

**GENERAL CONDITIONS OF CONTRACT****CONTENTS**

<b>Clause No.</b>	<b>Description</b>	<b>Page No.</b>
<b>1</b>	<b>DEFINITIONS AND INTERPRETATION</b>	<b>6</b>
1.1	Definitions	6
1.2	Interpretation	11
1.3	Law and Language	12
1.4	Contract Agreement	12
1.5	Priority of Documents	12
1.6	Care and Supply of Construction and/or Manufacture Documents	12
1.7	Communications	12
1.8	Employer's Use of Contractor's Documents	13
1.9	Contractor's Use of Employer's Documents	13
1.10	Compliance with Statutes, Regulations and Laws	14
1.11	Joint and Several Liability	14
1.12	Confidential Details	14
<b>2</b>	<b>THE EMPLOYER</b>	<b>15</b>
2.1	General Obligations	15
2.2	Access to and Possession of the Site	15
2.3	Permits, Licences or Approvals	15
2.4	Assignment by the Employer	15
<b>3</b>	<b>THE ENGINEER</b>	<b>15</b>
3.1	Appointment of Engineer	15
3.2	Duties and Authorities of the Engineer	16
3.3	Engineer's Authority to Delegate	16
3.4	Engineer's Instructions	17
3.5	Engineer to Attempt Agreement	17
<b>4</b>	<b>THE CONTRACTOR</b>	<b>17</b>
4.1	General Obligations	17
4.2	Performance Security Amount	18
4.3	Representation on Works	21
4.4	Facilities for and co-ordination with others	22
4.5	Sub-contractors	24
4.6	Assignment of Contractor's and Sub-contractor's Obligations	25
4.7	Compensation for Breach	25
4.8	Setting Out	25
4.9	Site Data	26
4.10	Sufficiency of accepted Contract Amount	27
4.11	Access Route	27
4.12	Rights of Way and Facilities	27
4.13	Programmes	28
4.14	Progress Reports	28
4.15	Contractor's Equipment	29
4.16	Safety of Works	29

<b>Clause No.</b>	<b>Description</b>	<b>Page No.</b>
4.17	Protection of the Environment	31
4.18	Electricity, Water and Gas	32
4.19	Tools, Plants And Equipment Supplied By The Employer	32
4.20	Employer's Materials & Excavated Material	32
4.21	Sheds, Stores, Yards	32
4.22	Temporary Works	32
4.23	Unforeseeable Physical Conditions	33
4.24	Access for Engineer	33
4.25	Access Road and Way Leaves	33
4.26	Contractor to keep Site Clear	33
4.27	Security of the Site	34
4.28	Contractor's Operations on Site	35
4.29	Discoveries	35
4.30	Publicity	35
4.31	Disclosure Of Relationship	35
4.32	Use Of Explosives	36
4.33	Corrupt/Fraudulent/Collusive/Coercive Practices	36
<b>5</b>	<b>DESIGN</b>	38
5.1	Description	38
5.2	General Obligations	38
5.3	Contractor's warranty of design	39
5.4	Construction and/or Manufacture Documents	40
5.5	Technical Standards and Regulations	41
5.6	Samples	42
5.7	As-Built Drawings and Documents	42
5.8	Operation and Maintenance Manuals	42
5.9	Intellectual Property Rights and Royalties	42
<b>6</b>	<b>STAFF AND LABOUR</b>	44
6.1	Engagement of Staff and Labour	44
6.2	Rates of Wages and Conditions of Labour	44
6.3	Persons in the service/ retired of Employer/Engineer	45
6.4	Labour Laws	45
6.5	Working Hours	47
6.6	Facilities for Staff and Labour	47
6.7	Health and Safety	47
6.8	Contractor's Superintendence	47
6.9	Provision of Efficient and Competent Staff	48
6.10	Preservation of Peace and orderly conduct	48
6.11	Labour to be Contractor's Employee	48
6.12	Report Of Accidents To Labour	48
6.13	Claim on account of violation of Labour laws	48
6.14	Maintenance of Records	49
<b>7</b>	<b>QUALITY CONTROL</b>	49
7.1	General	49
7.2	Manner of Execution	50

<b>Clause No.</b>	<b>Description</b>	<b>Page No.</b>
7.3	Source of Materials	50
7.4	Delivery to Site	50
7.5	Inspection	50
7.6	Testing	50
7.7	Rejection	51
7.8	Liability after Inspection and Testing	51
7.9	Ownership of Plant and Materials	52
7.10	Cost of Employer's Attendance Including Travel	52
7.11	Covering up of Works	52
7.12	Tests after Completion	52
7.13	Integrated testing and system commissioning	53
<b>8</b>	<b>TIME MANAGEMENT</b>	54
8.1	Commencement of Works	54
8.2	Time for Completion	54
8.3	Delay	54
8.4	Extension of Time for Completion	55
8.5	Liquidated Damages for Delay	56
8.6	Rate of Progress	57
8.7	Suspension of Work	57
8.8	Consequences of Suspension	57
8.9	Resumption of Work	58
<b>9</b>	<b>EMPLOYER'S TAKING OVER</b>	59
9.1	Taking Over Certificate	59
9.2	Taking over of Parts of the Works	60
<b>10</b>	<b>DEFECTS LIABILITY</b>	60
10.1	Completion of Outstanding Work and Remedying Defects	60
10.2	Cost of Remedying Defects	60
10.3	Extension of Contract Period	60
10.4	Failure to Remedy Defects	61
10.5	Removal of Defective Work	61
10.6	Further Tests	61
10.7	Right of Access	62
10.8	Contractor to Search	62
10.9	Performance Certificate	62
10.10	Unfulfilled Obligations	62
10.11	Emergency Defect Rectification	62
<b>11</b>	<b>CONTRACT PRICE AND PAYMENT</b>	62
11.1	The Contract Price Inclusions/ Exclusions	62
11.2	Advances	64
11.3	Provisional Payment Against Material at Site	66
11.4	Application for Interim Payment Certificates	66
11.5	Issue of interim Payment Certificate	67
11.6	Payment – Interim & Final	68
11.7	Statement at Completion	68
11.8	Application for Final Payment Certificate	69

<b>Clause No.</b>	<b>Description</b>	<b>Page No.</b>
11.9	Discharge	69
11.10	Issue of Final Payment Certificate	69
11.11	Cessation of Employer's Liability	70
11.12	Calculation of Payments in Foreign Currency	70
11.13	Round off	70
11.14	Payment by Cheque & E-Payment	70
11.15	Tax Deduction at Source	70
11.16	Production of Vouchers	70
11.17	Withholding And Lien For Sums Claimed	71
11.18	Signature On Receipts For Payments	71
11.19	Post Payment Audit	71
11.20	Recovery of money due to the Employer	71
<b>12</b>	<b>VARIATIONS</b>	72
12.1	Right to Vary	72
12.2	Contractor's Variations	72
12.3	Employer's Variations	73
12.4	Variation Procedure	75
12.5	Variation in the Bill of Quantities	75
12.6	Payment in Applicable Currencies	78
<b>13</b>	<b>TERMINATION OF THE CONTRACT</b>	78
13.1	Notice to Contractor	78
13.2	Termination Of Contract Due To Contractor's Default	78
13.3	Default of Employer	80
<b>14</b>	<b>RISK AND RESPONSIBILITY</b>	81
14.1	Indemnity	81
14.2	Contractor's Care of the Works	82
14.3	Employer's Risks	83
14.4	Consequences of Employer's Risks	83
14.5	Contractor's Risks	83
14.6	Limitation of Liability	83
<b>15</b>	<b>INSURANCE</b>	83
15.1	Professional Indemnity Insurance	84
15.2	Insurance for Works and Contractor's Equipment	84
15.3	Insurance Against Injury to Persons and Damage to Property	84
15.4	Insurance for Workers	85
15.5	General Requirements for Insurances	85
<b>16</b>	<b>FORCE MAJEURE</b>	86
16.1	Definition of Force Majeure	86
16.2	Effect of Force Majeure Event	87
16.3	Contractor's Responsibility	87
16.4	Employer's Responsibility	87
16.5	Payment to Contractor	87
16.6	Resumption of Work	87
16.7	Optional Termination, Payment and Release	87
16.8	Release from Performance under the Law	88

<b>Clause No.</b>	<b>Description</b>	<b>Page No.</b>
<b>17</b>	<b>CLAIMS AND DISPUTE RESOLUTION</b>	<b>88</b>
17.1	Procedure for Claims	88
17.2	Payment for Claims	89
17.3	Dispute Resolution Process	89
17.4	Notice of Dispute	89
17.5	Excepted Matters	89
17.6	Adjudication	90
17.7	Mediation	90
17.8	Procedure for appointment of Mediator	91
17.9	Venue of Mediation	91
17.10	Mediation Process	91
17.11	No legal Action during Mediation	93
17.12	Contractor's Claim	93
17.13	Jurisdiction of Courts	93
17.14	Suspension of Work on Account of Adjudication/ Mediation	93
<b>18</b>	<b>SERVICE OF NOTICES</b>	<b>93</b>
18.1	Notice to Contractor	93
18.2	Notice to Employer and Engineer	93
18.3	Change of Address	93

