delivery to Site	7.2	The Contractor shall be responsible for procurement, transport, receiving, unloading and safe keeping of all Plant, Rolling Stock, Construction Materials, Contractor's Equipment and other things required for the completion of the Works.
Inspection	7.3	The Employer and the Engineer 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, and (b) during production, manufacture, fabrication and construction (at the site and elsewhere) be entitled to inspect, examine, measure and test the materials and workmanship, and to check the progress of manufacture, of all Plant, Rolling Stock and Materials to be supplied under the Contract.

The Contractor shall give the Engineer full opportunity to carry out these activities including providing access, facilities, permissions and safety equipments. No such activity/inspection shall relieve the Contractor from any obligation or responsibility.

Testing

7.4

This Clause shall apply to all tests specified in the Contract.

The Contractor shall provide all documents and other information necessary for all types of testing and such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as are necessary to carry out such tests efficiently.

The Contractor shall agree, with the Engineer, the time and place for the testing of any Plant, Rolling Stock, Materials and other parts of the Works as specified in the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of his intention to attend the tests.

If the Engineer does not attend at the time and place agreed, or if the Contractor and the Engineer agree that the Engineer shall not attend, the Contractor may proceed with the tests, unless the Engineer instructs the Contractor otherwise. Such tests shall be deemed to have been made in the Engineer's presence.

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

The expense of conducting such Tests shall be borne by the Contractor. No such testing shall relieve the Contractor from any obligation or responsibility.

Rejection

7.5

If, as a result of inspection, examination or testing, any Plant, Rolling Stock, Material, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the same and by giving notice to the Contractor with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item after rectification complies with the Contract.

If the Engineer requires such Plant, Rolling Stock, Material, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If such rejection and retesting cause the Employer to incur costs, such costs shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor.

Liability after Inspection and Testing

7.6

The Contractor shall not be released from any liability or obligation under the Contract by reason of any such inspection or testing or witnessing of testing, or by the submission of reports of inspection or testing to the Engineer.

7.7

Not Used

Cost of Employer's Attendance Including Travel

7.8

The Employer shall bear the costs of attendance including travel, boarding and lodging for the Employer, the Engineer or his assistant for the purposes of Clauses 7.3 and 7.4 above. The cost of attendance including travel, boarding and lodging for the Employer, Engineer or his assistants for the purpose of Clause 7.5 shall be borne by the Contractor.

Covering up of Works 7.9

Examination of work before covering up 7.9.1 No work or part of work shall be covered up or put out of view, without the prior approval of the Engineer or the Engineer's Representative.

Cost of uncovering the work already covered up 7.9.2 The Contractor shall uncover any part or parts of the Works, or make openings in or through the same, as the Engineer may from time to time direct, and shall reinstate and make good such part or parts, to the satisfaction of the Engineer. If any such part or parts have been covered up, or put out of view after compliance with the requirement of Sub-Clause 7.10.4 and the Works are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating and making good the same, shall be borne by the Employer, but if the Works are found to be defective, costs shall be borne by the Contractor.

In case after completion of a part of the Work, the part of Work is not fully consistent with the Employer's Requirements and there is no way to change the same, in that case, the same (provided it has no implication on safety and operation) shall be accepted only at a Contractor's deemed variation at lower negotiated price.

The decision of the Engineer in this regard shall be final and binding on the Contractor.

Tests on Completion 7.10

Contractor's Obligations 7.10.1 The Contractor shall carry out the Tests on Completion at his own cost in accordance with the Contract and shall provide the documents in accordance with Clauses 5.6 and 5.7. The Contractor shall give, to the Engineer, 21 days' notice of the date after which the Contractor will be ready to carry out the Tests on Completion. Unless otherwise agreed, such Tests shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct. Unless otherwise stated in Special Conditions of Contract, the Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning test, which shall include appropriate instructions and ("dry" or "cold") functional tests to demonstrate that each item of the Plant, Rolling Stock and Work can safely undertake the next stage.
- (b) Commissioning Test shall include the specified operational tests to demonstrate Works or Sections can operated safely and as specified under all available operating condition.
- (c) trial operation which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract.

The Contractor at his own cost shall arrange all tools, equipments, gadgets, facilities or as deemed necessary by the Engineer for such tests, In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed the Tests on Completion described in sub-paragraphs (a), (b) or (c), the Contractor shall provide the Engineer and the Employer with a certified report of the results of all such Tests.

Delayed Tests	7.10.2	<p>If the Engineer opines that Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out such Tests within 21 days after the receipt of the notice. The Contractor shall carry out such Tests on such day or days as the Contractor may fix and of which he shall give notice to the Engineer.</p> <p>If the Contractor fails to carry out the Tests on Completion within 21 days, the Engineer may proceed with such Tests at the risk and cost of the Contractor. The Tests on Completion then shall be deemed to have been carried out in the presence of the Contractor and the results of such Tests shall be accepted as accurate.</p>
Retesting	7.10.3	<p>If the Works, or a part thereof, or a Section, fail to pass the Tests on Completion, Clause 7.5 "Rejection" shall apply, and the Engineer or the Contractor may require such failed Tests and the Tests on Completion on any related work, to be repeated under the same terms and conditions.</p>
Failure to Pass Tests on Completion	7.10.4	<p>If the Works, or a part thereof, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 7.10.3, the Engineer shall be entitled to:</p> <ul style="list-style-type: none"> (a) order further repetition of Tests on Completion under Sub-Clause 7.10.3; (b) reject the Works, or a part thereof, or a Section (as the case may be), in which event the Employer shall have the same remedies against the Contractor as are provided under Clause 13; or (c) issue a Taking Over Certificate if the Employer so requires. The Contract Price shall then be reduced by such amount as determined by the Engineer (agreed by both Parties and paid before this Taking-Over Certificate is issued) and as shall be appropriate to cover the reduced value to the Employer as a result of this failure. The Contractor shall then proceed in accordance with his other obligations under the Contract.
Integrated testing and system commissioning	7.11	
Integrated Testing	7.11.1	<p>Tests on Completion shall also include Integrated Testing. The Contractor shall, following satisfactory completion of tests on his works, equipment, sub-systems or system, perform, at the direction of the Engineer, programme of tests to verify and confirm the compatibility and complete performance of his works, equipment, sub-systems or system with the works, equipment, sub-systems or system provided by others.</p>
Compilation of Test Results	7.11.2	<p>The results of the Integrated Testing and Commissioning shall be compiled and evaluated by the Engineer and the Contractor.</p>
Retesting	7.11.3	<p>If the Works, or a part thereof, or a Section, fail to pass the Integrated Testing and Commissioning, the Engineer shall require such failed Tests, to be repeated under the same terms and conditions. If such failure and retesting result from a default of the Contractor and cause the Employer to incur costs, the same shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor.</p>

Failure to Pass Test **7.11.4** If the Works, or a part thereof, or a Section, fail to pass Integrated Testing and Commissioning and the Contractor in consequence proposes to make any adjustment or modification to the Works or a part thereof, or a section, the Engineer may, with the approval of the Employer, instruct the Contractor to carry out such adjustment or modification, at his own cost and to satisfy the requirements of Integrated Testing and Commissioning within such time as the Employer / Engineer may deem to be reasonable.

Statutory Requirements **7.11.5** The Contractor along with others shall carry out all statutory tests and trials, under the supervision of the Engineer, necessary for obtaining sanction of the competent authority for opening the system for public carriage of passengers as mentioned in the Special Conditions of Contract..

8 COMMENCEMENT, COMPLETION AND DELAY

Commencement of Works **8.1** The Contractor shall commence the Works on the date specified in the Letter of Acceptance or if no date is specified in the Letter of Acceptance, on the date specified in the Notice to Proceed. Thereafter the Contractor shall proceed with due diligence, without delay, and in accordance with the programme or any revised or modified programme of the Works. Time is the essence of Contract and time for Completion shall run from the date the Contractor is to commence the Works under this Clause.
The Contractor shall not commence the construction, manufacture or installation of the Works or of any part of the Works unless and until the Engineer has endorsed the relevant Working Drawings in accordance with the Employer's Requirements.

Time for Completion **8.2** Time is the essence of Contract and will remain so at all times during the pendency of the Contract including the extended period of Contract. The Contractor shall ensure defect free completion and have passed the tests on Completion, including Integrated Testing and Commissioning of the whole of the Works and/or parts thereof before the same is taken over by the Employer.

Delay **8.3** In case of delay on the part of the Contractor, the Contractor shall be liable to pay liquidated damages and any other compensation for the damages suffered by the Employer as per Clause 8.5. This is without prejudice to the right of the Employer to rescind the Contract.

Failure or delay by the Employer or the Engineer, to hand over to the Contractor the Site necessary for execution of Works, or any part of the Works, or to give necessary notice to commence the Works, or to provide necessary Drawings or instructions or clarifications or to supply any material, plant or machinery, which under the Contract, is the responsibility of the Employer, shall in no way affect or vitiate the Contract or alter the character thereof, or entitle the Contractor to damages or compensation thereof but in any such case, the Engineer shall extend the time period for the completion of the Contract, as in his opinion is / are reasonable.

Extension of Time for Completion **8.4**

Extension of Time **8.4.1** The Contractor may apply for an extension of the Time for Completion if the Work is or will be delayed either before or after the Time for Completion by any of the following causes:

(a) "Force Majeure" referred to in Clause 16.

- (b) The Contractor's work held up for not being given possession of or access to the Site in accordance with the Contract.
- (c) Instruction of the Engineer to suspend the Works and the Contractor not being in default as to reasons of suspension.
- (d) Acts or omissions of other Designated Contractors in executing work not forming part of this Contract and on whose performance, the performance of the Contractor necessarily depends.
- (e) Any act of prevention or Breach of the Contract by the Employer and not mentioned in this Clause.
- (f) Any order of Court restraining the performance of the Contract in full or in any part thereof and the Contractor not being in default as to reason of such order of court.
- (g) Any other event or occurrence which, according to the Employer is not due to the Contractor's failure or fault, and is beyond his control without Employer being responsible for the same.
- (h) An Employer's Variation

However, the Contractor shall not be entitled to any extension of time where the instructions or acts of the Employer or the Engineer are necessitated by or intended to cure any default of or breach of Contract by the Contractor or where any delay is due to:

- (a) the failure of sub-contractor, to commence or to carry out work in due time,
- (b) non-availability, or shortage of Contractor's equipment, labour, utility services, Plant and Materials,
- (c) inclement weather conditions, and
- (d) the Contractor not fulfilling his obligations under Clause 4.4.

If the Contractor considers himself to be entitled to an extension of time for Completion, he shall give notice to the Engineer of such intention as soon as possible and in any event within 28 days of the start of the event giving rise to the delay and full and final supporting details of his application within 21 days of the last day of delay, together with any notice required by the Contract and relevant to such Clause. If the cause of delay continued for a period exceeding 7 days, the Contractor shall submit interim details at intervals of not more than 28 days (from the first day of such delays).

The Engineer shall proceed in accordance with Clause 3.5 to agree or determine either prospectively or retrospectively such extension of the Time for Completion as may be due. The Engineer shall notify the Contractor accordingly.

Extension of time for completion for other reasons

- 8.4.2** The Contractor shall not be entitled to an extension of time by reason of any delay to any activity in carrying out of the Works unless in the opinion of the Engineer such delay results in or may be expected to result in a delay to completion of the Works, or achievement of any Stage by the relevant Key Date. Whether or not the Contractor fails to achieve any Milestone by reason of any delay shall not by itself be material to the Contractor's entitlement to an extension of time.
- Any extension to a Key Date shall not by itself entitle the Contractor to an extension to any other Key Date and the Time for Completion.

Extension of time for delays due to Contractor

8.4.3 If the delay in the completion of the whole Works or a portion of the Works, for which an earlier completion period is stipulated, is due to the Contractor's failure or fault, and the Engineer is of the view that the remaining Works or the portions of Works can be completed by the Contractor in a reasonable and acceptable short time, then, the Engineer may allow the Contractor extension or further extension of time at its discretion with or without liquidated damages, for completion, as he may decide.

Liquidated Damages for Delay

8.5 Time is the essence of the Contract. Appendix to the Form of Tender shall include in respect of the Works and in respect of any Stage, a percentage of the total contract value which will be recoverable from the Contractor as liquidated damages for each day of delay in completion of the Works or in achievement of a stage by a particular Key Date. The total amount of liquidated damages in respect of the Works in all stages shall, however, not exceed the limit of liquidated damages stated in the Appendix to the Form of Tender. The aforesaid liquidated damages do not, however, include the sums payable by the Employer to Designated Contractors on account of delay caused by the Contractor to Designated Contractors which sums shall be recoverable from the Contractor in addition to any liquidated damages payable under this clause, the total ceiling limit is 10% of Contract Price as specified under Appendix 1 to the Form of Tender.

The liquidated damages are recovered by the Employer from the Contractor for delay and not as penalty.

The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due, or to become due, to the Contractor. In the event of an extension of time being granted under Clause 8.4, the amount due under this Clause shall be recalculated accordingly, and any over-payment refunded. The payment or deduction of such damages shall not relieve the Contractor from his obligations to complete the Works, or from any other of his duties, obligations or responsibilities under the Contract.

The liquidated damages shall be recovered as specified in Appendix to the Form of Tender.

The Contractor shall use and continue to use his best endeavours to avoid or reduce further delay to the Works, or any relevant Stages.

At any time after the Employer has become entitled to liquidated damages, the Engineer may give notice to the Contractor under Clause 13.1, requiring the Contractor to complete the Works within a specified reasonable time. Such action shall not prejudice the Employer's entitlements to recovery of liquidated damages, under this Clause and to terminate under Clause 13.2.

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

Rate of Progress **8.6** If for any reason which does not entitle the Contractor to an extension of time, the rate of progress of the Works is at any time, in the opinion of the Engineer, too slow to ensure timely completion of the Works or achievement of any Stage by the relevant Key Date the Engineer may so notify the Contractor in writing. The Contractor shall thereupon take such steps as are necessary, or in default of taking such steps, shall take such steps as the Engineer may reasonably instruct in writing, to expedite progress so as to complete the Works or any Section in time or achieve any Stage by the relevant Key Date. The Contractor shall not be entitled to any additional payment for taking such steps.

If any steps taken by the Contractor in meeting his obligations under this Clause cause the Employer to incur additional costs, such costs shall be recoverable from the Contractor by the Employer, and shall be deducted by the Employer from any monies due, or to become due, to the Contractor.

Suspension of Work **8.7** The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works stating the grounds for such action. During suspension, the Contractor shall protect, store and secure such part or whole of the Works against any deterioration, loss or damage.

Consequences of Suspension **8.8** The Contractor shall not be entitled to extra cost (if any), incurred by him, during the period of suspension of Work, if such suspension is

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

Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with Engineer's instructions under Sub-Clause 8.7 and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 8.4.1 and 17.1 to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4.1, and
- (b) Payment of such cost which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's

failure to protect , store or secure in accordance with Sub-Clause 8.7

Resumption of Work 8.9

After receipt of permission or of an instruction to proceed, the Contractor shall, after notice to the Engineer, and together with the Engineer, examine the Works, Plant, Rolling Stock and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works, Plant, Rolling Stock and Materials, which has occurred during the suspension.

9 EMPLOYER'S TAKING OVER

Taking Over Certificate

9.1 The Works shall be taken over by the Employer when they have been completed in accordance with the Contract, have passed the Tests on Completion, including Integrated Testing and Commissioning, and a Taking Over Certificate for the Works has been issued. If the Works are divided into Sections, the Contractor shall be entitled to apply for a Taking Over Certificate for each Section.

The Contractor may apply by notice to the Engineer for a Taking-Over-Certificate not earlier than 14 days before the works or section (as the case may be) will, in the Contractor's opinion, be complete and ready for taking over. The Engineer shall, within 28 days after the receipt of the Contractor's application:

- (a) issue the Taking Over Certificate to the Contractor, stating the date on which the Works or Section were completed, including the Tests on Completion and Integrated Testing and Commissioning, in accordance with the Contract as specified in the Special Conditions of Contract (except for minor outstanding work that does not affect the use and safety of the Works or Section for their intended purposes); or
- (b) reject the application, giving his reasons and specifying the work required to be done by the Contractor to enable the Taking Over Certificate to be issued. The Contractor shall then complete such work before issuing a further notice under this Clause.