## GENERAL CONDITIONS OF CONTRACT

	<b>1</b>	<b>DEFINITIONS AND INTERPRETATION</b>
<b>Definitions</b>	<b>1.1</b>	In the contract (as defined below) the words and expressions defined below shall have the meanings assigned to them, except where the context requires otherwise. Words indicating persons or parties include corporations and other legal entities except where the context requires otherwise.
	<b>1.1.1</b>	<b>Documents</b>
	<b>1.1.1.1</b>	<b>“Appendix to Form of Tender”</b> means the completed pages in title Appendix, which are appended to and form part of the Tender.
	<b>1.1.1.2</b>	<b>“Bill of Quantity”</b> means a document containing various items of payment and contains schedule of Payment also.
	<b>1.1.1.3</b>	<b>“Construction and/or Manufacture Documents”</b> means all drawings, operation and maintenance manuals, and other manuals and information of a similar nature, to be submitted by the Contractor.
	<b>1.1.1.4</b>	<b>“Contract”</b> means the Contract Agreement, the Letter of Acceptance, the letter of tender, General Conditions of Contract, Special Conditions of Contract, the Employer's Requirements, the Notice Inviting Tender, Instructions To Tenderers, the Contractor's Proposal, the Schedules, and such further documents which are listed in the Letter of Acceptance or Contract Agreement (in completed).
	<b>1.1.1.5</b>	<b>“Contract Agreement”</b> means the contract agreement referred to in Sub-clause 1.4. It shall also include all subsequent modifications/ amendments to the Contract as a result of the communications or negotiation proceedings between the parties.
	<b>1.1.1.6</b>	<b>“Contractor's Proposal”</b> 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.
	<b>1.1.1.7</b>	<b>“Contractor's Document”</b> means the calculations, computer programme and other software's, drawings, manuals and other documents of a technical nature(if any) supplied by the Contractor under the Contract.
	<b>1.1.1.8</b>	<b>“Design Data”</b> 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.
	<b>1.1.1.9</b>	<b>“Drawings”</b> 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.
	<b>1.1.1.10</b>	<b>“Employer's Requirements”</b> 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.
	<b>1.1.1.11</b>	<b>“Interim Payment Schedule”</b> 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.
- 1.1.1.12 **“Letter of Acceptance”** means the formal acceptance to work by the Employer of the Tender.
- 1.1.1.13 **“Notice to Proceed”** means the notice issued by the Employer to the Contractor communicating the date on which the Works are to be commenced.
- 1.1.1.14 **“Letter of Tender”** means the document entitled letter of tender, which was completed by the Contractor and includes the signed offer to the Employer for the Works.
- 1.1.1.15 **“Conditions of Contract on Safety & Health and Environment”** means the Employer’s manual containing the requirements and conditions to be met during the execution of the Works by the Contractor.
- 1.1.1.16 **“Schedules”** means the information and data submitted with the Tender, as included in the Contract.
- 1.1.1.17 **“Tender”** means the Contractor’s priced offer to the Employer for the designing where ever applicable, execution, manufacture, and completion of the whole of Works, testing and commissioning (including Integrated Testing and Commissioning where ever applicable) and remedying of any defects therein, as accepted by the Letter of Acceptance.
- 1.1.1.18 **“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.
- 1.1.1.19 **“Schedule of Payment”** means the schedule included in the Bill of Quantity for payment in various stages on part of the works.
- 1.1.1.20 **“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 conditional upon acceptance of the Tender.
- 1.1.1.21 **“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 **“Tenderer or Bidder”** means the person submitting a bid/Tender.
- 1.1.2.3 **“Contractor”** means the person whose Tender has been

- accepted by the Employer and the legal successors in title to such person, but not (except with the consent of the Employer) any assignee of such person.
- 1.1.2.4 **“Contractor’s Representative”** shall mean a person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-clause 4.3 to act on behalf of Contractor.
- 1.1.2.5 **“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.
- 1.1.2.6 **“Other Contractor”** means a person employed by or having Contract directly or indirectly with the Employer otherwise than through the Contractor.
- 1.1.2.7 **“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.
- 1.1.2.8 **“Employer”** means UTTAR PRADESH METRO RAIL CORPORATION LIMITED (UPMRC), its legal successors and assignees.
- 1.1.2.9 **“Engineer”** means any person 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.
- 1.1.2.10 **“Engineer’s Representative”** means any Assistant of the Engineer appointed from time to time by the Engineer under Sub-clause 3.3
- 1.1.2.11 **“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.
- 1.1.2.12 **“Joint Venture (JV)”** means a new legal entity created by two or more parties to undertake a specific project, with shared ownership, profits, and losses.
- 1.1.2.13 **“Consortium”** means a formal agreement between existing organizations to pool resources for a common goal without creating a new legal entity; each member keeps its separate legal status.
- 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 issue of the LOA/ Notice to Proceed.
- 1.1.3.2 **“Contract Period”** means the period from the Commencement Date to the end of Defects Liability Period including Integrated Testing and Commissioning and as



- certified by the Engineer under Clause 7.11 (or as extended under Sub-clause 10.3).
- 1.1.3.3 **“Day”** means a calendar day, **“Week”** means 7 calendar days, **“Month”** means a calendar month and **“Year”** means 365 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 Uttar Pradesh Metro Rail Corporation Limited as a gazetted holiday as well as a weekly holiday.
- 1.1.3.6 **“General Holiday”** means Sunday.
- 1.1.3.7 **“Key Date”** means a date identified as such in the Contract.
- 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 or any retest due to failure at the contractor's cost.
- 1.1.4.2 **“Integrated Testing”** in the contracts where applicable 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 Sub-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 where applicable 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 therefrom 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,
- 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 Sub-clause 11.9.
- 1.1.5.5 **“Final Statement”** means the agreed statement defined in Sub-clause 11.10.
- 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 Sub-clause 11.5, other than the Final Payment Certificate.
- 1.1.5.8 **“Local Currency”** means Indian Rupees (INR).

**1.1.6 Other Definitions**

- 1.1.6.1 **“Approval or Approved”** means Approval in writing including subsequent written confirmation of previous verbal approval.
- 1.1.6.2 **“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.
- 1.1.6.3 **“Cost Centre”** means a group of activities and/ or items of work identified as such in the Pricing Document.
- 1.1.6.4 **“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.
- 1.1.6.5 **“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.
- 1.1.6.6 **“Section”** means a part of the Works specifically designated in the Appendix to Form of Tender as a Section (if any)
- 1.1.6.7 **“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.
- 1.1.6.8 **“Scheduled Bank”** means a bank included in the second schedule to the Reserve Bank of India Act, 1934, or

modifications thereto.

- 1.1.6.9 **“Specification”** means the Specification referred to in the contract and any modification thereof or addition thereto, as may from time to time be furnished or approved in writing by the Engineer.
- 1.1.6.10 **“Test”** means such Tests as are prescribed in the Specifications or by the Engineer or Engineer’s Representative, whether performed by the Contractor or by the Engineer or his Representative or any agency acting under the direction of the Engineer.
- 1.1.6.11 **“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.
- 1.1.6.12 **“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.
- 1.1.6.13 **“Permanent Works”** means the permanent works to be designed and executed in accordance with the Contract.
- 1.1.6.14 **“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.
- 1.1.6.15 **“Project”** means Uttar Pradesh Mass Rapid Transport System (MRTS) or any other Work(s) undertaken by UPMRCL. **“Funding Agency”** means the financing institution (if any) named in the NIT/ITT.
- 1.1.6.16 **“Borrower”** means the person (if any) named as the borrower in the NIT/ITT.
- 1.1.6.17 **“Tender Security”** means the tender security provided by the Bidder/Contractor to the Employer as specified in the Letter of Tender, and for the successful Bidder it is to remain in force until substituted by the Performance Security.
- 1.1.6.18 **“Goods”** means the goods specified in the contract, which the Contractor has agreed to supply under the contract.

## Interpretation

- 1.2** In the Contract except where the context requires otherwise:
  - 1.2.1
    - 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.
  - The marginal words and other headings shall not be taken into consideration in the interpretation of these condition.
  - 1.2.2 Terms and expressions not herein defined” shall have the meanings assigned to them in the “Indian General Clauses Act, 1897” or the Indian Contract Act or the Indian Sale of Goods Act or any other applicable Indian Law, as the case may

		be.
<b>Law and Language</b>	<b>1.3</b>	The Contract 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.
<b>Contract Agreement</b>	<b>1.4</b>	The Employer and the Contractor shall execute a Contract Agreement as per format given in Annexure of Instructions to Tenderer (ITT), within 30 days after receipt of confirmation of BG from Bank with such modifications as may be necessary to record the Contract. The Contract Agreement shall be based on the form as included in Tender document. The costs of stamp duties and similar charges imposed by law shall be borne by the Contractor.
<b>Priority of Documents</b>	<b>1.5</b>	<p>The documents forming the Contract are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy or inconsistency in the documents, the Engineer shall issue any necessary clarification or instruction to the Contractor, and the priority of the documents shall be as follows:</p> <ol style="list-style-type: none"> <li>The Contract Agreement;</li> <li>The Letter of Acceptance;</li> <li>Pre and Post bid proceeds</li> <li>Form of Tender (FOT)</li> <li>BOQ/Payment schedule</li> <li>Notice Inviting Tender (NIT)</li> <li>Instructions to Tenderer (ITT)</li> <li>The Outline Design Specifications (Design Criteria) and Outline Construction Specifications; or any other specification</li> <li>Drawings</li> <li>The Employer's Requirements</li> <li>The Special Conditions of Contract;</li> <li>The General Conditions of Contract;</li> <li>The Contractor's Proposal; and</li> <li>Any other document forming part of the Contract.</li> </ol>
<b>Care and Supply of Construction and/or Manufacture Documents</b>	<b>1.6</b>	<p>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 three copies for the use of the Engineer and Assistants (as referred to in Sub-clause 5.4).</p> <p>The Contractor shall keep, on the 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 Sub-clause 5.4. The Employer, the Engineer and their Assistants (as referred to in Sub-clause 3.3) shall have the right to access these documents at all reasonable times.</p> <p>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.</p>
<b>Communications</b>	<b>1.7</b>	Communications between parties, unless otherwise specified shall be effective only when made in writing. A notice will be

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

**1.8**

effective only when sent to the address of the Party by registered post or by telex or telefax or by an e-mail to the email ID of the Party or delivered by hand to the Party.

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.

After payment of the consideration under the Contract to Contractor all the intellectual property rights of Contractor vested in the Works, executed under the Contract, should get transferred and vested in the Employer.