Taking over of Parts of the Works 9.2

The Engineer may, at the sole discretion of the Employer issue a Taking Over Certificate for any part of the Permanent Works.

If the Employer uses any part of the Works for revenue service before the Taking Over Certificate is issued:

- (a) the part which is used shall be deemed to have been taken over at the date on which it is used, subject to the Contractor completing the works which remain outstanding in the opinion of the Employer;
- (b) the Engineer shall, when requested by the Contractor, issue a Taking Over Certificate after the Contractor has completed the outstanding Works and has carried out Tests on Completion, including Integrated Testing; and
- (c) the Contractor shall cease to be liable for the care of such part from such date, when responsibility shall pass to the Employer.

10 DEFECTS LIABILITY

Completion of Outstanding Work and Remedying Defects	<p>10.1 “Defects Liability Period” shall mean the defects liability period stated in the Special Conditions of Contract calculated from the date of issue of the last Taking Over Certificate for whole of the Works. Provided that, if any part of the Works or sub-systems or component of that part has been replaced, renewed or repaired, the “Defects Liability Period” in respect of that part or sub-system or components of that part shall start from the date of such replacement, renewal or repair has been completed to the satisfaction of the Engineer.</p> <p>The Contractor shall remedy, at no extra cost to the Employer, the defect or failure (fair wear and tear excluded) after any part of the Work are taken over by the Employer until the end of Defects Liability Period.</p> <p>In order that the Construction and/or Manufacture Documents and the Works shall be in the condition required by the Contract (fair wear and tear excepted) at, or as soon as practicable after the expiry of the Contract Period, the Contractor shall:</p> <ul style="list-style-type: none"> (a) complete any work which is outstanding on the date stated in a Taking Over Certificate, as soon as practicable after such date, and (b) execute all such work of amendment, reconstruction, and remedying defects or damage, as may be instructed in writing by the Employer or the Engineer during the Contract Period.
Cost of Remedying Defects	<p>10.2 All work referred to in Sub-Clause 10.1(b) shall be executed by the Contractor at his own cost, if the necessity for such work is due to:</p> <ul style="list-style-type: none"> (a) the design of the Works; (b) Plant, Rolling Stock, Materials or workmanship not being in accordance with the Contract; or (c) failure by the Contractor to comply with any of his other obligations. <p>If in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an adjustment to the Contract Price, with the approval of the Employer, and shall notify the Contractor accordingly. In this event, Clause 12.3 shall apply to such work.</p>
Extension of Defect Liability Period	<p>10.3 The Defect Liability Period shall be extended by a period, after the Works are taken over, during which the Works or any Section or item of Plant, Rolling Stock, cannot be used, for the purposes for which they are intended, by reason of a defect or damage.</p> <p>When delivery of Plant, Rolling Stock, and/or Materials, or erection of Plant, or installation of Materials, has been suspended under Clause 8.7, the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two (2) years after the Plant, Rolling Stock and/or Materials would otherwise have been delivered, erected and taken over.</p>
Failure to Remedy Defects	<p>10.4 If the Contractor fails to remedy any defect or damage within such time as the Employer / Engineer may deem to be reasonable, the Employer or the Engineer may fix a date on or by which to remedy the defect or damage, and give the Contractor reasonable notice of such date. If the Contractor fails to remedy the defect or damage by such date and the necessity for such work is due to a cause stated in Sub-Clauses 10.2(a), (b) or (c), the Employer may (at his sole discretion):</p>

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's risk and cost, but the Contractor shall have no responsibility for such work: the costs incurred by the Employer in remedying the defect or damage shall be recoverable from the Contractor by the Employer;
- (b) require the Engineer to determine and certify a reasonable reduction in the Contract Price; or
- (c) if the defect or damage is such that the Employer has been deprived of substantially the whole of the benefit of the Works or parts of the Works, terminate the Contract in respect of such parts of the Works as cannot be put to the intended use, the Employer shall then be entitled to recover all sums paid for such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant, Rolling Stock and Materials to the Contractor, and Clause 13.1 shall not apply.

Removal of Defective Work	10.5	If the defect or damage is such that it cannot be remedied expeditiously on the Site and if the Employer gives consent, the Contractor may, remove from the Site for the purposes of repair any part of the Works, which is defective or damaged. This consent may require the Contractor to increase the amount of Performance Guarantee by the full replacement cost of these items or to provide other appropriate guarantee acceptable to the Employer.
Further Tests	10.6	If the remedying of any defect or damage is such that it may affect the performance of the Works, the Engineer may require that Tests on Completion, including Integrated Testing, be repeated to the extent necessary. The requirement shall be made by notice within 28 days after the defect or damage is remedied. Such Tests shall be carried out in accordance with Clauses 7.10 and 7.11.
Right of Access	10.7	Until the Performance Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the working and performance of the Works, except as may be inconsistent with any reasonable security restrictions by the organisation responsible for operating the Works.
Contractor to Search	10.8	The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is one for which the Contractor is liable, the Cost of such search shall be added to the Contract Price.
Performance Certificate	10.9	<p>The Performance Certificate shall be given by the Engineer by the date 28 days after the issuance of last Taking Over Certificate for whole of the Works.</p> <p>Only the Performance Certificate shall be deemed to constitute approval of the Works.</p>
Unfulfilled Obligations	10.10	After the Performance Certificate has been signed by the Engineer and delivered to the Contractor, stating the date on which the Contractor completed his obligations to the Engineer's satisfaction, the Contract shall be considered to be complete. However, the Contractor and the Employer shall remain liable for the fulfilment of any obligation, which remains unperformed at that time. For the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force.

Emergency defect rectification **10.11** If any defect or damage is one requiring immediate attention from safety, environmental or operational viewpoint, the Engineer has the authority to proceed with rectification in any manner suitable and deduct such sums from the Contract Price.

11 CONTRACT PRICE AND PAYMENT

The Contract Price

11.1

11.1.1 Unless otherwise stated in the Special Conditions of Contract, the Contract Price shall be a fixed lump sum price for each of the contract corresponding to Schedule X and Schedule Y, subject to any adjustment thereto in accordance with the Contract. The Contract price shall be inclusive of all taxes, levies, duties, (VAT) royalties and other charges leviable and payable to the authorities.

The Contract price shall not be adjusted in respect of any increase or decrease of cost to the contractor in carrying out the work by reason including of:

- 1) an alteration in the rates of wages or allowances payable to labour or a change in the conditions of employment thereof;
- 2) a change in the cost of materials (whether for the permanent or temporary works), consumables stores, fuel or power but excluding stainless steel and copper;
- 3) a variation in the rates of freight or insurance;
- 4) variation in the incidence of landing charges;
- 5) a variation in the cost of any other matter or thing of whatsoever nature except as stated in Special Conditions of Contract.

Nothing extra shall be payable over the quoted rates, notwithstanding any provision to the contrary in any law for the time being in force, save and except what is specifically provided in General or Special Conditions of Contract.

11.1.2 The Contract Price shall not be adjusted to take into account any increase or decrease in cost resulting from any change in taxes, duties, levies from the last date of submission of the Tender to the completion date including the date of the extended period of Contract unless a contrary provision exists in Special Conditions of Contract.

Advance Payments

11.2

Mobilisation Advance

11.2.1 The Employer shall pay interest free mobilisation advance as specified in Appendix FT-1 of Form of Tender and Special Conditions of Contract. Mobilisation advance shall be payable for both the contract separately against acceptable relevant amount of Bank Guarantee from an Indian Schedule bank (excluding Cooperative Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule. The requisite Bank Guarantee shall be accompanied with the Contractor's written request for mobilisation advance. Such bank Guarantee shall remain effective until the mobilisation advance has been repaid but its amount will be reduced at six monthly intervals upon request of the Contractor by the amount recovered by the Employer.

Advance against Plant and Machinery

11.2.2 Unless otherwise specified in the Special Conditions of Contract, Plant and machinery advance shall not be paid.

Advance against Materials	11.2.3	Unless otherwise specified in the Special Conditions of Contract, Material advance shall not be paid.
Written Request for Advances	11.2.4	Advances as admissible, shall be payable only on Contractor's written request to the Employer.
Recovery of Advances	11.2.5	<p>(a) The Commencement and the period of recovery of advance shall be as specified in the Special Conditions of Contract.</p> <p>The Contractor shall always have the option to have the recoveries commenced and/or completed earlier, and/or to have recoveries affected in statements of higher amount and also to repay part or whole of the advance by direct payment rather than through interim payments.</p>
Interest in Case of Delay in Repayment of Advances	11.2.6	Should there be delay in the progress and completion of work, as a result of which it is not possible to recover the advance and interest thereon (if any), before the date of completion stipulated in the Contract, then the interest to be charged from the Contractor on the remaining portion of the advance beyond the original completion date specified in the Contract, shall be the State Bank of India prime lending Rate plus 2% (simple interest) per annum or 12% (simple interest) per annum whichever is higher.
Advances to be Used only for This Work.	11.2.7	<p>The advances shall be used by the Contractor strictly for the purpose of the Contract, and for the purpose for which they are paid. Under no circumstances, shall the advances be diverted for other purposes. Any such diversion shall be construed as a breach of the Contract and the Contractor shall be asked to return the advance at once and pay interest at 15% per annum till the advance is recovered back from him. The Contractor shall return the advance and pay the interests in one go without demur.</p> <p>The Employer retains the right for any other remedy prescribed for breach of Contract in this regard.</p> <p>The Contractor, if required by the Employer shall provide the details of Mobilization advance expended or to be expended.</p>
Application for Interim Payment Certificates	11.3	<p>The fixed Lump Sum Price as per Appendix A shall be apportioned by the Contractor amongst the various Cost Centres Under schedule X and Schedule Y. The amount thus apportioned under each Cost Centre will be further apportioned amongst various Milestones with the approval of the Employer. The Contractor shall be entitled to submit to the Engineer requests for payments only upon the achievement of one or more of the Milestones described in the Cost Centre and this will be treated as an interim payment in their respective Cost Centre.</p> <p>At the beginning of each month, the Engineer shall issue to the Contractor certificate in respect of each Milestone due to be achieved in the preceding month stating:</p> <p>(a) the date on which the Milestone was achieved; or</p> <p>(b) the non-achievement of the Milestone.</p> <p>The Contractor shall submit a statement in six copies to the Engineer at the beginning of each month, in a form approved by the Engineer, showing the amounts to which the Contractor is entitled, together with supporting documents, including Milestone Certificates. The statement shall include</p>

the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the amount due in respect of Milestones achieved under each Cost Centre certified by the Engineer;
- (b) any amounts to be added and deducted for the advance payments and recovery thereof;
- (c) any other additions or deductions is due and approved by the Engineer in accordance with the Contract; and
- (d) the deduction of the amounts certified in all previous Interim Payment Certificates.

The Contractor shall not submit more than one request for interim payment per month.

If any Milestone is not achieved by the end of the month in which it is scheduled to be achieved, the Engineer shall suspend the payment relating to the Cost Centre in which the Milestone is included.

Payments suspended under this Clause shall be resumed by being included in the next application for interim payment made after the Milestone is achieved.

Issue of Interim Payment Certificates

11.4 No amount will be certified or paid until the Employer has received, and approved, the Performance Guarantee and signing of the Contract Agreement. Thereafter, the Engineer shall, within 21 days of receiving a statement and supporting documents, deliver to the Employer, with a copy to the Contractor, an Interim Payment Certificate showing the amount which the Engineer considers to be due; if no payment is considered to be due, the Engineer shall promptly notify the Contractor accordingly.

Where only a part of the payment applied for is disputed, payment certificate shall be issued for the undisputed amount.

The Engineer shall have the power to omit from any of the contractor's requests for payment the value of any work executed or Materials supplied or services rendered, with which he may for the time being be dissatisfied and for that purpose and for any other reason which to him may seem proper, may delete, correct or modify the sum(s) previously certified by him as being due to the Contractor.

Payment- Interim and Final

11.5 Unless otherwise stated in Special Conditions of Contract,

- (a) Interim Payment
 - (i) After scrutiny and certification by Engineer, payment of 100% of the certified amount shall be made by the Employer within 28 days. The amount certified shall account for all deductions, recoveries for advances and all amounts due from the Contractor.
 - (ii) The next 100% interim payment shall be made only after 100% payment of preceding interim payment certified has been completed.
 - (iii) Mode of Payment:
 - Foreign Currency shall be made through Letter of Credit;
 - Payment in INR shall be paid through A/C Payee Cheque.
 - (iv) All payments can be made to the Lead Member of the Consortium/JV. However direct payment to the individual

member of the Consortium/JV can also be made on certification by the Lead Member. In the latter case MOU needs to be submitted to the Employer signed by all the members to this effect. However, any recovery that may become due to the Employer shall be recovered from the account of Lead Partner only.

(b) Final Payment

The Employer shall pay the amount certified in the Final Payment Certificate within 56 days from the date of issue of the Performance Certificate.

Payments shall be made by cheque and / or E-payment as desired by the Employer unless otherwise specified in the Special Conditions of Contract. All payment to the Contractor for the foreign currency portion shall be through a Letter of Credit.

Retention Money

11.6

Unless otherwise specified in SCC, Retention monies equal to 10 percent of the amount due to the Contractor from time to time against each of the contract will be retained, so as to maintain a reserve in the hands of the Employer equal to 5 percent of the Contract Price in respective currencies.

The Retention monies shall be held by the Employer without obligation to invest them or account for interest thereon or to place them in a designated account. No interest of whatsoever nature and type will be paid to the Contractor by the Employer in respect of Retention monies.

One half of the Retention monies (Bank Guarantees and/or money) shall become due to the Contractor on the date of issue of the Taking Over Certificate for the whole of the works or the date of issue of last Certificate, if more than one Taking Over Certificate exist.

One half of the balance of the Retention monies (Bank Guarantees and/or money) shall become due to the Contractor on the date of issue of the Performance Certificate and the remainder shall become due to the Contractor upon the issue of Final Payment Certificate by the Engineer.

Statement at Completion

11.7

Not later than 60 days after the issue of the Taking Over Certificate for the whole of Works, the Contractor shall submit, to the Engineer, six copies of a statement at completion with supporting documents, showing in detail, in the form approved by the Engineer under Clause 11.3:

- (a) the final value of all work done in accordance with the Contract, up to the date stated in such Taking Over Certificate,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of amounts which the Contractor considers will become due to him under the Contract.

The estimated amounts shall be shown separately in such statement at completion. The Engineer shall certify payment under Clause 11.4.

Application for Final Payment Certificate

11.8

Not later than 56 days after the issue of the Performance Certificate, the Contractor shall submit to the Engineer six copies of a draft final statement with supporting documents showing in detail, in a form approved by the Engineer:

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

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

If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Employer shall pay those parts of the draft final statement as certified by the Engineer as not being in dispute. The remainder of the dispute may then be resolved under Clause 17, in which case the Contractor shall then prepare and submit to the Engineer a Final Statement in accordance with the outcome of the dispute.

Discharge **11.9** When submitting the final statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all monies due to the Contractor under the Contract. Such discharge may state that it shall become effective only after payment due under the Final Payment Certificate has been made and the Performance Guarantee referred to in Clause 4.2 has been returned to the Contractor.

Issue of Final Payment Certificate **11.10** The Engineer shall issue to the Employer, with a copy to the Contractor, the Final Payment Certificate within 28 days after receiving the Final Statement and written discharge in accordance with Clauses 11.8 and 11.9, stating:

- (a) the amount which is finally due, and
- (b) after giving credit to the Employer for 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 maybe.

If the Contractor has not applied for a Final Payment Certificate in accordance with Clauses 11.8 and 11.9, the Engineer shall request the Contractor to do so. If the Contractor fails to make such an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he considers to be due.

Cessation of Employer's Liability **11.11** In respect of any matter or thing arising out of (or in connection with) the Contract or execution of the Works before the issue of the Taking Over Certificate for the whole of the Works, the Employer shall not be liable to the Contractor unless the Contractor shall have included a claim for it in his Statement at Completion described in Clause 11.7. For any such matter or thing arising after the issue of the Taking Over Certificate for the whole of the Works, the Employer shall not be liable to the Contractor unless the Contractor shall have included a claim for it in his Final Statement.

Calculation of Payments in Foreign **11.12** All payments made by the Employer pursuant to the terms of the Contract shall be in the currency or currencies specified in the Contract. Wherever any sum in a foreign currency has to be converted into Indian Rupees for

Currency		any purpose, the exchange rate to be employed for such conversion shall be the selling rate of exchange at the close of business of the State Bank of India 28 days before the latest date of submission of Tenders.
Round off	11.13	In every payment to the Contractor, sums of less than fifty paise shall be omitted and sums of fifty paise and more up to one rupee shall be reckoned as one rupee.
Payment By Cheque and E-Payment	11.14	All payments to the Contractor will be made by cheque and / or “E-Payment” as desired by the Employer.
Tax Deduction at Source	11.15	Tax deductions will be made at source as per statutory requirement from every payment made to the Contractor at rates notified from time to time.
Production of Vouchers	11.16	<p>(i) The Contractor shall, whenever required by the Engineer, produce or cause to be produced for examination by the Engineer, any quotation, invoice, cost or other account books, vouchers, receipts, letters, memoranda or any copy of or extract from any such documents and also furnish information and returns, as may be required, relating to the execution of this Contract or relevant for verifying or ascertaining the cost of execution of this Contract or ascertaining the Materials supplied by the Contractor are in accordance with the Specifications laid down in the Contract. The Engineer's decision on the question of relevancy of any documents, information or returns shall be final and binding on the parties.</p> <p>(ii) If any part or item of the Work is allowed to be carried out by a Sub-Contractor, assignee or any subsidiary or allied firm, the Engineer shall have power to secure the books of such Sub-Contractor, assignee or any subsidiary or allied firm through the Contractor, and shall have power to examine and inspect the same. The above obligations are without prejudice to the obligations of the Contractor under any statute, rules or orders.</p>
Withholding And Lien For Sums Claimed	11.17	<p>(i) The Employer shall have lien on and over all materials of every description, tools, tackles, plant, equipment or any moneys due and/or that may become due and payable to the Contractor under the Contract, and / or on and over the deposit of Performance Guarantee or other amount or amounts made under the Contract and which may become payable to the Contractor</p> <p>(ii) And further, unless the Contractor pays and clears immediately on demand any claim of the Employer, the Employer shall at all times be entitled to deduct the amount of the said claim from the moneys, securities and / or deposits which may have become or will become payable to the Contractor under these presents, or under any other Contract or transaction whatsoever between the Employer and the Contractor even if the matter stands referred to Arbitration. The Contractor shall have no claim for any interest or damage whatsoever in respect of any amounts withheld or treated as withheld under the lien referred to above and duly notified as such to the Contractor.</p>
Signature On Receipts For Payments	11.18	Every receipt of payment to Contractor including refund of the Performance Guarantee shall be signed by the person authorized to do so on his behalf. In the event of death of any of the Contractor's partners in case the Contractor is a partnership firm, during the currency of the Contract, it is hereby expressly agreed that every receipt by any one of surviving Contractor's partners, shall, if so signed as aforesaid, be a good and

sufficient discharge as aforesaid, provided that nothing in this Clause shall be deemed to prejudice or affect any claim, which the Employer may hereafter have against the legal representatives of any Contractor's partner so dying, for or in respect of breach of any of the conditions of the Contract. Provided also that nothing contained in this clause shall be deemed to prejudice or affect the respective rights and obligations of the Contractor's partners, or of the legal heirs / representatives of any deceased Contractor / partner's interest.

Post Payment Audit **11.19** It is an agreed term of the Contract, that the Employer reserves to himself the right to carry out a post payment audit and / or technical examination of the Works, and the Final bill including all supporting vouchers, abstracts, etc., and to make a claim on the Contractor for the refund of any excess amount paid to him, if as a result of such examination, any over-payment to him is discovered to have been made in respect of any work done or alleged to have been done by the Contractor, under the Contract. If any under-payment is discovered, the same shall be paid by the Employer to the Contractor. Such payments or recoveries, however, shall not carry any interest.

Recovery of money due to the Employer **11.20** All damages (including, without limitation, liquidated damages), costs, charges, expenses, debts, or sums for which the Contractor is liable to the Employer under any provision of the Contract may be deducted by the Employer from monies due to the Contractor under the Contract including, without limitation, and the Employer shall have the power to recover any balance not so deducted from monies due to the Contractor under any other contract between the Employer and the Contractor.

When the Contractor has assigned to a third party the right to receive monies due, or, to become due, under the Contract to the Contractor or charged such monies in favour of a third party, the Employer's right to deduct damages (including without limitation liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer from monies due to the Contractor under the Contract shall be limited to the right expressed above.

12 VARIATIONS

Right to Vary **12.1** All Variations shall be recorded in a written instruction from the Engineer either as a Contractor's Variation or as an Employer's Variation, and shall not be implemented by the Contractor without such an instruction in writing from the Engineer. No Variation shall in any way vitiate or invalidate the Contract. The Contractor shall not make any alteration and/or modification of the Works, unless and until the Engineer instructs or gives consent to a Variation. If the Construction and/or Manufacture Documents or Works are not in accordance with the Contract, the rectification shall not constitute a Variation.

Contractor's Variations **12.2 Value Engineering or Innovation**

Value Engineering Proposals **12.2.1** The Contractor may submit to the Employer, in writing at its own cost, value engineering proposals for modifying the Employer's Requirements, provision of additional land, access or feasibility over and above that is provided in the Contract for the purpose of saving in time, construction or

manufacture costs. The value engineering proposal shall not impair the essential character, functions or characteristics or the Work, including service life, economy of operation, ease of maintenance, desired appearance, or design and safety standards.

The Contractor shall provide his value engineering proposal in a time limit prescribed by the Engineer. The Engineer's decision in this regard shall be communicated to the Contractor within a reasonable period of time. If by any reason the time limit specified by the Engineer is exceeded, the proposal may not be considered.

The decision of the Engineer in this regard shall be final and binding.

Value Engineering Proposals – Contents

12.2.2 If the Employer requires or accepts it, and if the Contractor wants to proceed with the proposal, the Contractor must provide (at no cost to the Employer) a detailed report prepared by a consultant acceptable to the Employer and which shall include:

- (a) a general description of the original Contract requirements for the Works and the proposed changes
- (b) any detail of all the proposed modifications to the drawings and specifications
- (c) any detail of all Work and goods affected by the value engineering proposal
- (d) a detailed estimate of the construction cost based on the original Contract requirements and based on the proposed changes
- (e) any resultant time extensions or reductions for the Contract
- (f) statement to the extent of minimum saving expected. The Contractor's cost of preparing value engineering proposal shall be excluded in determining the estimated net savings in construction costs.

Value Engineering Proposals- Employer Review

12.2.3 The Employer may in his sole discretion, accept or reject the value engineering proposal or any part thereof and determine the estimated net saving in the construction cost. The Employer shall not be liable for delays or damages to the Contractor due to any failure of the Employer to accept or act upon any value engineering proposal submitted pursuant to this Clause. If the submitted value engineering proposal is similar to a change / variation already under consideration by the Employer, the Employer may make such changes without respect to the value engineering proposal.

Once, the Employer or the Engineer rejects the value engineering during proposition due to any reason, it shall not be pursued by the Contractor in any other form.

Amendments- Employer Issuance

12.2.4 If the value engineering proposal is acceptable to the Employer in whole or in parts, it will accept by execution of an amendment. Such amendment shall identify all the changes in the specifications, Contract Period etc, shall specify net savings on construction costs and shall provide that the Contractor be paid 30% of saved net savings amount based on the difference between the amount contained in the Contract and the estimated net savings both as determined by the Employer.

Contractor's Acceptance and Payment

12.2.5 The Contractor shall either accept or reject any proposed amendment executed by the Engineer pursuant to this section within 14 calendar days of its receipt date from the Employer. If the Contractor does not reject the same in the period stipulated above, the amendments shall be deemed to be accepted by the Contractor and shall become a variation to the Contract.

The Contractor's acceptance shall be unconditional and compensation of 30% of the value shall constitute the full compensation. The Contractor will be paid this 30% or less but not more at the time of final payment on Engineer's certification that the net savings as intended by value engineering have been achieved.

**Employer's
Variations**

12.3 If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall submit at his own cost within 14 days or such period as the Engineer may allow of the receipt of such request of the Engineer

- (a) a description of the proposed design and/or work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the programme according to Clause 4. 13, and
- (c) the Contractor's proposal for adjustment to the Contract Price, Time for Completion and/or modifications to the Contract.

**Variation
Procedure**

12.4 The Engineer shall, as soon as practicable after receipt of proposals under Clauses 12.2 and / or 12.3, respond with approval, rejection or comments.

If the Engineer instructs or approves a Variation, he shall proceed in accordance with Clause 3.5 to agree or determine adjustments to the Contract Price, Time for Completion and Schedule of Payments.

After receipt of proposal, it will be the prerogative of the Employer, whether to instruct and proceed ahead with the variation or drop the proposal in part or full. In that case, no cost of preparing and submitting the proposal will be payable to Contractor. In case, the design part of variation has been completed on submission of same to the Engineer, the Employer decides to abandon the variation; only cost for design to the extent of work done will be paid to the Contractor.

**Payment in
Applicable
Currencies**

12.5 If the Contract provides for payment of the Contract Price in more than one currency, and an adjustment is agreed or fixed as stated above, the amount payable in each of the applicable currencies shall be specified when the adjustment is agreed or fixed. In specifying the amount in each currency, the Contractor and the Engineer (or, failing agreement, the Engineer) shall take account of the actual or expected currency proportions of the Cost of the varied work, without being bound by the proportions of various currencies specified for payment of the Contract Price.

13.0 TERMINATION OF THE CONTRACT

**Notice to
Contractor**

13.1 If the Contractor fails to carry out any of his obligations, or if the Contractor is not executing the Works in accordance with the Contract, the Engineer may give notice to the Contractor requiring him to make good such failure and remedy the same within such time as the Employer / Engineer may deem to be reasonable.

**Termination
Of Contract
Due To
Contractor's
Default**

13.2

**Conditions
Leading To
termination
Of Contract**

13.2.1 The Employer shall be entitled to terminate the Contract if the Contractor or any one of its constituents,

- (a) fails to comply with a notice under Clause 13.1;
- (b) abandons or repudiates the Contract;
- (c) without reasonable excuse acceptable to the Engineer, fails to commence the Works in accordance with the Contract;
- (d) sub-contracts the whole of the Works or assigns the Contract without approval of the Employer;
- (e) becomes bankrupt or insolvent or goes into liquidation except voluntary liquidation for the purpose of amalgamation or reconstruction;
- (f) persistently disregards instructions of the Engineer or contravenes any provisions of the Contract, or
- (g) fails to adhere to the agreed programme of work by margin of 10% of the stipulated period or 60 days, whichever is earlier, or fails to complete the Works or parts of the Works within the stipulated or extended period of completion, or is unlikely to complete the whole Work or part thereof within time because of poor record of progress; or
- (h) fails to remove materials from the Site, or pull down and replace work, after receiving notice from the Engineer to the effect that the said materials or Works have been condemned or rejected, or
- (i) fails to take steps to employ competent and/or additional staff and labour, or
- (j) fails to afford the Engineer or his representative proper facilities for inspecting the Works or any part thereof, or
- (k) indulges in corrupt or fraudulent practices as explained in Sub-Clause 4.33.1

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

The Employer's decision to terminate the Contract shall not prejudice any other rights of the Employer under the Contract.

After termination, the Employer may complete the works and/ arrange for any other entities to do so at the risk and cost of the Contractor. The Employer and his entities may then use, the roads, the Contractor's documents and his design document made by or on behalf of the Contractor.

On termination of Contract due to Contractor's default, the Employer shall be entitled to

- (a) forfeit the whole or such portion of the Performance Guarantee amount as he may consider fit, and
- (b) recover from the Contractor the cost of carrying out the balance work in excess of the sum which he would have been paid according to the certificate of the Engineer, if the works had been carried out and completed by the Contractor under the terms of Contract. Such certificate shall be final and binding upon the Contractor. The amount

to be recovered may be deducted by the Employer from any monies then due or which, at any time thereafter, may become due to the Contractor alone or jointly under this or any other Contract or otherwise.

For the purpose of this clause, a reasonable excuse shall be one, which in the opinion of the Engineer has resulted from,

- Circumstance which
 - is beyond the Employer's or Contractor's control and
 - made the failure unavoidable and
- It is evidenced by the Contractor to the satisfaction of the Engineer that the failure was remedied without unreasonable delay once that obstacle was out of the way.

Valuation at the date of Termination **13.2.2** The Engineer shall, as soon as possible after termination under Sub-Clause 13.2.1, determine and advise the Contractor of the value of the Construction and/or Manufacture Documents, Plant, Rolling Stock, Materials, Contractor's Equipment and works and all sums then due to the Contractor as at the date of termination.

Payment after Termination **13.2.3** After termination under Sub-Clause 13.2.1, the Employer shall not be liable to make any further payments to the Contractor until the costs of design, manufacture, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established.

The Employer shall be entitled to recover from the Contractor the extra costs, if any, of completing the Works after allowing for any sum due to the Contractor under Sub-Clause 13.2.2. If there are no such extra costs, the Employer shall pay any balance to the Contractor.

Non-exercise of power not to constitute waiver **13.2.4** Provided always that in case any of the powers conferred upon the Employer by Clause 13.1 and Sub-Clause 13.2.1 above, shall have become exercisable, and the same may not have been exercised, the non-exercise thereof shall not constitute waiver of any of the conditions thereof.

Termination by Contractor **13.3**

Default of Employer **13.3.1** In the event of the Employer:

- (a) failing to pay the Contractor, without reasonable cause, the amount due under any certificate of the Engineer within 56 days after the expiry of the time stated in Clause 11.5 within which payment has to be made, subject to any deduction that the Employer is entitled to make under the Contract, or
- (b) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation,

then the Contractor may give notice requiring the Employer to remedy the default within 28 days after receipt of the notice. If the Employer fails to remedy the default or fails to propose steps reasonably acceptable to the Contractor to do so and in that case, the Contractor may terminate the Contract after issue of 14 days notice to the Employer with a copy to the Engineer. In this case, the Contractor shall be compensated as per Sub-Clause no. 13.3.4.

The Engineer's decision on the amount payable on this account shall be final and binding.

Contractor's Entitlement to Suspend the Work

13.3.2 The Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 56 days after the expiry of the time stated in Clause 11.5, within which payment is to be made, subject to any deduction that the Employer is entitled to make under the Contract, after giving 28 days' prior notice to the Employer, with a copy to the Engineer, suspend work or reduce the rate of work.

If the Contractor suspends work or reduces the rate of work in accordance with the provisions of this Sub-Clause and thereby suffers delay or incurs costs the Engineer shall, after due consultation with the Employer and the Contractor, determine:

- (a) any extension of time to which the Contractor is entitled under Clause-8.4, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Cessation of Work by Contractor

13.3.3 After termination under Clause 13.3, the Contractor shall:

- (a) cease all further work, except for such work as may be necessary and instructed by the Engineer for the purpose of making safe or protecting those parts of the Works already executed, and any Work required to leave the Site in a clean and safe condition,
- (b) hand over all Construction and/or Manufacture Documents, Plant, Rolling stock, and Materials for which the Contractor has received payment,
- (c) hand over those parts of other Works executed by the Contractor up to the date of termination, and
- (d) remove all Contractor's Equipment which is on the Site and repatriate all his staff and labour from the Site.

Any such termination shall be without prejudice to any other right of the Contractor under the Contract.

Payment on Termination

13.3.4 After termination under Sub-Clause 13.3.1 the Employer shall return the Performance Guarantee, and shall pay the Contractor an amount calculated and certified in accordance with the following conditions:

- (a) The value of approved materials actually brought to the site and reasonably required to execute the works during next three months, as per approved programme, and
- (b) Value of work completed up to date by the Contractor at rates specified in the Contract, after taking into account any deductions, retentions, setoff.
- (c) In addition a sum not exceeding 2% (two percent) of the value of the work remaining incomplete on the date of Termination notice taking effect.

The payment as above are full compensation for termination under this clause and the Contractor has no claim for damages or other entitlements whether under the contract or otherwise.