The Contractor shall, whenever required by the Employer and the Employer's Personnel; the Funding Agencies and auditors appointed by either of them, as well as any authority or Institution or body having competence under applicable law, produce or cause to be produced for examination, 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 Employer's decision on the question of relevancy of any documents, information or returns shall be final and binding on the Parties.

If any part or item of the Works is allowed to be carried out by a Subcontractor, assignee or any subsidiary or allied firm, the Employer and the Employer's Personnel; the Funding Agencies and auditors appointed by either of them, as well as any authority or Institution or body having competence under applicable law, shall have power to secure the books of such Subcontractor, 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.

**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,

		<p>copy, use, and obtain communication of these documents for the purposes of the Contract.</p> <p>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.</p>
<b>Compliance with Statutes, Regulations and Laws</b>	<b>1.10</b>	<p>The Contractor shall familiarise themselves and conform in all aspects with:</p> <ol style="list-style-type: none"><li>The provision of any enactment in India as applicable from time to time</li><li>The regulations or bye-laws of any local body and utilities.</li><li>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.</li></ol> <p>Ignorance of Rules, Regulations and Bye-laws shall not constitute a basis for any claim at any stage of work.</p> <p>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.</p>
<b>Joint and Several Liability</b>	<b>1.11</b>	<p>If the Contractor is (under applicable Laws) a joint venture, consortium, or other incorporated or unincorporated grouping of two or more Persons:</p> <ol style="list-style-type: none"><li>These Persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;</li><li>These Persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and</li><li>The Contractor shall not alter its composition or legal status without the prior consent of the Employer.</li></ol>
<b>Confidential Details</b>	<b>1.12</b>	<p>The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.</p> <p>The Employer and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor(s) such documents, data and other information it receives from the Employer to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor.</p> <p>The Employer shall not use such documents, data and other information received from the Contractor for any purpose other than the operation and maintenance of the Facilities. Similarly, the Contractor shall not use such documents, data</p>

and other information received from the Employer for any purpose other than the design, procurement of Plant and Equipment, construction or such other work and services as are required for the performance of the Contract.

The obligation of a party under the Clauses above, however, shall not apply to that information which:

- (a) Now or hereafter enters the public domain through no fault of that party
- (b) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party hereto Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

	<b>2</b>	<b>The Employer</b>
<b>General Obligations</b>	<b>2.1</b>	The Employer shall provide the Site/area of works and shall pay the Contractor in accordance with the Contract.
<b>Access to and Possession of the Site</b>	<b>2.2</b>	<p>The Employer shall grant the Contractor right of access to, and / or 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.</p> <p>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.</p> <p>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.</p> <p>Site access schedule will be consistent with the resettlement plan for the section as applicable.</p>
<b>Permits, Licences or Approvals</b>	<b>2.3</b>	<p>It shall be Contractor's exclusive responsibility to get approvals, permits or license required for the Contract. However, the Employer may (where he is in a position to do so) provide reasonable assistance to Contractor at the request and cost of the Contractor in getting Permits, License or Approvals required during the Contract.</p> <p>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.</p>
<b>Assignment by the Employer</b>	<b>2.4</b>	The Employer shall be fully entitled without the consent of the Contractor, to assign the benefit of the part thereof and any interest therein or thereunder to any third Party.
	<b>3</b>	<b>The Engineer</b>
<b>Appointment of Engineer</b>	<b>3.1</b>	The Employer shall notify the Contractor in writing of the appointment and identity of the Engineer and of any replacement from time to time, in absence of any written communication from the Employer about the

**Duties and Authorities of the Engineer 3.2**

appointment/identity/replacement of the Engineer, the Chief Project Manager/HOD of the Employer, in charge of the Works being executed by the Contractor, would be the Engineer under the Contract.

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

The Engineer may exercise the authority specified in, or necessarily to be implied from the Contract. 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 Sub-clause 5.4.

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

(i) shall watch and inspect the Works, monitor the test results and examine any material to be used and workmanship employed by the Contractor in connection with the Works;

(ii) shall carry out such duties and exercise such powers vested in the Engineer in accordance with the provisions of the Contract;

(iii) shall issue instructions which in his opinion are necessary for the execution of the Works; and

(iv) may issue any other instruction which in his opinion is desirable in connection with the Works.

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Employer, with any such instruction of the Engineer. The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 12 [Variations] of GCC and shall notify the Contractor accordingly with a copy to the Employer.

**Engineer's Authority to Delegate 3.3**

- i. The Engineer, 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 Assistant 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 Assistant shall have the same effect as though the act had been an act of the Engineer. However:

- a) Any failure to disapprove any Plant, Goods, Material, Design and Workmanship shall not prejudice the right of the Engineer to reject such Plant, Goods, Material, Design and Workmanship;
- b) if the Contractor questions any determination or instruction of an Assistant of the Engineer, 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.

(iii) The Engineer's decision on the suitability and qualification of the assistants will be final.

**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 the Assistants to the Engineer 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, if in the scope of work, manufacture, execute, install, complete, test (including Integrated Testing in case of rolling stock and signalling contracts) 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, works and remedying of defects.

Before commencing design, if in the scope of the Contract, the Contractor shall satisfy himself regarding the Employer's Requirements (including design criteria and calculations, if any) and the items of reference mentioned in Sub-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 Contract and all matters and things necessary for the proper design, manufacture, execution, installation, completion, testing, Integrated Testing whichever is in the scope of the Contract, 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, 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, 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 Security    4.2**  
**Amount**

**4.2.1**

Within 30 days from date of issue of Letter of Acceptance, the successful Tenderer shall furnish an irrevocable and unconditional Performance Security, for an amount of ten per cent of the Contract value in types and proportions of currencies

in which the Contract Price is payable either in the form of a Bank Draft/ RTGS/NEFT, FDR or in the form of a Bank Guarantee from a branch in India of a scheduled foreign bank or from a scheduled commercial bank in India acceptable to the Employer. In case of joint venture/consortium, the Performance Security is to be submitted in the name of the JV / Consortium. Also, the requirement of Performance Security shall be distributed between/among the members of JV/Consortium as per their percentage participation while ensuring the security is in the name of JV / Consortium. The constituent members shall submit Performance Security (as per their % participation in JV / consortium) from their respective bank accounts.

The Extension of time for submission of Performance Security beyond 30 (Thirty) days up to 60 days from date of issue of LOA may be given by the Authority who is competent to sign the Contract Agreement. However, a Penal Interest of 15% per annum shall be charged for the entire period i.e. from the date of issue of LOA to the date of submission of Performance Security. In case the Contractor fails to submit the requisite Performance Security within 60 days from the date of issue of LOA, the Contract shall be liable to be annulled at the option of employer duly forfeiting Tender Security and other dues, if any payable against the Contract. The failed Contractor shall be debarred not only from participating in re-tender for that work but also in any other tender of UPMRC for a period of one year from date of issue of letter of annulment of LOA. The approved form provided in the ITT shall be used for Bank Guarantee (BG). Further claim period of BG shall be 6 months beyond the validity of BG.

The successful Tenderer shall have the following options for submission of Performance Security;

- i) Performance Security for an amount of 10% of Contract value, if the same is in the form of Bank Guarantee/FDR, it shall be valid up to 6 months beyond the Defect Liability Period, or
- ii) Performance Security in the form of two Bank Guarantees/FDRs, each for an amount of 5% of Contract Value with one Bank Guarantee/FDR valid up to 6 months beyond the date of completion of work and second Bank Guarantee/FDR valid up to 6 months beyond the Defect Liability Period, or
- iii) One part of Performance Security for an amount of 5% of Contract value, if the same is in the form of Bank Guarantee/FDR, it shall be valid up to 6 months beyond the Defect Liability Period. For 2nd part of Performance Security for an amount of 5% of Contract value, amount shall be deducted at the rate of 5% of the gross amount of each running on-account bill. The Performance Security so deducted from running on-account bill, shall be released on completion of entire work in terms of Clause 4.2.3(i) of GCC. After achieving every 25% of financial progress w.r.t. Original Contract Value, Contractor can ask for release of such amount deducted towards Performance Security on submission of Bank Guarantee/FDR for an equal amount with validity up to 6 months beyond the date of completion of work. The Contractor shall always have the option during the currency of Contract to submit 2nd part of Performance Security for an amount of 5% of Contract

value in the form of Bank Guarantee/FDR with validity up to 6 months beyond the date of completion of work. In such a case, further deduction of Performance Security amount from running on-account bill shall be stopped and the amount deducted towards Performance Security shall be released.

In case, if Contract is terminated due to Contractor's default in terms of GCC Clause 13.2, the full 10% Performance Security amount shall be forfeited. Shortfall amount, if any, shall be recovered 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 from monies due to the Contractor under any other Contract between the Employer and the Contractor.

In case the Contract value exceeds beyond 25% of the Original Contract Value, the Contractor shall have to submit additional Performance Security as follows:.

- (a) If variation amount on plus side exceeds 25% of the Original Contract Value either due to Employer's variation or due to Contractor's variation, the Contractor shall submit additional performance security equal to an amount of 10% of the variation amount exceeding 25% of the Original Contract Value.
- (b) No additional Performance Security will be required to be submitted if the variation amount on plus side is within 25% of the Original Contract Value.

**Forfeiture**

**4.2.2**

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

The whole of the Performance Security amount 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. The forfeiture of the Performance Security amount by the Employer would be without prejudice to any amount(s) of money that the Employer may recover as Liquidated Damages or any other damages from the Contractor. The forfeiture of Performance Security amount by the Employer, would not operate as bar/set off/ adjustment from any amount of money which becomes recoverable or is recovered by the Employer. In case of the Performance Security Amount Bank Guarantee being invoked and forfeited by the Employer, the Contractor would immediately replenish the amount of Performance Security Bank Guarantee.

**Release**

**4.2.3**

- (i) On completion of the entire Work/part Work, one half of the proportionate Performance Security shall be refunded to the Contractor, on issue of Taking Over Certificate/part Taking over Certificate by the Engineer, in accordance with Sub-clause 9.1 and 9.2 of these conditions. The above shall not relieve the Contractor from his obligations and liabilities, to make good the defects that may be detected during the Defect Liability Period.
- (ii) The balance Performance Security amount shall become due and shall be paid to the Contractor on certification of performance of the Contractor by the Engineer or authorised officials of the Employer stating that no defect is pending after the expiry of the final Defect

**Guarantees and Warranties**

**4.2.4**

Liability Period as per Clause 10.9 of these conditions.

Within 30 days of the date of Letter of Acceptance of the Tender, the Contractor shall submit to the Employer:

- (i) 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.
- (ii) 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.
- (iii) A written Warrantee in the approved format from the Contractor.

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.

Notwithstanding any other provision of the Contract:

- a) Submission by the Contractor of the requisite Performance security, Parent Company Undertakings and written Guarantees shall be condition precedent to the Contractor's entitlement to any payment, under the Contract; and
- b) Failure by the Contractor to provide a Performance Security or Parent Company Undertakings or Parent Company Guarantees shall entitle the Employer either to suspend the Works or to terminate the Contract forthwith by notice in writing to that effect, notwithstanding that the Contractor may have been permitted to proceed with the Works, and the Contractor shall not be entitled to any compensation whatsoever as a consequence of such suspension or termination.

**Representation on Works**

**4.3**

Unless the Contractor's Representative is named in the Contract, the Contractor shall, within 14 days of issue of the LOA/ 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, no objection certificate, 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 Sub-clause 13.2.

The Contractor's Representative may delegate any of his powers, functions and authorities to any competent person,

**Facilities for and co-ordination with Others. 4.4**

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.

The contractor shall be responsible to interface with the other contractors as per the interface table provided in the contract. Employer will supervise/facilitate the coordination between the contractor and other designated contractors. However, the contractor will allow for liaison with, and modifications to his design to cater for the work of such other contractors. The list of interface items is indicative only and the ultimate responsibility of commissioning lies with the contractor.

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 suffer delay by reasons of failure by any Designated Contractor to meet the specified installation interfacing and co-ordination, completion dates and if such delay has been caused otherwise than the 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**

#### **4.5.1**

The Contractor shall not sub-contract the whole of the Works.

#### **4.5.2**

Unless otherwise stated in the Special Conditions of Contract:

- a) The Contractor shall not be required to obtain consent for purchases of Materials which are in accordance with the makes specified in the Contract or provisions of labour or for the sub-contracts for which the Sub-contractor is named in the Contract;
- b) The prior consent of the Engineer shall be obtained for other proposed Sub- contractors;
- c) 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 the Contractor shall give fair and reasonable opportunity for Contractors in India to be appointed as Sub-contractors.

#### **4.5.3**

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 Sub-clause (a) of clause 4.5 shall constitute a waiver of the Contractor's obligations under this Contract. The Contractor shall provide to the Engineer of all the Sub-contracts including terms, conditions and pricing. The Contractor shall endeavour to resolve all matters and payments amicably and speedily with the Sub-contractors.

The Contractor shall indemnify employer against any claim of subcontractor.

The Contractor shall release payment to the Sub-contractor(s) promptly and shall endeavour to resolve all matters and issues amicably and speedily with the Sub-contractors, so that the execution of work is not affected in any manner whatsoever.

#### **4.5.4**

The Contractor shall ensure that their Sub-contractors, material/equipment Suppliers, Consultants and other Agencies deployed by them in connection with execution of the Contract do not make any claim or raise any dispute before UPMRC. For this, necessary provision is to be made in the agreement between Contractor and their Sub-



contractors/Consultants/other Agencies. Similarly the agreement should also incorporate the provision of dispute resolution. An undertaking in the following format shall be submitted by Contractor in respect of each such agency:-

"Name ..... of  
Work.....

In connection with above Work, M/s....., Contractor has/is engaging M/s....., as Sub-contractor(or Consultant or material/equipment Supplier or Service provider). For this, the terms and conditions of agreement include necessary provisions for resolution of dispute if any arising between Contractor and Sub-contractor. It is confirmed by the Sub-contractor that any claim/dispute arising out of the above Work shall be resolved in terms of agreement and shall not be raised before UPMRC and also shall not make any claim against UPMRC before any forum/court.

Signature of Contractor

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

If a Sub-contractor'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 Sub- Clause 2.4.

**Compensation for Breach**

**4.7**

Any breach of Sub-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 cancellation.

**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 benchmarks, 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 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**

i) The Employer shall have made available to the Contractor with the Tender documents such 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 including with respect to the viability of his design and execution of Works and the Contractor shall be responsible for validity, and interpretation of all such data. 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, damages and costs.

ii) The Geotechnical and other related data provided by the Employer are based on the investigation conducted by employer and are for reference purposes only. The Tenderer should satisfy himself with the data furnished and make his own investigations if required for submitting his offer. Any change in design or construction methodology later during execution on account of change of Geotechnical Data will be the responsibility of the Contractor and no addition cost or time shall be allowed. The Contractor shall not be relieved from any risk or obligation imposed on or undertaken by him under the Contract on any such ground or on the ground that he did not or could not foresee any matter which may affect or have affected the execution of the Works, or compliance with his other obligations under the Contract.

(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.

(iii) The Contractor shall also be deemed to have inspected and examined the Site, its surroundings, the data and other available information including 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:

a) The form and nature of the Site, including the sub-surface conditions; the hydrological and climatic conditions;

b) 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;

- c) The applicable laws, procedures and labour practices
- d) The Contractor's requirement for access, accommodation, facilities, personnel, power, transport and other services.
- e) 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**

The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. Unless otherwise stated in the Contract, the Contract Price 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.

**Access Route**

**4.11**

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.

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.

All operations for the execution of the Works shall be carried out so as not to interfere unnecessarily with the convenience of the public or the access to public or private roads or footpaths or properties owned by the Employer or by any other person.

The Contractor shall select routes, choose and use vehicles so that movement of Contractor's Equipment, Plant and Materials from and to the Site is limited so that traffic is not delayed and damage to highways and bridges is prevented. If there is any delay or damage or injury, the cost of rectification or reconstruction of highways or bridges shall be borne by the Contractor. The Contractor shall indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters.

If during the execution of the Works the Contractor shall receive any claim arising out of the execution of the Works in respect of damage to highways or bridges, he shall immediately report the facts to the Engineer. The Contractor shall negotiate a settlement in respect of such claims and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto.

**Rights of Way and  
Facilities**

**4.12**

The Employer will acquire and provide land for Permanent Works and right of way (within UPMRC'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 not later than 28 days from the date of receipt of Letter of Acceptance. 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 or would entitle the Contractor for any amount of money/damages/compensation.

**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. The submission of Monthly Progress Report by the Contractor would not absolve the Contractor of its obligation/right to notify any events/information to the Employer. The submission of Monthly Progress Report by Contractor would not amount to admission of its content by the Employer.

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.
<b>Contractor's Equipment</b>	<b>4.15</b>	
	<b>4.15.1</b>	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.
	<b>4.15.2</b>	Upon completion of the Works, the Contractor shall remove from the Site all the said Constructional Plant and his unused materials
	<b>4.15.3</b>	The Employer shall not, at any time, be liable for the loss or damage to any of the Constructional Plant, Temporary Works or materials save as mentioned in Clauses 14.1.
	<b>4.15.4</b>	In respect of any Constructional Plant 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.
	<b>4.15.5</b>	The Employer may assist (but is not obligated to) the Contractor, where required, in obtaining clearance through the Customs of Constructional Plant, materials and other things required for the Works.
<b>Safety of Works</b>	<b>4.16</b>	<p>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:</p> <ul style="list-style-type: none"> <li>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;</li> <li>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 in so far 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.</li> <li>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</li> </ul>

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.

Within 8 weeks of the date of issue of the LOA/ Notice to Proceed, the Contractor shall submit a detailed and comprehensive contract-specific Site Safety & Health Plan based on the Conditions of contract on Safety & Health and Environment. The Contractor is required to make himself aware of all the requirements of the Conditions of contract on Safety & Health and Environment (SHE) in this regard and comply with them. The Site & Health Safety Plan shall include detailed policies, procedures and regulations which, when implemented, will ensure compliance with this clause and Clause 6.7 of General Conditions of Contract.

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

The Contractor shall, from time to time and as necessary or required by the Engineer, produce supplements to the Site Safety Plan such that it is at all times a detailed, comprehensive and contemporaneous statement by the Contractor of his site safety and industrial health obligations, responsibilities, policies and procedures (under the laws of India) or as stated in the Contract or elsewhere relating to work on Site.

If at any time the Site Safety Plan is, in the opinion of the Engineer, insufficient or requires revision or modification to ensure the security of the Works and the safety of all workmen upon, and visitors to the Site, the Engineer may instruct the Contractor to revise the Site Safety Plan. The Contractor shall, within 14 days, submit the revised plan to the Engineer for review.

Any omission, inconsistency or error in the Site Safety Plan or the Engineer concurrence or rejection of the Site Safety Plan and/or supplements thereto shall be without prejudice to the Contractor's obligations with respect to site safety and industrial health 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 adhere to the Site Safety Plan and shall ensure, that all sub-contractors of all tiers have a copy of the Site Safety Plan and comply with its provisions.

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 Site Safety Plan is being properly and fully implemented.

The Contractor shall notify the Engineer immediately of any occurrence or incident that results in death or serious injury as defined in the Bharatiya Nyaya Sanhita (BNS). Such initial notification may be verbal and confirmed in writing thereafter

and shall be followed by a comprehensive written report within 24 hours of the occurrence/incident. The Contractor shall duly complete standard forms as required by the Engineer and Statutory Authorities.