- 13.3.5** In case of termination/ foreclosure of the Contract under whatsoever circumstances, any remaining tools, plants, equipments and surplus materials of the Employer with the Contractor will be returned to the Employer at Employer's depot at the Contractor's cost. In case of the failure of the Contractor to do so, the Employer will be entitled to recover their cost from the Contractor from the amount becoming due to the Contractor or from any other money due in any other contracts between the Employer and the Contractor. The decision of the Engineer of the amount to be recovered will be final decision and full credit at rates initially charged to the Contractor shall be allowed for such materials. Similarly the Employer shall be entitled to recover the cost of the unreturned material, plants, equipments and tools from the Contractor where such material have been supplied free of cost and plants, equipments and tools free of cost or on lease basis to the Contractor as stipulated in the Contract

Survival

13.4 Termination of this Contract

- (a) shall not relieve the Contractor or the Employer of any obligations already incurred hereunder which expressly or by implication survives Termination hereof and
- (b) except as otherwise provided in any provision of this Contract expressly limiting the liability of either party, shall 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.

14 RISK AND RESPONSIBILITY

Indemnity

14.1

The Contractor shall indemnify and hold harmless the Employer, the Engineer, the Designated Contractors, representatives and employees from and against all actions, suits, proceedings, claims, damages, losses, expenses and demands of every nature and description, by reasons of any act or omissions of the Contractor, his representative or his employees in the execution of the Works, including professional services provided by the Contractor or in the guarding the same.

These indemnification obligations shall include but not be limited to claims, damages, losses, damage proceedings, charges and expenses which are attributable to:

- (a) sickness, or disease, or death of, or injury to any person; and
- (b) loss of, or damage to, or destruction of any property (other than the Works) including consequential loss of use; and
- (c) loss, damage or costs arising from the carriage of Plant, Rolling Stock and Materials and/or ownership or chartering of marine vessels by the Contractor, or any sub-contractor of any tier.

The Contractor shall also indemnify and save harmless the Employer from and against all claims and proceedings on account of infringements of patents rights, design, trademark name etc as detailed out in Clause 5.8.

All sums payable by way of compensation under these conditions shall be considered reasonable compensation payable to the Employer, without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained. The decision of the Engineer as to compensation claimed shall be final and binding.

**Contractor's
Care of the
Works**

14.2 The Contractor shall take full responsibility for the care of the Works, or any part thereof, including full responsibility for the care of any work being manufactured, or stored off-Site for inclusion in the Works, or in the course of transportation to the Site, and for the care of Contractor's Equipment, Temporary Works, Plant, Rolling Stock, and any other Material, whatsoever, on the Site or delivered to or placed on the Site in connection with, or for the purpose of the Works.

The Contractor shall take this responsibility from the Commencement Date until the date of issue of the Taking Over Certificate, when responsibility shall pass to the Employer. If the Engineer issues a Taking Over Certificate for any Section or part of the Works, the Contractor shall cease to be responsible for the care of that Section or part from the date of issue of such Taking Over Certificate when responsibility shall pass to the Employer.

The Contractor shall take responsibility for the care of any outstanding work which is required to be completed prior to the expiry of the Contract Period, until the Engineer confirms in writing that such outstanding work has been completed.

If any loss or damage happens to the Works, any other property or person, arising from any cause other than the Employer's risks listed in Clause 14.3, during the period for which the Contractor is responsible, the Contractor shall rectify such loss or damage, at his cost, so that the Works conform with the Contract or at the option of the Employer, will pay or allow to the Employer the cost of rectifying such loss or damage. Notwithstanding such loss or damage, the Contractor shall proceed with the execution of Works in all respects in accordance with the Contract and the Engineer's instructions. The Contractor shall also be liable for any loss or damage to the Works caused by any operations carried out by the Contractor after the date of issue of the Taking Over Certificate.

**Employer's
Risks**

14.3 The Employer's risks of loss or damage to physical property in India and of death and personal injury occurring in India in consequence of the performance of obligations under the Contract are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, revolution, insurrection, or military or usurped power, or civil war, within India,
- (c) riot, commotion or disorder by persons unless solely restricted to or caused by employees of Contractor or of sub-contractors currently or formerly engaged in the Works,
- (d) Ionising radiations, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly, except to the extent to which the Contractor may be responsible for the use of any radio-active material,
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (f) terrorism, munitions of war and explosive materials, and

		(g) use or occupation by the Employer of any part of the Works, except as may be specified in the Contract.
Consequences of Employer's Risks	14.4	<p>If an Employer's risk results in loss or damage, the Contractor shall promptly notify the Engineer and shall rectify this loss or damage to the extent required by the Engineer.</p> <p>If the Contractor suffers delay and/or incurs cost from rectifying this loss or damage, the Contractor shall give notice to the Engineer and shall be entitled to claim:</p> <p>(a) extension of time for any such delay, if completion is or will be delayed, under Clause 8.4, and</p> <p>(b) amount of such cost, which shall be included in the Contract Price.</p>
Contractor's Risks	14.5	The Contractor's risks are all risks other than the Employer's risks given in Clause 14.3.
Limitation of Liability	14.6	<p>Except as provided otherwise in these Conditions, neither party shall be liable to the other party for loss of use of any Works, loss of profit, loss of any Contract or any other indirect or consequential loss or damage which may be suffered by the other party in connection with the Contract. The total liability of the Contractor to the Employer under the Contract shall not exceed the Contract Price unless otherwise specified in SCC. Except that this Clause shall not limit the liability of the Contractor:</p> <p>(a) under Clauses 4.18, 4.19, 5.7, 7.9, 7.10, and 8.6;</p> <p>(b) under any other provisions of the Contract which expressly impose a greater liability;</p> <p>(c) in cases of fraud, wilful misconduct or illegal or unlawful acts, or; and</p> <p>(d) in cases of acts or omissions of the Contractor which are contrary to the most elementary rules of diligence which a conscientious Contractor would have followed in similar circumstances.</p>
Ownership of Plant and Materials	14.7	<p>(a) Ownership of the Plant and Equipment (including spare parts) to be imported into the country where the Site is located shall be transferred to the Employer on arrival at Employer's site.</p> <p>(b) Ownership of the Plant and Equipment (including spare parts) procured in the country where the Site is located shall be transferred to the Employer when the Plant and Equipment are brought on to the Site</p> <p>(c) Ownership of the Contractor's Equipment used by the Contractor and its Subcontractors in connection with the Contract shall remain with the Contractor or its Subcontractors.</p> <p>(d) Ownership of any Plant and Equipment in excess of the requirements for the Works shall revert to the Contractor upon Completion of the Works or at such earlier time when the Employer and the Contractor agree that the Plant and Equipment in question are no longer required for the Works.</p> <p>(e) Notwithstanding the transfer of ownership of the Plant and Equipment, the responsibility for care and custody thereof together</p>

with the risk of loss or damage thereto shall remain with the Contractor pursuant to Clause 14.2 (Contractor's Care of the Works) hereof until Completion of the Works or the part thereof in which such Plant and Equipment are incorporated.

15 INSURANCE

- | | | |
|-------------------------------------------------------------------|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Insurance for Design | 15.1 | <p>The Contractor shall effect and maintain professional indemnity insurance for the amount in Indian Rupees stipulated in Appendix A in pricing schedule, to the Form of Tender in respect of any design of the Works to be carried out by, or on behalf of the Contractor. This insurance, which shall ensure the Contractor's liability by reason of professional negligence and errors in the design of the Works, shall be valid from the date of commencement of Works until the date of issue of the Performance Certificate.</p> <p>The Engineer will not issue Final Payment Certificate until the Contractor has produced evidence that coverage of the professional indemnity insurance has been provided for the aforesaid period.</p> |
| Insurance for Works and Contractor's Equipment | 15.2 | <p>The Contractor shall insure the Plant, Rolling stock, Materials and Works in the joint names of the Employer, the Contractor and Sub-contractors (wherever applicable) against all loss or damage. This insurance shall cover loss or damage from any cause other than the Employer's risks listed in Clause 14.3 sub paragraphs (a), (b), (d) and (e). Such insurance shall be for a limit of not less than the full replacement cost (including profit) and shall also cover the costs of demolition and removal of debris. Such insurance shall be in such a manner that the Employer and the Contractor are covered from the commencement date until the date of issue of the Taking Over Certificate for the whole of Works. The Contractor shall extend such insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking Over Certificate, and for loss or damage occasioned by the Contractor or Sub-contractors in the course of any other operations (including Clauses 7.9, 7.10 and 10).</p> <p>The Contractor shall insure the Contractor's Equipment against all risks in the joint names of the Employer, the Contractor and Sub-contractors, (wherever applicable) against all loss or damage. This insurance shall cover loss or damage from any cause other than the Employer's risks listed in Clause 14.3 sub-paragraphs (a), (b), (d) and (e). Such insurance shall be for a limit of not less than the full replacement value (including delivery to Site). Such insurance shall be in such a manner that each item of equipment is insured while it is being transported to the Site and throughout the period it is on or near the Site.</p> |
| Insurance against injury to Persons and Damage to Property | 15.3 | <p>The Contractor shall insure against liability to third parties in the joint names of the Employer, the Contractor and Sub-contractors, (wherever applicable) for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Clause 15.2) or to any person (except persons insured under Clause 15.4), which may arise out of the performance of the Contract and occurring before the issue of the Performance Certificate. Such insurance shall be at least for the amount specified in the Appendix to Form of Tender.</p> |
| Insurance for Workers | 15.4 | <p>The Contractor shall effect and maintain insurance against losses and claims arising from the death or injury to any person employed by the Contractor or any Sub-contractor (wherever applicable) in such a manner that the Employer and the Engineer are indemnified under the policy of</p> |

insurance. For Sub-contractor's employees (wherever applicable), such insurance may be effected by the Sub-contractor, but the Contractor shall be responsible for compliance with this Clause.

Professional Indemnity Insurance

15.5

The Contractor shall also provide a Professional Indemnity Insurance as per the prevalent market practices. The Professional Indemnity Insurance shall be valid for period of 5 years. Alternatively the Contractor shall redeem the insurance before the expiry of the Yearly Insurance in such a way that the entire validity period is covered.

General Requirements for Insurances

15.6

The Contractor shall, within the respective periods stated in the Appendix to Form of Tender (calculated from the Commencement Date), submit to the Employer:

- (a) evidence that the insurances described in this Clause have been effected, with an Indian Insurance Company, and
- (b) copies of the policies for the insurances described in Clauses 15.2, 15.3 and 15.4.

When each premium has been paid, the Contractor shall submit copy of receipts to the Employer. The Contractor shall also, when providing such evidence, policies and receipts to the Employer, notify the Engineer of so doing.

The Contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the Employer. Each policy insuring against loss or damage shall provide for payments required to rectify such loss or damage. Payments received from insurers shall be used for the rectification of such loss or damage.

The Contractor (and, if appropriate, the Employer) shall comply with the conditions stipulated in each of the insurance policies. The Contractor shall make no material alteration to the terms of any insurance without the prior approval of the Employer. If an insurer makes (or purports to make) any such alteration, the Contractor shall notify the Employer immediately.

If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide satisfactory evidence, policies and receipts in accordance with this Clause, the Employer may, without prejudice to any other right or remedy, effect insurance for the coverage relevant to such default, and pay the premiums due. In such cases the premium paid by the Employer plus overheads (equal to 50% of the premium paid) shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor or recover the same as debt due from the Contractor. The Contractor shall not dispute the amount of premium paid by the Employer or the overhead charges thereon.

Nothing in this clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amount not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer accordingly, unless otherwise specified in the Special Conditions of Contract.

The Contractor shall submit to the Engineer, the details of all claims made with the insurer and claims accepted by the insurer or any other details as required by the Engineer on monthly basis.

16 FORCE MAJEURE

Definition of Force Majeure	16.1	<p>In this Clause, "force majeure " means an event beyond the control of the Employer and the Contractor, which makes it impossible or illegal for a party to perform, including but not limited to:</p> <ul style="list-style-type: none"> (a) act of God; (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo; (c) rebellion, revolution, insurrection, or military or usurped power, or civil war; (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly; (e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Sub-contractors currently or formerly engaged on the Works; (f) strike, sabotage, lockout, embargo, import restriction, port congestion, lack of usual means of public transportation and communication, industrial dispute, shipwreck, shortage or restriction of power supply, epidemics, quarantine and plague; (g) earthquake, landslide, volcanic activity, fire, flood or inundation, tidal wave, typhoon or cyclone, hurricane, storm, lightning, or other inclement weather condition, nuclear and pressure waves or other natural or physical disaster; (h) shortage of labour, materials or utilities where caused by circumstances that are themselves Force Majeure. <p>If a party considers that it may be affected by Force Majeure, the party shall promptly notify the other party and Engineer of such Force Majeure within 21 days of such occurrence. If neither party issues any notice regarding the event within 21 days of its occurrence, the said event shall be deemed not to have occurred and the Contract shall continue to have effect as such.</p>
Effect of Force Majeure Event	16.2	Neither the Employer nor the Contractor shall be considered in default or in contractual breach to the extent that performance of obligations is prevented by a Force Majeure event which arises after the date of Notice to Proceed. Upon the occurrence of such Force Majeure, the affected party shall endeavour to continue to perform its obligations as far as reasonably practicable.
Contractor's Responsibility	16.3	If affected by such Force Majeure, the Contractor shall promptly notify the Engineer of any proposals for overcoming the consequences of the Force Majeure, including any reasonable alternative means for performance, but shall not carry out these proposals without the consent of the Engineer.
Employer's Responsibility	16.4	If affected by such Force Majeure, the Employer shall promptly notify the Engineer and the Contractor of any proposals for overcoming the consequences of the Force Majeure.
Payment to Contractor	16.5	If the Works shall suffer loss or damage due to such Force Majeure, the Contractor shall be entitled to have included, in an Interim Payment

Certificate, the Cost of work executed in accordance with the Contract.

**Resumption
of
Work**

- 16.6** The obligations under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.
- In case of doubt or dispute, whether a particular occurrence should be considered an “event” as defined under this clause, the decision of the Engineer shall be final and binding.
- Works that have already been measured shall be paid for by the Employer even if the same is subsequently destroyed or damaged as a result of the event. The cost of rebuilding or replacing any work that has been measured shall be borne by the Employer.

**Optional
Termination,
Payment and
Release**

- 16.7** Irrespective of any extension of time, if a Force Majeure occurs and its effect continues for a period of 6 months, after notice has been given under Clause 16.1, either party may give to the other party a notice of termination the Contract which shall take effect 28 days after the notice is given. Unless at the end of 28 days period the effect of the Force Majeure has ceased, the Contract shall terminate upon that date. Otherwise, the Contract shall remain in effect.
- The Contractor shall be paid fully for the work done under the Contract, but not for any defective work or work done which has been destroyed or damaged before its measurement. The Employer shall have the option to take over any Plant, Rolling Stock and Materials lying at site, at rates provided for in the Contract, failing that, as per rates, which are determined to be fair and reasonable by the Engineer.

**Release from
Performance
Under the
Law**

- 16.8** If under the law of the Contract the Employer and the Contractor are released from further performance, the sum payable by the Employer to the Contractor shall be the same as would have been payable under Clause 16.7, if the Contract had been terminated under that Clause.

17 CLAIMS, DISPUTES, CONCILIATION AND ARBITRATION

**Procedure for
Claims**

- 17.1** If the Contractor intends to claim any additional payment under any clause of these Conditions or otherwise, the Contractor shall give notice to the Engineer as soon as possible and in any event within 28 days of the start of the event giving rise to the claim.
- The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at any other location acceptable to the Engineer. Without admitting the Employer’s liability, the Engineer shall, on receipt of such notice, inspect such records and may instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all such records, and shall (if instructed) submit copies to the Engineer.
- Within 28 days of such notice, or such other time as may be agreed by the Engineer, the Contractor shall send to the Engineer an account, giving detailed particulars of the amount and basis of the claim. Where the event giving rise to the claim has a continuing effect, such amount shall be considered as interim. The Contractor shall then, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event.