The Contractor shall provide and maintain all necessary temporary fire protection and firefighting facilities on the Site during the construction of the Works in accordance with the statutory regulations and as required by the Engineer. The Contractor shall ensure that all gases, fuels and other dangerous Materials and goods are stored and handled in a safe manner and in accordance with the statutory regulations and as required by the Engineer.

The obligations and requirements for safety and industrial health under this Contract are entirely without prejudice to, and do not derogate from, the Contractor's statutory obligations, with respect to safety and industrial health.

**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 Conditions of Contract on Safety & Health and Environment, as per the Employer's Requirements and Special Conditions of Contract. Nothing extra shall be payable to the Contractor on this account and his Tender price shall be inclusive of expenditure required to be incurred for working as per Conditions of Contract on Safety & Health and Environment.

Outline Environmental Plan means the environmental plan forming part of the Tender, setting out, in summary form, the Contractor's proposed means of complying with his obligations in relation to environmental quality. Site Environmental Plan means the site environmental plan including all supplements thereto, or any amended or varied version thereof, as submitted by the Contractor in accordance with Employer's Safety, Health and Environmental Manual (SHE Manual, vol-8 of tender document), this Clause and which has received the Engineer's consent. The Site Environmental Plan shall include detailed policies, procedures and regulations which, when implemented, will ensure compliance with this Clause. The Contractor is required to make himself aware of all the requirements of the Employer's SHE Manual in this regard and comply with them.

Within 8 weeks of the date of the issue of the LOA/ Notice to Proceed, the Contractor shall submit a detailed and

comprehensive Site Environmental Plan based on the Employer's Safety, Health and Environmental Manual (SHE Manual), and shall include such further material, which the Contractor considers necessary and relevant.

Upon the Engineer notifying his consent to the Site Environmental Plan, or any supplemental part thereof, the Contractor shall adhere to the principles and procedures contained in such document save to the extent that the Engineer may give his consent to any amended or varied version thereof.

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

**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 Equipment to the Employer in good order and repair, fair wear and tear accepted, 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 & Excavated Materials 4.20**

- I. 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.
- II. Unless otherwise specified, the Contractor shall not sell or remove, except for the purpose of this Contract, sand, stone, clay, ballast, earth, rock or other materials obtained from the Work Site and these shall be the property of the Employer and will be disposed off only in the manner instructed by him.

**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.
<b>Temporary Works</b>	<b>4.22</b>	All temporary Works necessary for the proper execution of the Works shall be provided and maintained by the Contractor at his own 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.
<b>Unforeseeable Physical Conditions</b>	<b>4.23</b>	<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 may certify and the Employer may 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"> <li>a) For complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and</li> <li>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.</li> </ul> <p>The decision of the Engineer as to the additional cost shall be final and binding.</p>
<b>Access for Engineer</b>	<b>4.24</b>	The Contractor shall allow the Engineer or the Engineer's Representative 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.
<b>Access Road and Way Leaves</b>	<b>4.25</b>	Providing access roads/ way leaves to the site will be Contractor's responsibility.
<b>Contractor to keep Site Clear</b>	<b>4.26</b>	<p>During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site, any wreckage, rubbish or Temporary Works which are no longer required.</p> <p>On completion of the Works, the Contractor shall clear away and remove from site all Contractor's 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</p>

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 to its original condition within the stipulated time as determined by Engineer, will be recovered from the Contractor's dues.

No final payment in settlement of the accounts for Works shall be made or held to be due to the Contractor, 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 Contractor's on-account or final bills, or from Performance Security amount or from any other amount payable to the Contractor in any other Contract.

**Security of the Site                      4.27**

The Contractor shall take all measures necessary to ensure such security, including exercising control over all persons and vehicles which are employed or engaged on the Site or in connection with the Works or the other works comprising the Project and with the security arrangements applicable to any other site within the Project.

The Contractor shall arrange the issue of passes for the admission of all persons and vehicles to the Site or to any part thereof and may refuse admission to or remove from the Site any person or vehicle failing to show an appropriate pass on demand to any duly authorised person.

If required by the Engineer, the Contractor shall submit a list identifying all persons to whom passes have been issued together with two photographs of each person and all entities to which a pass has been issued in respect of any vehicle and shall satisfy the Engineer of the bonafides of any such person or entity.

The Contractor shall not, without the written permission of the Engineer or otherwise in accordance with the Contract, allow access to the Site to any person unless the presence on Site of such person is necessary in connection with the execution of the Works or with the discharge of the duties of any relevant authority.

The Contractor, after obtaining any necessary consent from any relevant authority, shall submit to the Engineer proposals showing the layout of pedestrian routes, lighting, signs, and guarding any road opening or traffic diversion which may be required in connection with the execution of the Works and which the Contractor intends to construct. Any consent given by the Engineer to such proposals shall not relieve the Contractor of any obligation under the Contract or absolve the Contractor from any liability for or arising from such proposals or the implementation thereof.

All lights provided by the Contractor shall be so placed or screened as not to interfere with signs, signals or lights. The Contractor shall not in any way obscure or affect signs, signals or lights, in use by any relevant authority. In the

event that the Contractor does so, the Contractor shall pay all costs associated with the re-setting, re-instating or provision of alternatives for any sign, signal or light, obscured or affected.

For the purposes of this Clause only, "Site" shall include off-Site places of manufacture or storage and the Contractor's Work Areas and shall include, areas provided to the Contractor by others.

Generally Civil contractor will put a properly designed system of security in place till ROD, in which no material of any system contractor will go out of the system without written authorization of civil / system contractors. System contractors are required to Coordinate / interface with the civil contractors to put up a coordinated security system in place. However, ultimate responsibility for security of the contractor's material /equipment / property fully lies with the contractor himself and No claim of any nature in this regard will be entertained by the Employer. In case Civil contractor is demobilized before completion of system contract or in the contracts where separate civil contractor is not available like in RSS contracts then the complete security system shall be provided by the System contractor itself.

<b>Contractor's Operations on Site</b>	<b>4.28</b>	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.
<b>Discoveries</b>	<b>4.29</b>	All fossils, coins, articles of value or antiquity, 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. 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.
<b>Publicity</b>	<b>4.30</b>	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 similar 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.
<b>Disclosure of Relationship</b>	<b>4.31</b>	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 also.

**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 / Fraudulent/  
Collusive/ Coercive  
Practices 4.33**

**Definition 4.33.1**

The Employer requires that the Bidders/Contractors, their designated Contractors and/or their Agents observe the highest standards of ethics during Tendering and execution of this Contract. In pursuance with this Policy, the Employer:

- a. Defines, for the purpose of these provisions, the terms set forth below as follows:
  - i) "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to any officer/employee of UPMRC or Engineer or to any other person to influence in the procurement process or in Contract execution and/or after the execution of the Contract.
  - ii) "Fraudulent practice" means a concealment or misrepresentation of facts in order to influence a procurement process or during the execution of a Contract and/or after the execution of the Contract, which may or may not be to the detriment of the Employer and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition and further includes concealment or misrepresentation of facts leading to breach of any of the Contract condition during execution of the Contract which may or may not be to the detriment of the Employer.
  - iii) "Collusive practice" means amongst Bidders (prior to or after bid submission) a scheme or arrangement designed to establish bid prices at artificial non-competitive levels and to deprive UPMRC of the benefits of free and open competition.
  - iv) "Coercive practice" means impairing or harming or threatening to impair or harm directly or indirectly, any Agency or UPMRC or its employees/ consultants or its property, to influence improperly the actions of an Agency or UPMRC or its

- employees/ consultants, obstruction of any investigation or auditing of a Procurement/ Contract process.
- v) Breach of any of the contract condition during execution.
  - vi) “Suspension”: Business dealings with an Agency may be suspended in exceptional cases if there is gross and blatant violation of the provisions of the Suspension/ Banning Policy by the Agency and it is considered not desirable to continue the business with the Agency pending detailed enquiry for Banning of Business Dealing. Suspension shall be for a period upto six months from the date of approval of decision of Suspension.
  - vii) “Banning”: Shall mean officially debarring or forbidding an Agency from participating as Vendor/ Supplier/Contractor etc. with UPMRC, for its requirement related to all Tenders / Contracts. Business dealings with an Agency may be banned if it violates/ infringes the provisions of the Suspension/ Banning policy of the UPMRC. Banning shall be for a period ranging from one year from the date of issue of Banning Order or Suspension Order (if suspension imposed on the Agency) and upto five years.
  - viii) “Anti-competitive practice”: means any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more bidders, with or without the knowledge of the procuring entity, that may impair the transparency, fairness and the progress of the procurement process or to establish bid prices at artificial, non-competitive levels;
  - ix) “Conflict of interest”: means participation by a bidding firm or any of its affiliates that are either involved in the consultancy contract to which this procurement is linked; or if they are part of more than one bid in the procurement; or if the bidding firm or their personnel have relationships or financial or business transactions with any official of UPMRC who are directly or indirectly related to tender or execution process of contract; or improper use of information obtained by the (prospective) bidder from the UPMRC with an intent to gain unfair advantage in the procurement process or for personal gain.
  - x) “Obstructive practice”: means materially impede the UPMRC’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the UPMRC’s rights of audit or access to information;

xi) "Undue Advantage": means improper use of information obtained by the bidder from the procuring entity with an intent to gain an unfair advantage in the procurement process or for personal gain. This also includes if the bidder provided services for the need assessment/ procurement planning of the tender process in which he is participating;

- b. If it is found that the Bidder/Contractor has indulged in corrupt/fraudulent/ collusive/coercive practices, actions such as rejection of bid/forfeiture of Tender Security or rescission/termination of Contract/forfeiture of Performance Security etc. shall be taken as per Suspension/Banning Policy of UPMRC.
- c. The successful Bidders/Contractors shall apprise the Employer through Chief Vigilance Officer, UPMRC of any fraud/suspected fraud/corrupt practices as soon as it comes to their notice.

**4.33.2** Without prejudice to and in addition to the rights of the Employer to other penal provisions as per the bid documents or contract, if the procuring entity comes to a conclusion that a (prospective) bidder/ contractor directly or through an agent, has violated this code of integrity in competing for the contract or in executing a contract, the Employer may take appropriate measures including one or more of the following:

- i) If his bids are under consideration in any procurement
  - a) Forfeiture or encashment of bid security;
  - b) calling off of any pre-contract negotiations; and
  - c) rejection and exclusion of the bidder from the procurement process
- ii) If a contract has already been awarded
  - a) Cancellation of the relevant contract and recovery of compensation for loss incurred by the procuring entity;
  - b) Forfeiture or encashment of any other security or bond relating to the procurement;
  - c) Recovery of payments including advance payments, if any, made by the procuring entity along with interest thereon at the prevailing rate;
- iii) Provisions in addition to above:
  - a) Removal from the list of enlisted contractors and banning/ debarment of the bidder from participation in future procurements of the procuring entity for a period not less than one year;
  - b) In case of anti-competitive practices, information for further processing may be filed under a signature of the Joint Secretary level officer, with the Competition Commission of India;
- c) Initiation of suitable disciplinary or criminal proceedings against any individual or staff found responsible.

**Compensation to Contractor on rescission of Contract**

**4.33.3** In the event of rescission of Contract under Sub-clause 4.33.1 & 4.33.2, the Contractor shall not be entitled to any compensation whatsoever, except for the Work done up to the date of rescission, payable as per the provisions of the Contract.

**5 Design**

**Description**

**5.1** The clauses under the head 'Design' are applicable only in 'Design & Build' Contracts and in case of 'Part Design & Build' Contracts, these are applicable only to part of the Contract in which the design is the responsibility of the

**General Obligations 5.2**

Contractor.

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 pre-qualification, unless otherwise approved by the Employer. The Contractor shall furnish Designer's Warranty in the format approved by the Employer.

The Design and Construction Standards 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" and to the satisfaction of the Commissioner of Metro Railway Safety whose sanction is mandatory for commissioning of the System.

The Contractor shall in this regard carry out all statutory tests and trials necessary for obtaining sanction of the competent authority for opening the system for public carriage of passengers and provide assistance and information as required by the appropriate statutory authorities in India.

**Technology Transfer**

The Contractor shall provide the Transfer of Technology as stipulated in tender document. The Contractor shall use indigenous Materials to the maximum extent and shall use non-Indian substitutes only if Indian materials do not fit the requirements and/or are costlier.

**Contractor's warranty of design 5.3**

- a. The Contractor shall be fully responsible, for the suitability, adequacy, integrity, durability and practicality of the Contractor's proposal and design.
- b. The Contractor warrants that the Contractor's Proposals and design 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 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**      **5.4**

The Manufacture Documents shall comprise the technical documents specified in the Employer's Requirements, documents required to satisfy all regulatory approvals, documents described in Sub Clause 5.7 (As Built Document), and Sub Clause 5.8 (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 Sub-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 for the Construction and/or Manufacture Document; and
  - (iii) The Engineer shall be deemed to have provided with no objection for 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 sub-paragraph (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 construction or any operations manufacture documents, then shall be rectified by the Contractor at his own cost and any approval or consent or review (under this sub-clause or otherwise) by

		the Employer/Engineer of the Manufacture and Construction Documents under this Sub-clause shall not relieve the Contractor from any obligations or responsibility under the Contract.
<b>Technical Standards and Regulations</b>	<b>5.5</b>	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
<b>Samples</b>	<b>5.6</b>	<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 Sub-clause 5.4:</p> <p>a) Manufacturer's standard samples of Materials, b) Samples (if any) specified in the Employer's Requirements.</p> <p>Each sample shall be labelled as to origin and intended use in the Works</p>
<b>As-Built Drawings and Documents</b>	<b>5.7</b>	<p>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 Sub-clause. Six copies shall be submitted to the Engineer prior to the commencement of the Tests on Completion.</p> <p>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.</p> <p>Prior to the issue of any Taking Over Certificate, the Contractor shall submit to the Engineer one soft copy and four 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 Sub-clause 9.1 until such documents have been submitted to the Engineer.</p> <p>All Drawings, Proposal, Manuals, Design, Correspondence, Final Tender (Contract) documents and submittals etc. should be submitted in digitized form along with the Hard Copy.</p> <p>In addition to above, Contractor shall provide As-built drawings/model of all Civil/Structural Utilities and Electrical and Mechanical Services such as HT/LT Cables/Pipes/Earthlings etc, above Ground and underground, in .SHP, KML or in any other GIS supporting format as desired by Engineer.</p>
<b>Operation and Maintenance Manuals</b>	<b>5.8</b>	Prior to commencement of the Tests on Completion, 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,

**Intellectual Property  
Rights and Royalties**      **5.9**

adjust and repair the Works. The Works shall not be considered to be completed for the purposes of Taking Over under Sub-clause 9.1 until such Operation and Maintenance Manuals have been submitted to the Engineer and received his consent.

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, 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 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 Sub- 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 Contractor failing to act at 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.

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 (carrying the right to grant sub-licences) 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).

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 (carrying the right to grant sub-license) to use, repair, copy, modify, enhance, adapt and translate in any form such

Software for his 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.

i. The Contractor shall ensure that all personnel are registered under Centralized Management System with their personal information like family details, medical data, education & training, work history, skills acquired, PF Number, UAN Id and ESI details, if applicable, are recorded for each.

ii. All personnel shall be issued a Photo Identity Card of size and format stipulated under Conditions of Contract on Safety & Health and Environment.

iii. The attendance of all the personnel shall be recorded through Biometric Systems and Statutory compliances like ESIC and EPF contribution as well as monthly wages paid, shall be through such recorded attendance.

iv. The Contractor shall share all such data with UPMRC for Centralised Management by a nominated authority.

v. Hardware resources shall be arranged by the Contractor.

#### Rates of Wages and Conditions of Labour 6.2

Full compliance of statutory requirements apart, the Contractor shall pay rates of wages and observe conditions of labour not less favourable than those fixed by appropriate Government for the industry.

The Contractor shall make himself aware of 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.

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 Sub-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/Court and proof thereof is furnished to the satisfaction of the Labour Authority/Court, 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/Court and any sums so paid shall be recoverable by the Employer from the Contractor.

**Persons in the service/ retired of Employer/ Engineer**

**6.3**

- a) The Contractor shall not recruit or attempt to recruit, staff and labour from amongst the Employer and the Engineer's personnel.
- 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.

In case of non-compliance of above, in addition to any or several of the courses, referred in Sub-clauses 13.2 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.

**Labour Laws**

**6.4**

- a) 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. In this context, the Contractor is also required to familiarize himself with latest labour codes notified by the Government on 21 November 2025 including any modification(s) thereof to be notified by the Government from time to time and shall ensure to comply with the same. The Contractor shall indemnify Employer in the event of non-compliance of the extant labour laws.
- b) The contractor shall be required to obtain "Labour License" on his own from relevant authority for the use of labours employed in this contract either through himself or through any of his sub-contractor and maintain all the records and establishments as per the existing Labour Laws. 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 or his sub-contractors on the Site.

- c) The Contractor shall have a Labour Welfare Organisation which shall be responsible for labour welfare and compliance with prevalent labour laws, statutes and guidelines. The Labour Welfare Organization of Contractor shall comprise of such competent officials having requisite qualification as prescribed in Conditions of Contract on Safety & Health and Environment. In no case, an under qualified person may be appointed in Labour Welfare Organisation of Contractor.
- d) The Labour Welfare Organisation of Contractor shall prepare and submit a monthly compliance/Status Report of adherence to labour laws to the Engineer.
- e) The Contractor will ensure to open bank accounts for each worker employed by him and his Sub-contractors and all the payments to workers will be released through bank accounts.
- f) The violation of Labour Laws viz. Contractor Labour (Regulation & Abolition) Act, 1970 & Central Rules, 1971 made thereunder or other applicable Labour Laws under the jurisdiction shall attract following penalties in addition to the penalties imposed by Statutory Authorities in terms of applicable Act/Rules:-
  - (i) Delay in payment of dues to : ₹500/- per day | any workmen
  - (ii) Non-compliance(s) of any : ₹5000/- for other provision of labour compliance info laws, pointed out by under the contr Employer/Engineer or their representative

The decision of Engineer with regard to the merits of imposition of penalty, determination of non-compliance and amount of penalty shall be final and binding on Contractor. The 'Contract' under this Sub-clause shall include any workmen employed by Contractor working within premises of Works at Employer's establishment whether directly or through Sub-contractor etc.

In every case in which, by virtue of the provisions of the aforesaid Act or the rules, the Employer is obliged to pay any amount of wages to a workman employed by the Contractor or his subcontractor in execution of the work or to incur any expenditure on account of the contingent, liability of the Employer due to the Contractor's failure to fulfil his statutory obligations under the aforesaid Act or the rules, the Employer will recover from the Contractor, the amount of wages so paid or the amount of expenditure so incurred and without prejudice to the rights of the Employer under the Section 20, Sub-Section (2) and Section 2, Sub-Section (4) of the aforesaid Act, the Employer shall be at liberty to recover such amount or part thereof from Contractor's bills/Security Deposit or any other dues of Contractor with the Employer. The Employer shall not be bound to contest any claim made against it under Sub-Section (1) of Section 20 and Sub-Section (4) of Section 21 of the aforesaid Act except on the written request of the Contractor and upon his giving to the Employer full security for all costs for which the Employer might become liable in

contesting such claim. The decision of the Engineer regarding the amount actually recoverable from the Contractor as stated above shall be final and binding on the Contractor.

- g) The Contractor shall ensure the registration of all his eligible workers inclusive of Sub-contractor and Petty Contractors with BOCW (Building and Other Construction Workers) Board. Any liabilities on account of BOCW at any stage shall be on part of tenderer and the quoted price shall be inclusive of BOCW charges. The Employer shall make the deduction accordingly and deposit the amount to the concerned authorities.