		If the Contractor fails to comply with this Clause, he shall not be entitled to claim any additional payment.
Payment for Claims	17.2	The Contractor shall be entitled to have included in any Interim Payment Certificate such amount for any claim as the Engineer considers due, after taking approval from the Employer. If the particulars supplied are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment for such part of the claim as has been substantiated.
No legal action Till Dispute Settlement Procedure is Exhausted	17.3	Any and all Disputes shall be settled in accordance with the provisions of Clause 17. No action at law concerning or arising out of any Dispute shall be commenced unless and until all applicable Dispute resolution procedures set out in Clause 17 shall have been finally exhausted in relation to that Dispute or any Dispute out of which that Dispute shall have arisen with which it may be or may have been connected.
Notice of Dispute	17.4	For the purpose of Clause 17.5, a Dispute shall be deemed to arise when one party serves on the other party a notice in writing (hereinafter called a "Notice of Dispute") stating the nature of the Dispute provided that no such notice shall be served later than 28 days after the date of issue of Performance Certificate by the Engineer.
Two Stages for Dispute Resolution	17.5	Disputes shall be settled through two stages: <ul style="list-style-type: none"> (a) Conciliation procedures. In the event this procedure fails to resolve the Dispute then; (b) Arbitration procedures
Conciliation	17.6	<p>Within 60 days of receipt of Notice of Dispute, either party shall refer the matter in dispute to conciliation.</p> <p>Conciliation proceedings shall be initiated within 30 days of one party inviting the other in writing to Conciliation. Conciliation shall commence when the other party accepts in writing this invitation. If the invitation is not accepted then Conciliation shall not take place. If the party initiating conciliation does not receive a reply within 30 days from the date on which he sends the invitation he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.</p> <p>The Conciliation shall be undertaken by one Conciliator selected from a panel of Conciliators maintained by the Employer. The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner.</p>
Conciliation Procedure	17.7	The Employer shall maintain a panel of Conciliators with requisite qualifications and professional experience who shall be from serving or retired engineers of Government Departments, or of Public Sector Undertakings. Out of this panel, a list of three Conciliators shall be sent to the Contractor who shall choose one of them to act as Conciliator and conduct conciliation proceedings in accordance with "The Arbitration and Conciliation Act, 1996", of India. The party serving notice of dispute on the other party shall also serve such notice on the Conciliator chosen as per this Clause. The Employer at the time of offering the panel of Conciliators to be appointed as Conciliator shall also supply the information with regard to the qualifications of the said Conciliators nominated in the panel along with their professional experience, phone nos. and addresses to

the Contractor.

In the event of the Contractor not choosing the Conciliator from the panel furnished by the Employer, within a period of 30 days, the Employer is at liberty to choose and nominate a Conciliator from the same panel and communicate to the Contractor which will be final and binding on the Contractor.

The Employer and the Contractor shall in good faith co-operate with the Conciliator and, in particular, shall endeavour to comply with requests by the Conciliator to submit written materials, provide evidence and attend meetings. Each party may, on his own initiative or at the invitation of the Conciliator, submit to the Conciliator suggestions for the settlement of the dispute.

When it appears to the Conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the Conciliator may reformulate the terms of a possible settlement in the light of such observations.

If the Parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the Parties, the Conciliator may draw up, or assist the Parties in drawing up, the settlement agreement.

When the Parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the Parties.

As far as possible, the conciliation proceedings should be completed within 60 days of the receipt of notice by the Conciliator.

The Parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.

**Termination
of
Conciliation
Proceedings**

17.8

The conciliation proceedings shall be terminated:

- (a) by the signing of the settlement agreement by the Parties on the date of agreement; or
- (b) by written declaration of the Conciliator, after consultation with the Parties, to the effect further efforts at conciliation are no longer justified, on the date of declaration; or
- (c) by a written declaration of the Parties to the Conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration; or
- (d) by a written declaration of a Party to the other Party and the Conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration.

Upon termination of the conciliation proceedings, the Conciliator shall fix the costs of the conciliation and give written notice thereof to the Parties. The costs shall be borne equally by the Parties unless settlement agreement provides for a different apportionment. All other expenses incurred by a Party shall be borne by that Party.

Arbitration

17.9

If the efforts to resolve all or any of the disputes through conciliation fails, then such disputes or differences, whatsoever arising between the Parties, arising out of touching or relating to construction/ manufacture, measuring

operation or effect of the Contract or the breach thereof shall be referred to Arbitration in accordance with the following provisions:

- (a) The Arbitration Board will consist of three Arbitrators. The Contractor may select his own Arbitrator and Employer will propose an Arbitrator from the panel selected by the Employer. The third Arbitrator will be selected in accordance with "the Section 11 of Arbitration and Conciliation Act, 1996", of India. All Arbitrators shall be Indian nationals, ordinary residing in India with technical competence and experience.

The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/ demand of appointment of Arbitrator from either Party. Neither Party shall be limited in the proceedings before such Arbitrator(s) to the evidence nor arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the Arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to Arbitrator/s. The arbitration proceedings shall be held in KOLKATA only. The language of proceedings, which of documents and communication shall be English.

- (b) The Employer at the time of offering the panel of Arbitrators to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrators nominated in the panel along with their professional experience, phone nos. and addresses to the Contractor.
- (c) The cost of arbitration shall be shared equally by the contractor and the Employer.

Interest on Arbitration Award	17.10	Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period, till the date on which the award is made.
Cost of Arbitration	17.11	The Arbitrator shall be paid an hourly fee fixed by the Employer plus reasonable expenditures incurred in the execution of its duties as Arbitrator, and these costs shall be divided equally between the Employer and the Contractor.
Jurisdiction of Courts	17.12	Where recourse to a Court is to be made in respect of any matter, the high court at KOLKATA shall have the exclusive jurisdiction to try all disputes between the parties.
Suspension of Work on Account of Arbitration	17.13	The reference to Conciliation / Arbitration shall proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, Engineer and the Contractor shall not be altered by reasons of arbitration being conducted during the progress of the Works. Neither party shall be entitled to suspend the work or part of the work to which the dispute relates on account of arbitration and payments to the Contractor shall continue to be made in terms of the Contract.

18 SERVICE OF NOTICES

Notice to Contractor	18.1	(a) All notices to the Contractor shall be served by post or telex or telefax or by hand to the Contractor or his authorized representatives. In case of notices delivered by post, they will be deemed to have been delivered after 7 days of dispatch.
		(b) The Contractor shall, on award of the Contract, furnish to the Engineer, the name, designation, address and telephone, telex and telefax numbers and e-mail address of his representative referred to in Clause 4.3.
Notice to Employer and Engineer	18.2	All notices to the Employer or Engineer shall be served by post or telex or telefax, or by delivering by hand to the address nominated for the purpose.
Change of Address	18.3	Parties to the Contract may change the nominated address with a notice to all concerned.

**Kolkata Metro Rail Corporation Limited
East West Metro Project**

**Contract RS (3R)
TENDER DOCUMENTS
VOLUME 2**

SPECIAL CONDITIONS OF CONTRACT

**Kolkata Metro Rail Corporation Limited
KMRCL Bhawan, (HRBC Office Complex),
Munshi Premchand Sarani,
Kolkata 700 021
India**

SPECIAL CONDITIONS OF CONTRACT

CONTENTS

Cl. No		Page No
1	Change in Laws and Regulations	4
2	Electricity, Water and Gas	4
3	Sub-Contractors	4
4	Programmes	5
5	Safety of Works	5
6	Protection of the Environment	5
7	Tools, Plants and Equipments and Materials supplied by the Employer	6
8	Construction and/or Manufacture documents	6
9	Operation and Maintenance Manuals	6
10	Statutory Requirements	6
11	Taking Over Certificate	6
12	Defects Liability	6
13	The Contract Price	7
14	Mobilisation Advance and its Recovery	9
15	Application for Interim Payments	9
16	Payment-Interim and Final	9
17	Retention Money	10
18	Employer's Variation and Variation Procedure	10
19	Limitation & Liability	11
20	Insurance for Works and Contractor's Equipments	11
21	General Requirements for Insurance & Payment to Contractor	11
22	Conciliation	11
23	Conciliation Procedure	12
24	Notices	12
25	Option	13
26	Facilities in the Labour Camp	13
27	Deployment of Personnel by the Employer	13
28	KMRCL Labour Welfare Fund Rules	13
29	Parent Company Guarantee	15
30	Duties and Authorities of the Engineer	15
31	Insurance	15
32	Cross Fall Breach	15
33	Assignment by the Employer	16
34	Additional Liquidity Damages	16
35	Optional Termination, Payment and Release	16
36	As-Built Drawings and Documents	16
37	Priority of Documents	16

38	Contractor's Acceptance and Payment	17
39	Amount of Performance Guarantee	17
40	Access Road and Way Leaves	17
41	Professional Indemnity Insurance	17
42	Production of Vouchers and Post payment Audit	17
43	Withholding and Lien for Sum Claimed	17
44	Valuation at the date of termination	17
45	The testing	17
46	Taking over of parts of the works	17
47	Engineer's Authority to delegate	17
48	Proven Design Propulsion System along with other Sub-Assemblies	17

Schedules to Special Conditions of Contract

Schedule 1	-	Contract Agreement
Schedule 2	-	Performance Guarantee
Schedule 3	-	Parent Company Undertaking
Schedule 4	-	Parent Company Guarantee
Schedule 5	-	Contractor's Warranty
Schedule 6	-	Sub-Contractor's/Vendor's Warranty
Schedule 7	-	Form of Bank Guarantee for Advance Payments
Schedule 8	-	Designer's Warranty
Schedule 9	-	List of Proposed Subcontractors/Vendors

SPECIAL CONDITIONS OF CONTRACT

1. Change in Laws and Regulations (GCC Clause 1.10)

If, after the date twenty-eight (28) days prior to the date of Tender submission, in the country where the Site is located, any law, regulation, ordinance, order or by-law having the force of law is enacted, promulgated, abrogated or changed which shall be deemed to have given effect the differential taxes and duties portion that has been included in the lump sum price of the contract over the present Tax/duties structure except Income Tax, such increase of taxes/duties will be reimbursed separately and if decreased it will be adjusted accordingly.

2. Electricity, Water and Gas (GCC Clauses 4.1 & 4.18)

The Contractor shall be allowed, free of charge, traction power and use of test track during the testing and commissioning as specified in the Employer's Requirements - General Specification.

3. Sub-Contractors (GCC Clause 4.5)

In addition to the provisions of Clause 4.5 of the General Conditions of Contract, the Contractor shall submit an undertaking as per Schedule 5 to these Special Conditions of Contract for manufacture & supply of spares for the equipment supplied in the contract for at least 10 years from the date of completion of the contract.

It shall be obligatory for the Contractor to obtain Notice of No Objection from the Engineer for the selection of the sub-contractor and vendors for all items of work, even if the name of the sub-contractor and vendor is named in the Contractor's Proposal and the works to be done including purchase of materials and equipment are in accordance with the Standards specified in the Contract. List of such major items for sub-contracting shall be drawn up by the Contractor in consultation with the Engineer. The terms and conditions of the sub-contract/vending agreement are the sole prerogatives of the Contractor and are deemed to be included in the Contract Price.

The proposed sub-contract terms and conditions shall impose on the sub-contractor such of the terms of the Contract as are applicable and appropriate to the part of the Works to be sub-contracted, to enable the Contractor to comply with his obligations under the Contract. (refer Schedule 9)

After the Notice of No Objection issued by the Engineer for the selection of the sub-contractor/vendor, any change in the identity of sub-contractor/vendor shall require prior approval of the Engineer.

Selection of Subcontractor /Vendor should be strictly as per 'Proven Design'. Notwithstanding any consent to the selection of the sub-contractor/vendor given by the Engineer, the Engineer shall have full power to order the change of sub-contractor/vendor, if considered necessary by him.

Non-Payment by the Contractor to Sub-Contractors

Timely payment to the Sub-Contractors is the sole responsibility of the Contractor for smooth execution of the Works. Though KMRCL shall not interface in the day to day management of

the Contract between the Contractor and the Sub-Contractor, but if frequent complaints are received from any Sub-Contractor regarding non-payment or delay in payment by the Contractor to him then KMRCL will notify to the Contractor to resolve the issue within the reasonable period (to be specified in the notice) and provide the details to KMRCL.

4. Programmes (GCC Clause 4.13)

In addition to the provisions of Clause 4.13 of the General Conditions of Contract, the Works Programme, Design Submission Programme and other documents specified in the Employer's Requirements shall be submitted within the period stipulated in the Employer's Requirements. The Works Programme and Design Submission Programme and any other document submitted as per requirements of the Tender documents along with the Tender shall not in any event be construed as submission of the Programme under Employer's Requirements.

5. Safety of Works (GCC Clause 4.16)

In addition to the provisions of Clause 4.16 of the General Conditions of Contract, the Contractor shall submit a detailed and comprehensive contract-specific Site Safety Plan and System Safety Assurance Plan in accordance with the provisions in Employer's Safety, Health & Environment (SHE) Manual and Employer's Requirements.

The Contractor shall, from time to time and as necessary or required by the Engineer, produce supplements to the Site Safety and System Safety Assurance Plans such that they are at all times detailed, comprehensive and contemporaneous statements by the Contractor of his site safety measures, policies and procedures (under the laws of India) or as stated in the Contract or elsewhere.

If at any time the Site Safety Plan and/or System Safety Assurance Plan is, in the Engineer's opinion, insufficient or requires revision or modification, the Engineer may instruct the Contractor to revise the appropriate Plan. The Contractor shall, within fourteen days, submit the revised plan to the Engineer for review.

Any omission, inconsistency or error in the Safety Plans or the Engineer's consent or rejection of the Safety Plans and/or supplements thereto shall be without prejudice to the Contractor's obligations with respect to safety measures and shall not excuse any failure by the Contractor to adopt proper and recognised safety practices throughout the execution of the Works

The Contractor shall provide all necessary access, assistance and facilities to enable the Engineer and the Employer to carry out surveillance to verify that the Safety Plans are being properly and fully implemented.

6. Protection of the Environment (GCC Clause 4.17)

Outline Environmental Plan shall be in accordance with the provisions of Employer's Safety, Health & Environment (SHE) Manual and shall include in summary form, the Contractor's proposed means of complying with his obligations in relation to:

- (a) the Site Environment ; and
- (b) System Environment as described in Employer's Requirements.

Within 60 days of the date of the Notice to Proceed, the Contractor shall submit a detailed and comprehensive Environmental Plan based on the Outline Environmental Plan. The Environmental Plan shall include detailed policies, procedures and applicable regulations.

The Contractor shall provide all necessary access, assistance and facilities to enable the Engineer and the Employer to monitor and conduct tests at site to verify that the Safety, Health and Environmental Plan is being properly and fully implemented.

7. Tools, Plants and Equipments and Materials supplied by the Employer (GCC Clauses 4.19 & 4.20)

The Employer will not provide any Tools, Plants, Equipments or materials under the Contract.

8. Construction and/or Manufacture documents (GCC Clause 5.3)

No examination by the Engineer of the drawings or documents submitted by the Contractor, nor any consent of the Engineer in relation to the same, with or without amendment, shall absolve the Contractor from any of his obligations under the Contract or any liability for or arising from such drawings or documents.

Should it be found at any time after notification of consent that the relevant drawings or documents do not comply with the Contract or do not agree with drawings or documents in relation to which the Engineer has previously notified his consent, the Contractor shall, at his own expense, make such alterations or additions as, in the opinion of the Engineer, are necessary to remedy such non-compliance or non-agreement and shall submit all such varied or amended drawings or documents for the consent of the Engineer.

9. Operation and Maintenance Manuals (GCC Clause 5.7)

The Operation and Maintenance Manuals and drawings submitted by the Contractor shall, if required, be updated by him during the Defects Liability Period and re-submitted for review by the Engineer.

10. Statutory Requirements (GCC Clause 7.11.5)

The Design and Manufacture Standards to be adopted by the Contractor shall be in conformity with the requirements of "Rules for Opening of a Railway or a Section of a Railway for Public Carriage of Passengers" and "Rules for Introduction of New Type of Rolling Stock". The Contractor under the supervision of the Engineer shall carry out all tests and trial runs and prepare reports & documents required for obtaining all approvals and sanction of the Commissioner of Metro Railway Safety (CMRS) and any other Statutory Authority for introduction of Rolling Stock for Public Carriage of Passengers.

11. Taking Over Certificate (GCC Clause 9.1)

The first train in each Line shall, after completion of Integrated Testing and Commissioning, be subject to intensive service trials for a period to be determined by the Employer/ notified else- where in the document. The remaining trains will be subject to intensive service trials for at least 10 days/ notified else-where in the document. Any defects, deficiencies detected during these Service Trials shall be made good promptly by the Contractor. The Engineer shall thereafter consider issue of Taking over Certificate for respective train set before introduction into commercial service.

12. Defects Liability (GCC Clause 10)

"Defects Liability Period" shall mean the defects liability period as stated in the Appendix FT-1 to the Form of Tender.