**Working Hours**                      **6.5**                      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.

The Contractor shall provide adequate lighting and safety arrangements. The Contractor shall also provide rest room if the work is being carried out in night shift.

**Facilities for Staff and Labour**                      **6.6**                      The Contractor shall provide and maintain at his own expense, all necessary accommodation and welfare facilities as per prevailing labour & welfare laws for his (and his Sub-contractor's) staff and labour. This includes good practices like provision of temporary crèche (Bal Mandir) where 50 or more women are employed at a time. All accommodation shall be maintained in a clean and sanitary condition, by the Contractor at his own cost. Separate rest room, toilets needs to be provided for female workers.

**Health and Safety**                      **6.7**                      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 Conditions of Contract on Safety & Health and Environment.

The Contractor's Site Safety Plan shall be developed from his Outline Safety Plan as per Employer's Requirements and Conditions of Contract on Safety & Health and Environment of the Employer.

The contractor need to mobilize at site with full preparation with proper provision of display boards (mentioning various details like Contract Name, Contract Value, Scope, Organization, Contract Details, Labour Laws obligations as per agreement with the engineer), lighting, Water Supply, Ventilation Facility, Toilet Facility, Tea & Coffee facility, sweeping and cleaning arrangement etc (this list is indicative not exhaustive). The engineer shall approve after inspection and shall issue no objection certificate for erection of the equipment.

In case of repeated aberrations noticed by the engineer a minimum penalty of Rs. 5000/- shall be imposed for each

		instance.
		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 the work and shall have the authority to issue instructions and take protective measures to prevent accidents.
<b>Contractor's Superintendence</b>	<b>6.8</b>	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.
<b>Provision of Efficient and Competent Staff</b>	<b>6.9</b>	<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"> <li>a) persists in any misconduct,</li> <li>b) is incompetent or negligent in the performance of his duties,</li> <li>c) fails to conform with any provisions of the Contract, or persists in any conduct which is prejudicial to safety, health of workers, or the protection of the environment.</li> </ul>
<b>Preservation of Peace and orderly conduct</b>	<b>6.10</b>	
	<b>6.10.1</b>	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.
	<b>6.10.2</b>	The Contractor shall at all times take all reasonable precautions which will include that no labour or employee is permitted to work at site in an intoxicated state or under influence of drugs, 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.
<b>Labour to be Contractor's Employee</b>	<b>6.11</b>	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.
<b>Report of Accidents to Labour</b>	<b>6.12</b>	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 relating to any of them, however, and wherever occurring on Works, to the Engineer or the Engineer's Representative 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 expeditiously in accordance with the Workmen's Compensation Act or ESI Act as applicable.
<b>Claim` on account of violation of Labour laws</b>	<b>6.13</b>	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 money shall, as a result of any instructions, directions or decisions from the Authorities/Court or claim or application made under any of the labour laws or regulations, be directed to be paid by the Employer, such money shall be deemed to be money 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 money paid or to be paid by it as aforesaid within seven days after the same shall been demanded, the Employer shall be entitled to recover the amount from any money due or accruing to the Contractor under this or any other Contract with the Employer.
<b>Maintenance of Records</b>	<b>6.14</b>	The Contractor shall maintain all records pertaining to labour as mandated by the law of the land and shall keep it preserved at least for three years after the completion of the Project.
	<b>7</b>	<b>Quality Control</b>
<b>General</b>	<b>7.1</b>	<p>Within 28 days of the issue of the LOA/ Notice to Proceed, the Contractor shall submit to the Engineer, for his consent, his proposed Site Quality Plan based on the Outline Quality Plan and the Employer's Requirements. The quality manual should address the quality system as required by ISO 9001-2015. Any supplement to the Site Quality Plan shall be submitted at least 14 days before commencement of the relevant work.</p> <p>Upon the Engineer notifying his consent to the Site Quality Plan, or any supplement thereto, the Contractor shall, adhere to the principles and procedures contained in such document, except where the Engineer gives his consent to any amended or varied version thereof. The Contractor shall cause any sub-contractors to adhere to this Plan.</p> <p>The Contractor shall appoint a suitably qualified and experienced person, not otherwise engaged in the performance of the Contract, to act as manager of the quality assurance system and shall provide such other personnel and resources as required to ensure effective operation of the quality assurance system. The said manager shall carry out audits of the application of the quality assurance system and ensure effective quality control and delivery of quality assurance.</p> <p>The Contractor shall provide all necessary access, assistance and facilities to enable the Engineer to carry out surveillance visits both on and off the Site to verify that the quality assurance system is being properly and fully implemented. No extra payment shall be made in this regard and the cost of the Work under this element shall be deemed to be included in the Contract Price.</p>

Contractor shall arrange Quarterly External Quality audits for internal review of project's compliance with contract conditions. This audit shall be conducted by external agencies that are competent with ISO qualified auditors with prior approval of the Employer. The report of audit shall be shared with employer. The cost of such audit shall be deemed to be included in contract price.

In addition, employer may conduct its own Quarterly Quality Audits (at employer's cost) of project through external Quality Audit team. The contractor shall extend all necessary assistance to audit team to enable performance of audits. Contractor shall comply with the observations brought out in Quality Audits.

**Manner of Execution      7.2**

All Plant, goods, 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, workman like and careful manner, with properly equipped facilities and non-hazardous Materials, and in accordance with modern recognized good practice.

**Source of Materials      7.3**

Sources of Materials being supplied shall be intimated to the Engineer and are subject to his approval. Materials that are not specified in the Contract document shall conform to the relevant Indian Standards or in their absence, shall conform to any International Standard approved by the Engineer. Once the contractor has got the vendor approved, the contractor shall procure the material from the 'approved' sources. In the event, material found at site from the unapproved sources, the engineer can decide not to pay the BOQ price for the same.

Save as otherwise expressly provided in the Contract, samples shall be supplied by the Contractor at his own cost.

**Delivery to Site      7.4**

The Contractor shall be responsible for procurement, transport, receiving, unloading and safe keeping of all Plant, Rolling Stock, and Construction Materials, Contractor's Equipment and other things required for the completion of the Works.

**Inspection      7.5**

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, goods, construction 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      7.6**

This sub clause shall apply to all tests specified in the Contract, other than the Tests after Completion.

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, goods, Materials and other parts of the Works as specified in the Contract. The Employer/Engineer may instruct the Contractor for any additional test, at Employer's cost.

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

### 7.7

- i) If, as a result of inspection, examination or testing, any Plant, goods, Material, design or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the same duly 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.

Any rejected/ non-conforming materials shall be removed from site within 72 hours by the contractor provided no resting of materials has been permitted by the Engineer.

- ii) If the Engineer requires such Plant, Goods, 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 additional costs, such costs shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any sum due, or to become due, to the Contractor.
- iii) Notwithstanding any previous Test or certification, the Engineer shall have the authority to instruct the Contractor:-
  - a. To remove from the Site and replace any plant or Materials which is not in accordance with the Contract.
  - b. To remove and re-execute any other work which is not in accordance with the Contract.
- iv) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.
- v) In case of default on the part of the Contractor in carrying

		out such order, the Employer shall be entitled to employ and pay other Parties, to carry out the same, and all expenses consequent thereof or incidental thereto, shall be recoverable from the Contractor or may be deducted by the Employer from any sum which may be due to the Contractor.
<b>Liability after Inspection and Testing</b>	<b>7.8</b>	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.
<b>Ownership of Plant and Materials</b>	<b>7.9</b>	Each item of Plant, goods, and Material shall become the property of the Employer, when it is delivered to Site or payment thereof, either in part or full, has been made. The Contractor shall however continue to bear the risk in respect of such items which continue to remain in his custody.  However, the plant, goods & material not finally taken over as per GCC Clause 9 but payment against which have been made in part or full against Indemnity Bond/ Safe Custody Bank Guarantee (as applicable) will remain under the contractor's custody. The contractor shall be responsible for its safety and will bear all the risks till taken over by the employer.
<b>Cost of Employer's Attendance Including Travel</b>	<b>7.10</b>	The Employer shall bear the costs of attendance including travel by the Employer or his Representative for the purposes of Sub-clauses 7.4 and 7.5 above. The cost of attendance including travel by the Employer, Engineer or his Representative for the purpose of Sub-clause 7.6 shall be borne by the Contractor.
<b>Covering up of Works</b>	<b>7.11</b>	
<b>Examination of Work before covering up</b>	<b>7.11.1</b>	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.
<b>Cost of uncovering the Work already covered up</b>	<b>7.11.2</b>	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 7.12.4 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.
<b>Tests after Completion</b>	<b>7.12</b>	
<b>Contractor's Obligations</b>	<b>7.12.1</b>	The Contractor shall carry out the Tests on Completion at his own cost in accordance with the Contract after providing the documents in accordance with Sub-clauses 5.4 and 5.5. 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, goods and Work can safely undertake the next stage
- b) Commissioning Test shall include the specified operational tests to demonstrate that Works or Sections can be 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 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

<b>Delayed Tests</b>	<b>7.12.2</b>	<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>
<b>Retesting</b>	<b>7.12.3</b>	<p>If the Works, or a part thereof, or a Section, fail to pass the Tests on Completion, Sub-clause 7.7 “Rejection” shall apply, and the Engineer or the Employer may require such failed Tests, and the Tests on Completion on any related work, to be repeated under the same terms and conditions.</p>
<b>Failure to Pass Tests on Completion</b>	<b>7.12.4</b>	<p>If the Works, or a part thereof, or a Section, fail to pass the Tests on Completion, repeated under Sub-clause 7.12.3, the Engineer shall be entitled to:</p> <ol style="list-style-type: none"> <li>a) Order further repetition of Tests on Completion under Sub-clause 7.12.3; or</li> <li>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</li> <li>c) Issue a Taking Over Certificate, if the Employer so requires. The Contract Price shall then be reduced by</li> </ol>

such amount as determined by the Engineer 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**      **7.13**

**Integrated Testing**      **7.13.1**

Tests on Completion shall also include Integrated Testing where applicable as per the Contract conditions. 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.