The Defect Liability Period (general warranty) of the first 5 metro trains begins with the Taking Over of the 5th train. For each following metro train delivered, the general warranty starts after Taking Over of each metro train for commercial service. During the Defect Liability Period the Contractor shall provide, free of cost, competent and skilled personnel round the clock as required and maintain adequate stock of spares so as to promptly fulfil his obligations to remedy the defects or failure as laid down in Employer's Requirements.

13. The Contract Price (GCC Clause 11.1.1 & 11.1.2)

- 13.1 The Contractor shall maintain complete records of Custom Duty, Excise Duty, CST, VAT, Octroi/Entry Tax (if any) in the state of West Bengal and other levies/Cess etc as applicable and payable to various authorities and submit the original receipts/documents along with bills

If the Employer obtain a waiver and exemption specific to Kolkata Metro Rail Project for any other taxes and duties etc. in full or part thereof, the Contractor will be advised on the process to be followed to obtain exemption/refund of such taxes, duties etc., from the concerned Authorities. The Contractor shall arrange for the remittance of the refund so obtained to the Employer. In case of exemption, the Contractor shall pay the amount calculated by the Engineer on account of exemption to the Employer either separately or the Employer at its discretion shall deduct the calculated amount from any payments due to the Contractor under the Contract. The maximum amount of reimbursement from the Contractor to Engineer is upto the amount included in the Contract Amount. In case of failure by the Contractor to obtain and remit the refund within reasonable time (to be decided by the Employer & intimated to the Contractor) to the Employer, the same will be recovered by the Employer from the amounts due as payment to the Contractor or as debt due from the Contractor. If the Contractor fails to take the required action to obtain refund or exemption, the Employer may take action in accordance with the Conditions of Contract.

Except as otherwise specifically provided in the Contract, the Contractor shall bear and pay all taxes, duties, levies and charges assessed on the Contractor, its Subcontractors or their employees by all municipal, state or national government authorities in connection with the Facilities in and outside of the country where the Site is located.

For the purpose of the Contract, it is agreed that the Contract Price specified in Part II ,Vol-6 , is inclusive of all taxes, such as CST, VAT, Discounted Custom duty as applicable, Excise duty, levies/cess and charges payable to the authorities prevailing at the date twenty-eight (28) days prior to the date of tender submission in the country where the Site is located (hereinafter called "Tax"). If any rates of Tax are increased or decreased, a new Tax is introduced, an existing Tax is abolished which was or will be assessed on the Contractor, in connection with performance of the Contract, an equitable adjustment of the Contract Price shall be made to fully take into account any such change by addition to the Contract Price or deduction there from, as the case may be, in accordance with SCC Clause 13 hereof.

- 13.2 The Contract Price shall be adjusted for increase/decrease of the price of Labor, Stainless Steel, Carbon Steel, Copper and Fuel Oil as per the Price Adjustment Formula detailed below (Applicable to Schedule X and Y) only):

$$P_1 = P_0 \times \{ a + b \times (S_1 / S_0) + c \times (C_1 / C_0) + d \times (F_1 / F_0) + f \times (L_1 / L_0) + g \times (O_1 / O_0) \} - P_0$$

Where

P₁ Price Adjustment (increase/decrease) amount with respect to Schedule X & Y only in respective currency.

- P₀ Contract value as per Schedule X & Y (in respective currency) after adjusting mobilisation advance.
- a Fixed element weightage representing profit and overhead in contract price
- b Estimated weightage of stainless steel component in contract price
- c Estimated weightage of copper component in contract price
- d Estimated weightage of carbon steel component in contract price
- f Estimated weightage of labour component in contract price
- g Estimated weightage for crude oil component in contract price.

(Where the sum of coefficients: $a+b+c+d+f+g=1$)

The base date (suffix '0') shall be the date twenty eight (28) days prior to the Bid closing date. The date of adjustment (suffix '1') shall be the date 120 days before shipment of cars, for cost centres A, B & C and 28 days before the date of submission of eligible bills for all other cost centres.

And;

- L₀ , L₁ Labor indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively (published by a credible government source or other labour/price index published by an international funding/financing agency relevant to the country/continent, independent of the tenderer.)
- S₀, S₁ Stainless steel price indices published by CRU on the base date and the date for adjustment, respectively
- C₀, C₁ Copper price indices published by LME on the base date and the date for adjustment, respectively
- F₀, F₁ Carbon steel price indices published by CRU – SPI for North America, Europe and Asia as continent of origin, or Global as applicable, on the base date and the date for adjustment, respectively
- O₀, O₁ Crude price – London Brent Crude oil price on the base date and the date for adjustment, respectively

- 13.3 The price adjustment shall be applied for every milestone payment whether there is increase or decrease of the apportioned amount for respective milestone number. No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the employer under the terms of the contract. No increase in prices on account of price variation shall be admissible for periods of delays not attributable to Employer. In case of decrease, the benefit shall be passed on to the Employer even for the delayed period.

If the currency in which apportioned amount for respective milestone number, P₀ expressed is different from the currency of the country of origin of the labour and /or materials indices, a correction factor will be applied to avoid incorrect adjustments of the contract price. The correction factor shall corresponds to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.

- 13.4 Total admissible price variation amount shall have no ceiling of the Contract Price.

14. Mobilisation Advance and its Recovery (GCC Clauses 11.2.1 & 11.2.5)

Non recoverable mobilisation advance will be given as per the Payment schedule; therefore no recoveries from the bills will be made as stipulated in GCC. Mobilisation Advance Payment as stated in Appendix FT-1 to the Form of Tender will be paid interest free in the respective currencies against submission of separate Bank Guarantees for the equivalent amount of advance in respective currencies as per format given in schedule to the SCC from an Indian Schedule bank (excluding Cooperative Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule. Advance Bank Guarantee shall remain valid till 28 days after final taking over certificate.

The Mobilisation Advance shall be paid within 30 days after receipt of the Contractor's written request by the Employer and submission of the Performance Guarantee and Advance Payment Bank Guarantee and Contractor's Warrantee and after fulfilling all terms & conditions of the Contract.

Reduction of bank guarantees by 1/3rd amount on successful commissioning of first 5 rakes at KMRCL. Rest amount of bank guarantee shall be refunded after completion of commissioning of the last car.

15. Application for Interim Payments (GCC Clause 11.3)

The Milestones have been specified in the Pricing Document. The quoted cost against each milestone is an apportioned cost except for Milestones under Cost Centre 'G' (Spares). Quoted cost of Cost Centre 'G' shall not be apportioned cost and shall be the actual cost.

16. Payment-Interim and Final (GCC Clause 11.5)

If and to the extent that the Pricing Document expressly specifies in relation to a Cost Centre that the Contractor is entitled to payment in a currency other than Indian Rupees, or the Engineer makes a determination of Cost in a currency other than Indian Rupees, all such payments shall be made in the relevant foreign currency and no adjustment shall be made to any payment or to the Final Contract Price on account of any fluctuation in the exchange rate between Indian Rupees and such other currency from the Base Date i.e. the last working day, 28 days before the latest date of submission of Tenders.

In calculating the amount payable to the Contractor for the Rupee portion, for each item, sums of less than Fifty Paise shall be omitted and sums of Fifty Paise and more, up to one Rupee, shall be reckoned as one Rupee.

All payments to the Contractor for the Rupee portion shall be made by cheque, but no cheque will be issued for an amount of less than Rs. 1000/-. This shall not apply to the final payment.

All payments to the Non-resident Contractor for the foreign currency portion shall be through an Irrevocable Letter of Credit. All bank charges of Employer's Banker shall be borne by the Employer and that of Contractor's Banker shall be borne by the Contractor. The charges towards confirmation (if required by the Contractor) shall be borne by the Contractor. Extension of validity of L/C need is not envisaged. However, should be validity of L/C need to be extended, for reasons solely attributable to the Employer, the charges for such extension will be borne by the Employer. In all other cases, L/C charges for extension or otherwise shall be borne by the Contractor.

17. Retention money (GCC Clause 17)

No monies will be deducted from the invoice on account of retention money

18. Employer's Variation and Variation Procedure (GCC Clauses 12.3 & 12.4)

"Employer's Variation" means a change in the Employer's Requirements which makes necessary alteration or modification of the Design, quality or scope of Works as described by or referred to in the Employer's Requirements. Changes to any sequence, method or timing of manufacture, testing and Commissioning including Integrated Testing and Commissioning and changes to any part of the Site or access thereto will not constitute Employer's Variation. An Employer's Variation shall be requested and implemented in accordance with and subject to the following provisions:

- (a) within 14 days (or such other period as the Engineer may allow) of the Engineer informing the Contractor in writing of the intention to request an Employer's Variation, the Contractor shall notify the Engineer in writing whether in his opinion the Employer's Variation would, if ordered:

(i) give rise to any entitlement to an extension of time; or

(ii) affect the achievement of any Milestone; or

(iii) give rise to any entitlement to additional payment; or

(iv) affect the warranties of the Contractor set out in Clause 5 of Special Conditions of Contract,

and shall submit his proposals as to the terms upon which he would agree to implement the Employer's Variation. The contractor shall furnish sufficient information in terms of rates/prices of the equipment/components manufactured by the Contractor or sourced from the Vendors/Sub-contractors such as: estimated man-hours, man-hours rates for manufactured items, design costs, basic rate of materials, sub-assemblies, taxes, duties, overheads & profits and inflation rate, so as to establish the reasonableness of the variation price.

- (b) any agreement between the Engineer and the Contractor as to the terms upon which an Employer's Variation may be implemented shall have no contractual or other legal effect, until it is in writing and is signed by the Contractor and the Engineer. The Engineer before signing such agreement shall take prior approval of the Employer. The terms of this agreement will be binding upon the Contractor and the Employer. This agreement shall determine the amount which should be added to or deducted from the relevant Cost Centre Amount and/or the revisions (if any) which should be made to the Milestone Payment Schedules as a result of the Variation.

In the event of the Engineer and the Contractor failing to reach agreement on the revisions to be made to the Cost Centre Amounts, the Engineer shall, with the approval of the Employer, determine the amount which should be added or deducted from the relevant Cost Centre amount which shall be binding on the Contractor. In case the Contractor supplies part/ incomplete information or refuses to supply the required information, the Employer shall determine the cost of Variation based on the information available to him from any sources which in his judgment can be used to

determine the case. The Contractor will proceed with the Work on this basis but may submit his Claim if necessary, in accordance with Clause 17 of GCC.

In assessing work covered by any sub-contract, the Engineer will have, where he deems necessary, access to the original sub-contract conditions, rates, prices and details of the variation claimed, to assist in evaluating any Variations.

- (c) if the Engineer withdraws the request for an Employer's Variation, the Contractor shall have no claim of any kind whatsoever arising out of or in connection with any of the proposals made or any failure to reach agreement. In case the Employer's Variation involves omission of part of the Works, the agreement shall address the issue of reduction in the Contract Price.

19. Limitation of Liability (GCC Clause 14.6)

The total aggregate liabilities of the contractor to the employer shall not exceed 10% of the total contract price

20. Insurance for Works and Contractor's Equipments (GCC Clause 15.2)

The Contractor shall take comprehensive all risk insurance for value equivalent to total contract value with deductibles not exceeding one (01) percent of total value. Insurance policy shall be valid 28 days until issue of taking over certificate of last car. The policy shall include insurance for the complete trains from the Manufacturer's Works abroad in case of imported equipments and Manufacturer's Works in India for locally manufactured equipments.

21. General Requirements for Insurance & Payment to Contractor (GCC Clauses 15.6 & 16.5)

Insurance by an Indian Insurance Company shall not be required for the liabilities described in Clauses 15.2, 15.3 and 15.4 for risks to be covered offshore. For such risks the insurances can be affected with suitable non-Indian Insurance Companies. Insurances to cover risks within India as well as Marine and Transit Insurances shall invariably be effected with an Indian Insurance Company or any Foreign insurance company who have valid licence for doing Insurance business in India.

Any loss or damage caused to trains or coaches in manufacturer's works in India or abroad due to natural calamities like flooding, typhoons and heavy storms etc. including rioting, fire and/or during test, trial and/or commissioning at Employer's site, accident, etc. shall be covered by an insurance policy by the Contractor and he shall not be entitled for any payment against the loss or damage from the Employer. The Employer may however consider an extension to the Contract on this account if it is established that all reasonable precautions were taken by the Contractor.

In case the premium is paid by the Employer for any default by the contractor, the same amount shall be recovered from the contractor's bill.

22. Conciliation (GCC Clause 17.6)

If any dispute or difference occurs between the Employer and the Contractor in connection with or arising out of the disapproval by the Engineer of any document and/or any modification(s) thereto that cannot be settled between the parties within a reasonable period,

then such dispute or difference may be referred to a Conciliator for determination in accordance with GCC Clause 17.6 hereof. If such dispute or difference is referred to a Conciliator, the Engineer shall give instructions as to whether and if so, how, performance of the Contract is to proceed. The Contractor shall proceed with the Contract in accordance with the Engineer's instructions, provided that if the Conciliator upholds the Contractor's view on the dispute and if the Employer has not given notice under GCC Clause 18.1. hereof, then the Contractor shall be reimbursed by the Employer for any additional costs incurred by reason of such instructions and shall be relieved of such responsibility or liability in connection with the dispute and the execution of the instructions as the Conciliator shall decide, and the Time for Completion shall be extended accordingly.

23. Conciliation Procedure (GCC Clause 17.7)

Appointment of Conciliator shall be as per Section 64 of Indian Arbitration and Conciliation Act, 1996", which states:

- (a) In conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;
- (b) In conciliation proceedings with two conciliators, each party may appoint one conciliator;
- (c) In conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

Procedure for Conciliation may be as per Section 65, Role of Conciliator may be as per Section 67 and as per other Sections relevant to reconciliation which may be followed as stated in Section 61 to Section 82 of Indian Arbitration and Conciliation Act, 1996.

24. Notices (GCC Clause 18.1)

For **Notices**, the Employer's address shall be:

Attention: Managing Director
Street Address: KMRCL Bhawan (HRBC Office Complex),
Munshi Premchand Sarani,
Kolkata-700 021, India.
Telephone: 033-66071115
Facsimile number: 033-66071116
Electronic mail address: ceekmrc@gmail.com

Contractor's address for notice purposes:

Attention: *[insert full name of person, if applicable]*
Street Address: *[insert street address and number]*
Floor/ Room number: *[insert floor and room number, if applicable]*
City: *[insert name of city or town]*
ZIP Code: *[insert postal ZIP code, if applicable]*
Country: *[insert name of country]*
Telephone: *[include telephone number, including country and city codes]*
Facsimile number: *[insert facsimile number, including country and city codes]*
Electronic mail address: *[insert e-mail address, if applicable]*

25. Rate of Progress (GCC 8.6)

If any steps taken by the contractor to expedite completion of the work, and incurred additional cost, employer shall not bear such cost.

26. Facilities in the Labour Camp

If the Contractor employs 10 or more woman contract labour for KMRCL work, the contractor is required to provide facilities in the labour camp for looking after their children.

27. Deployment of Personnel by the Employer

The Contractor shall deploy personnel sponsored by the Employer during the Contract Period in areas stipulated in the Employer's Requirements. The travel expenses, salary and allowances, boarding and lodging expenses of these sponsored personnel shall be borne by the Employer but the Contractor shall provide other facilities required for the purpose of performing their duties. The sponsored personnel shall be under the technical and administrative control of the Contractor.

28. KMRCL Labour Welfare Fund Rules

28.1 Sources of the Fund

The Labour Welfare Fund will be created jointly by KMRCL and the Contractors. A contractor shall remit a minimum amount of Rs 1 lakh against every case of death or total incapacitation and KMRCL would also contribute a matching amount.

28.2 Objectives of the Fund

The objectives of the Fund are:-

- (i) To ensure that widow and children of the deceased worker is given monetary assistance for bringing up of the children.
- (ii) If the children are orphans, their upkeep and educational requirements should be met with from the fund till one of the children becomes major and is gainfully employed.

28.3 Allocation of Fund

Allocation of fund for the various activities shall be decided by the Committee at the beginning of each financial year. Any reallocation during the year, if necessitated, will also be decided by the Committee.

28.4 Accounts of the Fund

The accounts of the Fund shall be maintained separately in appropriate form. An account shall be opened in a nationalised bank in the name of "KMRCL LABOUR WELFARE FUND A/C".

28.5 Audit

The accounts of the Fund shall be audited annually by an Auditor appointed by the Committee.

28.6 General

In case of death due to accident, the immediate relative of the deceased should be given an ex-gratia payment by the Contractor. The Contractor should also provide employment to one of the dependents of the deceased under the ongoing Contract, if the family of the deceased have no other means of livelihood and the family was dependent on the income of the deceased

In case of any major accident, an enquiry should be ordered by the Head of Project/ Department of KMRCL within 24 hours and report made available to the committee within 72 hours. The enquiry committee should consist of one officer from KMRCL and one from contractor's side.

Any payments made from the KMRCL Labour Welfare Fund to the widow or children of the deceased worker are outside the payments to be made by the contractor under the statutory laws of the country.

All decisions taken by a majority shall prevail. However, the Managing Director/KMRCL is competent to alter, modify or cancel any decision taken by the Committee.

28.7 Management of the Fund

The fund shall be managed and administered by the following two committees. The Standing Committee and case to case committee consist of following:

Standing Committee

- (i) Chief Engineer – Chairman
- (ii) General Manager (Administration) – Secretary
- (iii) FA & CAO – Member
- (iv) Chief Signal & Telecommunication Engineer – Member
- (v) Chief Electrical Engineer – Member
- (vi) Contractor's Representative (Major works in any particular year)
- (vii) Any other representative considered necessary by MD

Case to Case Committee

- (i) GM (Administration) – Chairman
- (ii) Dy. Chief Engineer – Secretary
- (iii) Dy. FA & CAO
- (iv) Contractor's Representative – Member

The above are the Standard Committee and Case-to-case sub-committee. However, the Managing Director may at his discretion change the above constitution.

28.8 Compensation to Individual Cases

Regarding payments to death/incapacitation, the general procedure to be adopted is as follows:

- (i) A token amount of Rs. 25,000 from contractor's contribution and additional Rs. 25,000 from KMRLC's side totaling to Rs. 50,000/- may be paid to all cases. This amount of Rs. 50,000/- should be paid to the legal heir of the deceased immediately on confirmation of the death.

29. Parent Company Guarantee

NOT USED.

30. Duties and Authorities of the Engineer (GCC Clause 3.2)

In the event the Engineer is required to obtain the specific approval of the Employer before exercising such authority, process for approval of such authority to the Engineer shall be undertaken by the Employer at appropriate time.

31. Insurance (GCC Clause 15)

In connection with Clause 15, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified in the said Appendix. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, who should not unreasonably withhold such approval:

(a) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the execution of the Contract.

(b) Workers' Compensation

"Worker's compensation" is a system of compensation for work-related injuries or death paid for by Employer compensation insurance contributions. This insurance contribution is as defined in clause 28 of SCC.

(c) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Contract or any part thereof is executed.

(d) Other Insurances

Such other insurances as may be specifically agreed upon by the parties hereto as listed in the said the corresponding Appendix.

32. Cross Fall Breach

In this tender, Contract is awarded with the stipulation that two separate Contracts are awarded to the same Contractor viz the one Contract (Supply) for "Design, Manufacture, Supply of Passenger Rolling Stock (Multiple Electric Unit) and Spares (Payment Schedule X)" and the other Contract (Services) for "Testing, Commissioning and Integration of Passenger Rolling Stock (Electrical Multiple Unit), and Training of Personnel (Payment Schedule Y)". As there is cross fall breach clause, so breach in one contract will automatically be qualified as a breach of other contract. Any such breach or occurrence shall give the Employer right to take all appropriate action to the extent of termination of any or all Contracts. This Clause is common to both Contracts.

33. Assignment by the Employer(GCC 2.4)

Neither the Employer nor the Contractor shall, without the express prior written consent of the other party (which consent shall not be unreasonably withheld), assign to any third party the Contract or any part thereof, or any right, benefit, obligation or interest therein or there under, except that the Contractor shall be entitled to assign either absolutely or by way of charge any monies due and payable to it or that may become due and payable to it under the Contract.

34. Additional Liquidity Damages (GCC 4.4,8.3,& 8.5)

The Compensation by the contractor for the sums payable by the Employer to the designated contractor together with liquidated damages and liability shall be limited to 10% of Contract amount.

35. Optional Termination, Payment and Release (GCC 16.7)

If a Force majeure occurs and its effect continues for a Period of 4 months after Notice has been given, either party may give to other party a Notice to the Termination of the Contract".

Note: The Schedules attached to SCC may be modified as considered necessary at the time of finalisation of the Contract.

36. As-built drawings and documents (GCC 5.6)

The delivery date of As-built drawings is given in Volume 6 - Appendix A2, milestone No. A14.

37. Priority of Documents (GCC Cl.1.5)

Priority of Documents	1.5	<p>The documents forming the Contract are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Engineer shall issue any necessary clarification or instruction to the Contractor, and the priority of the documents shall be unless otherwise specified in the Special Conditions of Contract, as follows:</p> <ul style="list-style-type: none"> (a) Contract Agreement; (b) Letter of Acceptance; (c) Form of Tender (FOT) and Appendix 1 to FOT; (d) Special Conditions of Contract including Schedules; (e) General Conditions of Contract; (f) Employer's Requirements – Technical Specification and Drawings; (g) Employer's Requirements – General Specification; (h) Pricing Document; (i) Safety, Health and Environment (SHE) Manual (j) Tender, Tender Addenda (k) Approved Subcontractors' List (l) Contractor's Proposal (as listed); and (m) Any other documents forming part of the Contract
------------------------------	------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

38. Contractor's acceptance and Payment (GCC CL.12.2.5)

The Contractor shall either accept or reject any proposed amendment executed by the Engineer pursuant to this section within 14 working days of its receipt date from the Employer.

39. Amount of Performance Guarantee (GCC Cl.4.2.1 (i))

Only one Performance Guarantee for an amount of 10% of the Contract Price of respective currencies (comprising of Schedule X and Schedule Y).

40. Access Road and Way Leaves (GCC 4.25)

Providing access roads/ way leaves to the site will be Employer's responsibility.

41. Professional Indemnity Insurance (GCC 15.25)

The Professional Indemnity Insurance shall be valid for a period of 5 years from the date of LOA.

42. Production of Vouchers and Post payment Audit (GCC cl. 11.16 & 11.19)

GCC clause ignored.

43. Withholding and Lien for Sum Claimed (GCC cl.11.17)

GCC clause ignored.

44. Valuation at the date of Termination (GCC cl. 13.2.2)

The assessment of the value of the construction and / or manufacture etc. as defined in the above mentioned clause in GCC may be completed within 90 days from the date of termination of the Contract.

45. The Testing (GCC cl.7.4)

The Notice issued by the Engineer to attend the test shall not be less than 7 days.

46. Taking over of parts of the works (GCC cl. 9.2)

If the Employer uses any part of the works for revenue service before the taking over certificate is issued, the defects liability period of that part of the works will be commenced as soon as such part is put to use for revenue service.

47. Engineer's Authority to Delegate (GCC clause 3.3 (ii) b)

Three days to be read as five calendar days.

48. Proven Design Propulsion System along with other Sub-Assemblies (GCC Clause 1.1.6.14 Category 2)

The Contractor (Sole Contractor/Joint Venture/Consortium) or Sub-Contractor has carried out design and manufacturing of sub-assemblies and those sub-assemblies have been in service during the preceding five years (ending 30th November 2014) or more in respect of Saloon/Cab Air Conditioners, Saloon Doors, Battery and Charger units, Bogie suspension items, couplers, Gangways, Current collector assemblies, communication system, TIMS, Lighting system, Flooring and saloon furnishing including glass in similar Metro System.

However, the Sub-Contractors of the Propulsion System (Traction Converter/Inverter,

Auxiliary Converter/Inverter and Traction Motor) and the Brake System have carried out design and manufacture, supply and testing of at least 200 numbers of cars in the last ten years (ending 30th November 2014) and at least 100 cars have been supplied and in service for a period of at least five years (ending 30th Nov. 2014) in India or in a country other than country of manufacture.

KOLKATA METRO RAIL CORPORATION LIMITED CONTRACT RS (3R)

DESIGN, MANUFACTURE, SUPPLY, TESTING, COMMISSIONING AND INTEGRATION OF PASSENGER ROLLING STOCK (ELECTRICAL MULTIPLE UNITS), AND TRAINING OF PERSONNEL

SCHEDULES TO SPECIAL CONDITIONS OF CONTRACT

- Schedule 1 - Contract Agreement
- Schedule 2 - Performance Guarantee
- Schedule 3 - Parent Company Undertaking
- Schedule 4 - Parent Company Guarantee
- Schedule 5 - Contractor's Warranty
- Schedule 6 - Sub-Contractor's/Vendor's Warranty
- Schedule 7 - Form of Bank Guarantee for Advance Payments
- Schedule 8 - Not used
- Schedule 9 - List of Proposed Subcontractors/Vendors

**KOLKATA METRO RAIL CORPORATION LIMITED
CONTRACT RS (3R)**

**DESIGN, MANUFACTURE, SUPPLY, TESTING, COMMISSIONING
AND INTEGRATION OF PASSENGER ROLLING STOCK
(ELECTRICAL MULTIPLE UNITS) AND TRAINING OF PERSONNEL**

SPECIAL CONDITIONS OF CONTRACT

SCHEDULE 1

CONTRACT AGREEMENT

CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT is made the _____ day of _____, 2010.

BETWEEN

(1) Kolkata Metro Rail Corporation Limited, a corporation incorporated under the laws of India and having its principal place of business at KMRCL Bhawan (HRBC Office Complex), Munshi Premchand Sarani, Kolkata-700 021, India (hereinafter called “the Employer”), and (2) *[name of Contractor]*, a corporation incorporated under the laws of *[country of Contractor]* and having its principal place of business at *[address of Contractor]* (hereinafter called “the Contractor”).

WHEREAS the Employer desires to engage the Contractor to design, manufacture, test, deliver, install, complete and commission certain Facilities, viz. the Rolling Stock for the Kolkata East West Metro Project (“the Works”) and the Contractor have agreed to such engagement upon and subject to the terms and conditions hereinafter appearing.

NOW IT IS HEREBY AGREED as follows:

**Article 1.
Contract
Documents**

1.1 Contract Documents (Reference GCC Clause 1.4)

The following documents shall constitute the Contract between the Employer and the Contractor, and each shall be read and construed as an integral part of the Contract:

- (a) This Contract Agreement and the Appendixes hereto
- (b) Letter of Acceptance
- (c) Form of Tender (FOT) and Appendix FT-1 to FOT
- (d) Special Conditions of Contract
- (e) General Conditions of Contract
- (f) Employer’s Requirements - Technical Specification and Drawings
- (g) Employer’s Requirements - General Specification
- (h) Pricing Document
- (i) Tender and Tender Addenda, if any
- (j) Approved Subcontractors’ List
- (k) Contractor’s Proposals (as listed); and
- (l) Any other documents forming part of the Contract

1.2 Priority of Documents (Reference GCC Clause 1.5)

In the event of any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the order in which the Contract Documents are listed in Article 1.1 (Contract Documents) above.

1.3 Definitions (Reference GCC Clause 1.1)

Capitalized words and phrases used herein shall have the same meanings as are ascribed to them in the General Conditions of Contract.

**Article 2.
Contract Price and
Terms of Payment**

2.1 Contract Price and Payment (Reference GCC Clause 11)

The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be the aggregate of: *[amount of foreign currency in words]*, *[amount in figures]* and *[amount of local currency in words]*, *[amount in figures]*, as specified in Appendix A1 (Contract Package 1) or B1 (Contract Package 2) for Schedule X or Schedule Y respectively or such other sums as may be determined in accordance with the terms and conditions of the Contract.

2.2 Terms of Payment (Reference GCC Clause 11)

The terms and procedures of payment according to which the Employer will reimburse the Contractor are given in the corresponding Appendix (Terms and Procedures of Payment) hereto.

**Article 3.
Effective Date for
Determining Time
for Completion**

3.1 Effective Date (Reference GCC Sub-Clause 1.1.3.4)

The Time of Completion of the Works shall be determined from the date of issue of Letter of Acceptance (LOA).

**Article 4.
Appendices**

4.1 The Appendices listed in the attached List of Appendices shall be deemed to form an integral part of this Contract Agreement.

4.2 Reference in the Contract to any Appendix shall mean the Appendixes attached hereto, and the Contract shall be read and construed accordingly.

IN WITNESS WHEREOF the Employer and the Contractor have caused this Agreement to be duly executed by their duly authorized representatives the day and year first above written.

Signed by, for and on behalf of the Employer

[Signature]

[Title]

in the presence of _____

Signed by, for and on behalf of the Contractor

[Signature]

[Title]

in the presence of _____

APPENDIXES

- Appendix 1 Terms and Procedures of Payment
- Appendix 2 Insurance Requirements
- Appendix 3 List of Documents for Approval or Review

Appendix 1 – Terms and Procedures of Payment

In accordance with the provisions of GCC Clause 11 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Tenderer unless otherwise agreed between the parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

TERMS OF PAYMENT

Schedule No. 1. Plant and Equipment Supplied from Abroad

In respect of Plant and Equipment supplied from abroad, payments shall be made in accordance with the Pricing Document.

Schedule No. 2. Plant and Equipment Supplied from within the Employer's Country

In respect of Plant and Equipment supplied from within Employer's country, payments shall be made in accordance with the Pricing Document.

Schedule No. 3. Local Transportation

In respect of Plant and Equipment supplied from abroad or within Employer's country, payments shall be made in accordance with the Pricing Document.

Schedule No. 4. Installation Services

In respect of Plant and Equipment supplied from abroad, payments shall be made in accordance with the Pricing Document.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

Milestone Payment Schedule

The Contractor shall refer to the Milestones Payment Schedule (MPS) showing Milestone Cash Flow for the Contract in the Pricing Document. In the MPS, it sets out the maximum cumulative amount for each currency for all Cost Centre's under Schedule X or Schedule Y of the Contract for each milestone for which payment for that Cost Centre may be sought in accordance with Clause 11 of the GCC.

The MPS shall cover the period commencing from the first day of the second calendar month from the NTP up to one calendar month after the last Key Date achieved. The first interim payment application

may be submitted on the first day of the second calendar month from the NTP, such first application will be treated as the month one of the MPS.

Application for Interim Payment Certificates

The fixed Lump Sum Price shall be apportioned by the Contractor to the respective Cost Centre's. The amount thus apportioned under each Cost Centre will be further apportioned amongst various Milestones with the approval of the Employer. The Contractor shall be entitled to submit to the Engineer requests for interim payments only upon the achievement of one or more of the Milestones described in the Cost Centre.

At the beginning of each month, the Engineer shall issue to the Contractor certificate in respect of each Milestone due to be achieved in the preceding month stating:

- (a) date on which the Milestone was achieved; or
- (b) non-achievement of the Milestone.

The Contractor shall submit a statement in six copies to the Engineer at the beginning of each month, in a form approved by the Engineer, showing the amounts to which the Contractor is entitled, together with supporting documents, including Milestone Certificates. The statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) any amount due in respect of Milestones certified achieved by the Engineer under each Cost Centre;
- (b) any amounts to be added and deducted for the advance payments and recovery thereof;
- (c) any other additions or deductions is due and approved by the Engineer in accordance with the Contract; and
- (d) any deduction of the amounts certified in an previous Interim Payment Certificates.

The Contractor shall not submit more than one request for interim payment per month.

If any Milestone is not achieved by the end of the month in which it is scheduled to be achieved, the Engineer shall suspend the payment relating to the Cost Centre in which the Milestone is included.

Issue of Interim Payment Certificates

No amount will be certified or paid until the Employer has received, and approved, the Performance Guarantee and the Parent Company Undertakings and Guarantees in accordance with GCC Clause 4.2. Thereafter, the Engineer shall, within 21 days of receiving a statement and supporting documents, deliver to the Employer, with a copy to the Contractor an Interim Payment Certificate showing the amount which the Engineer considers to be due; if no payment is considered to be due, the Engineer shall promptly notify the Contractor accordingly.

Where only a part of the payment applied for is disputed, payment certificate shall be issued for the undisputed amount.

The Engineer shall have the power to omit from any of the Contractor's requests for payment the value of any work executed or Materials supplied or services rendered, with which he may for the time being be dissatisfied and for that purpose and for any other reason which to him may seem proper, may delete, correct or modify the sum(s) previously certified by him as being due to the Contractor.

Payment – Interim and Final

- (a) After preliminary scrutiny and certification by the Engineer, payment of 100% of the certified interim amount shall be made by the Employer within 28 days. The amount certified shall account for all deductions, including statutory deductions, recoveries for advances and any amounts due from the Contractor.
- (b) Next 100% interim payment shall be made only after 100% payment of preceding interim payment certified has been completed.
- (c) The Employer shall pay the amount certified in the Final Payment Certificate within 56 days from the date of issue of the Certificate.

Payments shall be made into a bank account, nominated by the Contractor in Indian rupees in a bank in India unless otherwise permitted in Special Conditions of Contract. If payments are to be made in more than one currency, separate bank accounts may be nominated by the Contractor for each currency, and payments shall be made by the Employer accordingly.

Appendix 2 – Insurance Requirements

Insurances to Be Taken Out By the Contractor

In accordance with the provisions of GCC Clause 15, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Transit Insurance

Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts there for) and to the construction equipment to be provided by the Contractor or its Subcontractors.

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
<i>[in currency(ies)]</i>		<i>[names]</i>	<i>[place]</i>	<i>[place]</i>

(b) Erection All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>
<i>[in currency(ies)]</i>		<i>[names]</i>

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>
<i>[in currency(ies)]</i>		<i>[names]</i>

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Details:

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>
<i>[in currency(ies)]</i>		<i>[names]</i>

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Clause 15, except for the Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GCC Clause 15, except for the Cargo, Workers' Compensation and Employer's Liability Insurances. All insurers' rights of subrogation against such co-insured for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Appendix 3 – List of Documents for Approval or Review

Pursuant to GCC Clause 5.3, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Employer's Representative in accordance with the requirements of the Contract (Program of Performance), the following documents for

A. Approval

1.

2.

3.

B. Review

1.

2.

3.

**KOLKATA METRO RAIL CORPORATION LIMITED
EAST WEST METRO PROJECT**

CONTRACT RS (3R)

SPECIAL CONDITIONS OF CONTRACT

SCHEDULE 2

PERFORMANCE GUARANTEE

PERFORMANCE GUARANTEE

(To be stamped in accordance with the Stamp Act of the Country of Issuing Bank)

To: KOLKATA METRO RAIL CORPORATION LIMITED, KMRCL Bhawan (HRBC Office Complex), Munshi Premchand Sarani, Kolkata, India, 700 021.

WHEREAS (Name and address of Design and Construct Contractor) (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract RS (3R) to design, manufacture, supply, testing, commissioning and integration of passenger rolling stock (Electric Multiple Units) and remedy any defects in the Works of the Contract RS (3R) (hereinafter called “the Contract”)

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee from a Schedule Commercial Bank in India acceptable to the Employer or an Indian Nationalised for the sum specified herein as security for compliance with his obligations in accordance with the Contract.

AND WHEREAS we (Insert name and address of Bank) have agreed to give the Contractor such a Bank Guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor up to a total of ----- (amount of Guarantee)----- (in words), such sum being payable in the types and proportion of currencies in which the Contract Price is payable and we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil or argument any sum or sums within the limits of ----- (amount of guarantee) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the contract or of the Works to be performed there under or of any of the contract documents which may be made between you and the Contractor shall in any way release us from any liability under the guarantee and we hereby waive notice of any such change, addition or modification.

The amount of Guarantee shall be reduced by half on completion of the Works as certified by the Engineer.

This guarantee shall be valid for 28 days after the completion of Defect Liability Period of the last car. The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.

SIGNATURE AND SEAL OF THE GUARANTOR

NAME OF BANK -----

ADDRESS -----

DATE -----

Notes:

1. The stamp papers of appropriate value shall be purchased in the name of the Bank, which issue the 'Bank Guarantee'

**KOLKATA METRO RAIL CORPORATION LIMITED
EAST WEST METRO PROJECT**

CONTRACT RS (3R)

SPECIAL CONDITIONS OF CONTRACT

SCHEDULE 3

PARENT COMPANY UNDERTAKING

PARENT COMPANY UNDERTAKING

NOT USED

**KOLKATA METRO RAIL CORPORATION LIMITED
EAST WEST METRO PROJECT**

CONTRACT RS (3R)

SPECIAL CONDITIONS OF CONTRACT

SCHEDULE 4

PARENT COMPANY GUARANTEE

PARENT COMPANY GUARANTEE

NOT USED

**KOLKATA METRO RAIL CORPORATION LIMITED
EAST WEST METRO PROJECT**

CONTRACT RS (3R)

SPECIAL CONDITIONS OF CONTRACT

SCHEDULE 5

CONTRACTOR'S WARRANTY

CONTRACTOR'S WARRANTY

THIS AGREEMENT is made the day of

BETWEEN:

1. [] of [] [and {see Note 1}] (jointly "the Contractor")
2. [] [of]/[whose registered office is at] [] (together with its successors and assigns, "the Employer")

WHEREAS

- (A) By a Contract RS (3R) dated [] ("the Contract") made between (1) the Kolkata Metro Rail Corporation Limited ("the Employer") and (2) the Contractor, the Contractor has agreed to design, manufacture, supply, testing, commissioning and integration of passenger rolling stock (Electric Multiple Units) and remedy any defect in the Works upon the terms and conditions contained in the Contract.
- (B) {See Note 3}.
- (C) At the request of the Employer and pursuant to the terms of the Contract the Contractor has agreed to enter into this Warranty.

NOW IT IS AGREED AS FOLLOWS:

1. The Contractor hereby warrants and undertakes to:
 - (a) design, execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defect in the Works in accordance with the terms of the Contract; and
 - (b) take duty of care to the Employer in relation to the performance of its duties under the Contract.
2. The liability of [the companies comprising {see Note 3}] the Contractor under this Warranty [shall be joint and several and {see Note 3}] shall not be released, diminished or in any way affected by any independent inquiry or investigation into the Works or any matter related to the Contract whether carried out by or on behalf of the Employer or any liability or right of action which may arise out of such inquiry or investigation.
3. Insofar as the copyright or other intellectual property rights in any plans, calculations, drawings, documents, materials, plant, know-how and other information relating to the Works shall be vested in the Contractor, the Contractor grants to the Employer his successors and assigns a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works or the East West Metro Project including without limitation the design, manufacture, installation, completion, testing and commissioning (including Integrated

- Testing and Commissioning) reinstatement, extension and the remedy of any defect in the Works. To the extent that beneficial ownership of any such copyright or other intellectual property rights is vested in anyone other than the Contractor, the Contractor shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.
4. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Contractor, whether in tort or otherwise .
 5. Nothing contained in this Warranty shall vary or affect the Contractor's rights and obligations under the Contract.
 6. The address for service of all documents arising out of or in connection with this Warranty shall be upon the:-
 - (a) Employer at [] India. {Note 4}
 - (b) Contractor at [] India. {Note 4}
 7. The Employer and the Contractor may change their respective nominated addresses to another address in India but only by prior written notice to each other. All notices must be in writing.
 8. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
 9.
 - (1) Any dispute or difference of any kind whatsoever between the Employer and the Contractor arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the Conciliation and Arbitration rules set out in the General Conditions of Contract and Special Conditions of Contract. "Dispute" as defined in the Contract shall be deemed to include any such dispute or difference between the Employer and Contractor.
 - (2) In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under out of or in connection with the Contract ("the Contract Dispute") then provided that an arbitrator has not already been appointed pursuant to Clause 9(1), the Employer may by notice in writing to the Contractor require and the Contractor shall be deemed to have consented to the referral of such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.
 - (3) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objections relating to the dispute.
 - (4) Subject to the foregoing provisions of this clause 9, the Employer and the Contractor agree to submit to the jurisdiction of the Courts of India at Kolkata.

Notes (for preparation of and not inclusion in the engrossment of this Warranty)

- (1) If the Contractor comprises more than one company, each such company shall be a party and liability under this warranty will be joint and several, with consequential grammatical changes.
- (2) If Note 1 applies, that fact and the joint venture or other relevant agreement must be recited.
- (3) Delete if Note 1 does not apply.
- (4) The address for service shall be in India.

**KOLKATA METRO RAIL CORPORATION LIMITED
EAST WEST METRO PROJECT**

CONTRACT RS (3R)

SPECIAL CONDITIONS OF CONTRACT

SCHEDULE 6

SUB-CONTRACTOR'S WARRANTY

- b) he will supply to the Contractor and in specific cases wherever required to the Engineer with all information as may be required from time to time in relation to progress of the Sub-contract Works.
- 2. The Sub-contractor undertakes to indemnify the Employer against each and every liability which the Employer may have to any person whatsoever and against any claims, demands, proceedings, loss, damages, costs and expenses sustained, incurred or payable by the Employer provided that the Sub-contractor shall have no greater liability to the Employer by virtue of this Warranty than the liability of the Contractor to the Employer under the Contract insofar as and to the extent that the same has arisen by reason of any breach by the Sub-contractor of his obligations under the Sub-contract.
- 3. No allowance of time by the Employer hereunder or by the Contractor under the Sub-contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning this Warranty or the Sub-contract on the part of the Employer or the Contractor, nor anything that the Employer or the Contractor may do or omit or neglect to do, shall in any way release the Sub-contractor from any liability under this Warranty.
- 4. The Sub-contractor agrees that he will not without first giving the Employer not less than 21 day's prior notice in writing exercise any right he may have to terminate the Sub-contract or treat the same as having been repudiated by the Contractor or withhold performance of its obligations under the Sub-contract.
- 5.
 - (1) In the event that the Contract or the employment of the Contractor under the Contract is terminated for any reason whatsoever and if so requested by the Employer in writing within 21 days of such termination, the Sub-contractor shall carry out and complete his obligations under this Warranty and shall enter into a novation agreement with the Employer and the Contractor in which the Sub-contractor will undertake inter alia to perform the Sub-contract and be bound by its terms and conditions as if the Employer had originally been named as a contracting party in place of the Contractor. The said novation agreement will be in such form as the Employer may reasonably require.
 - (2) In the event that the Employer does not require the Sub-contractor to enter into a novation agreement as required by Sub-clause 5(1), the Sub-contractor shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with this Warranty.
- 6. Insofar as the copyright or other intellectual property rights, in any plans, calculations, drawings, documents, materials, know-how and information relating to the Sub-contract Works shall be vested in the Sub-contractor, the Sub-contractor grants to the Employer, his successors and assignees a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works of the Mass Rapid Transport System – Phase One, without limitation the design, manufacture, installation, reconstruction, completion, reinstatement, extension, remedy of any defect of the Works. To the extent beneficial ownership of any such copyright or other intellectual property right is vested in anyone other than the Sub-contractor, the Sub-contractor shall use best endeavors to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Sub-contractor shall for any reason cease to be employed in connection with the Sub-contract Works.
- 7. In the event of any ambiguity or conflict between the terms of the Sub-contract and this Warranty, the terms of this Warranty shall prevail.

**KOLKATA METRO RAIL CORPORATION LIMITED
EAST WEST METRO PROJECT**

CONTRACT RS (3R)

SPECIAL CONDITIONS OF CONTRACT

SCHEDULE 7

FORM OF BANK GUARANTEE FOR ADVANCE PAYMENTS

FORM OF BANK GUARANTEE FOR ADVANCE PAYMENTS

(To be stamped in accordance with Stamp Act, if any, of the country of issuing bank)

Ref _____

Bank Guarantee _____

Date _____

Dear Sir,

In consideration of M/s. _____ (hereinafter referred as the “Employer”, which expression shall, unless repugnant to the context or meaning thereof include its successors, administrators and assigns) having awarded to M/s. _____ (hereinafter referred to as the “Contractor” which expression shall unless repugnant to the context of meaning thereof, include its successor, administrators, executors and assigns), a contract by issue of Contract Agreement No. _____ dated _____ and the same having been unequivocally accepted by the Contractor, resulting in a Contract valued at _____ for _____ Contract (hereinafter called the “Contract”) and the Employer having agreed to make an advance payment to the Contractor for performance of the above Contract amount to _____ (in words and figures) as an advance against Bank Guarantee to be furnished by the Contractor.

We _____ (Name of the Bank) having its Head Office at _____ (hereinafter referred to as the Bank, which expression shall unless repugnant to the context of meaning thereof, include its successors, administrators executors and assigns) do hereby unconditionally, irrevocably and without demur guarantee and undertake to pay the Employer immediately on demand any or, all monies payable by the Contractor to the extent of _____ as aforesaid at any time up to _____ @ _____ without any demur reservation, context, recourse or protest and or without any reference to the Contractor. Any such demand made by the Employer on the Bank shall be conclusive and binding notwithstanding any difference between the Employer and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other authority. We agree that the Guarantee herein contained shall be irrevocable and shall continue to be enforceable till 31.12.2018, but extendable as required by the Employer.

The Employer shall have the fullest liberty without affecting in any way the liability of Bank under this Guarantee, from time to time to vary the advance or to extend the time for performance of the contract by the Contractor. The Employer shall have the fullest liberty without affecting this guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the Employer and to exercise the same at any time in any manner, and either to enforce or to forebear in enforce any covenants, contained or implied, in the Contract between the Employer and Contractor any other course or remedy or security available to the Employer. The bank shall not be relieved of its obligation under these presents by any exercise by the Employer of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of the Employer or any other indulgence shown by the Employer or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving the Bank

The Bank also agrees that the Employer at his option shall be entitled to enforce this Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Contractor and notwithstanding any security or other guarantee that the Employer may have in relation to the Contractor's liabilities.

The outstanding liability of the Bank under this guarantee will reduce by such amounts as may be notified to the Bank in your authorised writing and stated to be the reduction of this guarantee required to be made in accordance with the Contract by reason of the repayments made by the Contractor

Notwithstanding anything contained herein above or liability under this guarantee is limited to ____ and it shall remain in force up to and including _____@_____ and shall be extended from time to time for such period (not exceeding one year) as may be desired by M/s. _____ on whose behalf this guarantee has been given.

Dated this _____ day of _____ 2015 ____ at _____

WITNESS

_____	_____
(Signature)	(Signature)
_____	_____
(Name)	(Name)
_____	_____
_____	_____
(Office Address)	Designation (with Bank stamp)
	Attorney as Power of
	Attorney No. _____
	Date _____

Strike out, whichever is not applicable.

@ The date will be the scheduled completion date of Works. / Full repayment of the advance.

Notes:

1. The stamp papers of appropriate value shall be purchased in the name of the Bank, who issues the 'Bank Guarantee'.
2. The 'Bank Guarantee' shall be from an Indian Schedule Bank(Excluding co-operative bank) or from a Schedule Foreign Bank as defined in section 2(e)of RBI act 1934 read with second schedule, acceptable to Employer.

KOLKATA METRO RAIL CORPORATION LIMITED

CONTRACT RS (3R)

**DESIGN, MANUFACTURE, SUPPLY, TESTING, COMMISSIONING AND
INTEGRATION OF PASSENGER ROLLING STOCK (ELECTRICAL
MULTIPLE UNITS) AND TRAINING OF PERSONNEL**

SPECIAL CONDITIONS OF CONTRACT

SCHEDULE 8

DESIGNER'S WARRANTY

DESIGNER'S WARRANTY
(Refer Clause 5.1 & 5.2 of the GCC)

NOT USED

KOLKATA METRO RAIL CORPORATION LIMITED

CONTRACT RS (3R)

**DESIGN, MANUFACTURE, SUPPLY, TESTING, COMMISSIONING
AND INTEGRATION OF PASSENGER ROLLING STOCK
(ELECTRICAL MULTIPLE UNITS) AND TRAINING OF PERSONNEL**

SPECIAL CONDITIONS OF CONTRACT

SCHEDULE 9

LIST OF PROPOSED SUB-CONTRACTORS/ VENDORS

**LIST OF PROPOSED SUBCONTRACTORS/VENDORS
(Refer Clause 4.5 of the GCC and Clause 3 of the SCC)**

Prior to award of Contract, the following details shall be completed, indicating those Subcontractors/VENDORS proposed by the Bidder in the corresponding Attachment to its bid that need to be approved by the Employer for engagement by the Contractor during the performance of the Contract.

The following Subcontractors/Vendors are proposed for carrying out the item of the facilities indicated. Where more than one Subcontractor/Vendor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor/Vendor. In accordance with GCC Sub-Clause 1.1.6.14, the Contractor may propose names of Sub-contractor or vendor for supply of items identified by them.

Item of Facilities

Proposed Subcontractors/Vendors

Nationality

Signature of Tenderer