**Compilation of Test Results**      **7.13.2**

The results of the Integrated Testing and Commissioning shall be compiled and evaluated by the Engineer and the Contractor.

**Retesting**      **7.13.3**

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 additional costs, the same shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any money due, or to become due, to the Contractor.

**Failure to Pass Test**      **7.13.4**

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**      **7.13.5**

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.

**8**

**Time Management**

**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 an instruction in writing to that effect from the Engineer (issue of the LOA/ 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 will be the essence of Contract and time for Completion shall reckon from the date the Contractor is required 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.

<b>Time for Completion</b>	<b>8.2</b>	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 passing of tests on the completion, including integrated testing wherever provided in the scope of Work and commissioning of the whole of the Works and/or parts thereof before the same is taken over by the Employer.
<b>Delay</b>	<b>8.3</b>	<p>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.</p> <p>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.</p>
<b>Extension of Time for Completion</b>	<b>8.4</b>	
<b>Extension of Time</b>	<b>8.4.1</b>	<p>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:</p> <ol style="list-style-type: none"> <li>"Force Majeure" referred to in Clause 16</li> <li>The Contractor's work held up for not being given possession of or access to the Site in accordance with the Contract</li> <li>Instruction of the Engineer to suspend the Works and the Contractor not being in default as to reasons of suspension.</li> <li>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.</li> <li>Any act of prevention or Breach of Contract by the Employer and not mentioned in this Clause</li> <li>Any order of Court restraining the performance of the Contract in full or in any part thereof</li> <li>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.</li> <li>An Employer's Variation</li> </ol> <p>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</p> <ol style="list-style-type: none"> <li>the failure of Sub-contractor, to commence or to carry out Work in due time,</li> <li>non-availability, or shortage of Contractor's equipment,</li> </ol>

- labour, utility services, Plant and Materials,
- c) inclement weather conditions, and
- d) the Contractor not fulfilling his obligations under Sub-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.

The Engineer shall proceed in accordance with Sub-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. The extension of time including that of key date shall not entitle the Contractor to retain the Advances which shall be governed by Clause 11.2.

**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.

**Extension of time for delays due to Contractor**      **8.4.3**

If the delay in the completion of the whole Works or in achieving Key Date for stages of Work defined in Contract, 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 subsequent linked Key Date for remaining stages of Work 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, or with or without freezing of escalation indices in Price Variation formula, for completion, as he may decide.

**Liquidated Damages for Delay**      **8.5**

Time is the essence of the Contract. Appendix-1 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 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 10% of total Contract Value as stated in the Appendix-1 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. Such sums shall be recoverable from the Contractor in addition to any Liquidated Damages payable under this clause, the total ceiling limit of which is 15% of the Contract value including Liquidated Damages levied under the provision of 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 Parties agree that amount of Liquidated Damages leviable under the Contract are the genuine pre-estimate of the loss suffered by the Employer because of which the Liquidated Damages have been levied on the Contractor. The Liquidated Damages may be recovered from any amount of money due from the Contractor under the Contract or any other Contract which the Contractor has with the Employer. The Liquidated Damages may also be recovered from the amount of Performance Security Bank Guarantee and in that case the Contractor would be liable to replenish the amount of Performance Security Bank Guarantee.

The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any sum due, or to become due, to the Contractor. In the event of an extension of time being granted under Sub- Clause 8.3 and the amount due under this Sub-clause shall be recalculated accordingly, if excess recovery has been done, same will be 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 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 Sub-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 Sub-clause and to terminate under Sub-clause 13.2.

The total contract value used in the clause for the purpose of levy of liquidated damages on failure to achieve key dates shall mean the 'Total Contract Price'.

The decision of the Engineer as to the Liquidated Damages 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 Sub- 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 sum due, or to become due, to the Contractor.

If, in the opinion of the Engineer, the steps taken by the Contractor to expedite the progress are not adequate, the

Engineer may take a recourse as per Clause 13.2.4 of this GCC.

**Suspension of Work 8.7**

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. 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, or
- f) Due to instructions of NGT or any other statutory authority on account of high pollution.

If suspension is ordered by the Engineer for reasons other than those mentioned in Sub-clause 8.8 then the Contractor's entitlement are in the table below:

Suspension Period	Extension of Time	Compensation for the suspension period	Remarks
Upto 14 days	No	No	Engineer may, at his sole discretion, give extension of time in exceptional circumstances.
15-30 days	Yes	No	Extension of time as considered proper by the Engineer
Above 30 days	Yes	<ul style="list-style-type: none"> <li>As per Daily rate of wages for idle labour/employees</li> <li>70% of the rate for hire charges/ equivalent hire charges for idle plant and machinery hired/owned (excluding cost of fuel and lubricants)</li> <li>15% above all these items to cover overhead costs.</li> </ul>	Compensation as assessed by the Engineer for entire suspension period on submission of documentary proof by the contractor to Engineer's satisfaction.

Above 90 days If contractor asks for fore closure	No	As per Clause 13.3.4	Contractor may ask for closure of the Contract, or deletion from the Contract of that part of Works which has been suspended.
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**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 wherever applicable as per the Contract, and a Taking Over Certificate for the Works shall be 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 shall conduct a complete joint survey of the Works including carrying out any tests prescribed in the Contract and prepare a list of defects and outstanding Works and :

- 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 wherever applicable as per the Contract in accordance with the Contract if defects and/or outstanding Works are minor that does not affect the use and safety of the Works or Section for their intended purposes. The list of such Works along with the target date of completion for each Work shall be enclosed with the Taking Over Certificate and completion of all these Works / Rectification of defects within the stipulated time shall be the responsibility of the Contractor and any failure in it may be considered a reason by the Engineer to cancel the Taking Over Certificate issued earlier. In addition, the Engineer may withhold an amount equivalent to the balance works/snag list from the running account bills/final bills which shall be released only after completing this balance works/snag list enclosed with taking over certificate.
- 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 Sub-clause.
- c) Issue of Taking over Certificate by the Employer would not absolve Contractor from any liability under the Law and Contract, arising from any hidden / latent defect in the

**Taking over of Parts of the Works 9.2**

Works / Section executed under the Contract by the Contractor. The Employer would be entitled to recover from the Contractor any compensation / damages / loss arising from such hidden / latent defect in the Works executed by the Contractor.

The Engineer may, at the sole discretion of the Employer issue a Taking Over Certificate for any part of the Permanent Works/ Employer agreed for such splitting of work in writing by following the procedure stipulated in Clause 9.1 above if:

- a) The Employer uses that part of the Works for revenue service before the Taking over Certificate is issued for the entire Work.
- b) The balance part is not completed, not due to the fault of the Contractor and contractual date of completion for the completed part is over.
- c) If some part of work is not completed along with rest of the works in the contract and the Employer agreed for such splitting of work in writing provided condition stipulated in a) and b) above complies, the Taking Over Certificate can be issued for that part of work which has been completed and accepted by the Employer. However, such splitting of work for issue of taking Over Certificate is sole discretion of the Employer and the contractor have no right what so ever.

**10 Defects Liability**

**Completion of Outstanding Work and Remedying Defects**

**10.1**

“Defects Liability Period” shall mean the Defects Liability Period stated in the Special Conditions of Contract calculated from the date of taking over 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 except minor repair, the “Defects Liability Period” in respect of that part or sub-system or components of that part shall start from the date such replacement, renewal or repair has been completed to the satisfaction of the Engineer.

The expiry of Defect Liability Period would not absolve the Contractor from any liability under the Law and Contract arising from any hidden / latent defect in the Works / Section executed under the Contract by the Contractor. The Employer would be entitled to recover from the Contractor any compensation / damages / loss arising from such hidden / latent defect in the Works executed by the Contractor.

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 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 Defect Liability Period.

**Cost of Remedying Defects**

**10.2**

All Work referred to in Sub-clause 10.1 shall be executed by the Contractor at his own cost, if the necessity for such Work is due to:

- 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.

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, Sub-clause 12.3 shall apply to such Work.

**Extension of Contract Period 10.3**

The Contract 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.

When delivery of Plant, Rolling Stock, and/or Materials, or erection of Plant, or installation of Materials, has been suspended under Sub-clause 8.7, the Contractor's obligations under this Sub-clause shall not apply to any defects or damage occurring more than three years after the Plant, Rolling Stock and/or Materials would otherwise have been delivered, erected and taken over.

**Failure to Remedy Defects 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-clause 10.2(a), (b) or (c), the Employer may (at his sole discretion):

- a) Carry out the Work himself or by others, in a reasonable manner and at the Contractor's risk and cost, 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 Sub-clause 13 shall not apply.

Notwithstanding anything contained herein the Contractor shall not be relieved from any of its obligation or responsibility as specified in the Contract and the Employer would be entitled in urgent and critical situation(s)/events to remedy the defects in the Work by himself or through others, at the Contractor's risk and cost. The cost incurred by the Employer in remedying the defect or damage shall be recoverable from the Contractor by the Employer.

Notwithstanding anything contained herein, the Contractor would continue to remain liable to the Employer for any cost, loss, damage or compensation which arises due to any default of the Contractor in the performance of its obligations under

		this Agreement
<b>Removal of Defective Work</b>	<b>10.5</b>	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 Security by the full replacement cost of these items or to provide other appropriate Security acceptable to the Employer.
<b>Further Tests</b>	<b>10.6</b>	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 Clause 7.12
<b>Right of Access</b>	<b>10.7</b>	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.
<b>Contractor to Search</b>	<b>10.8</b>	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.
<b>Performance Certificate</b>	<b>10.9</b>	<p>The Contract shall not be considered to be completed until the Performance Certificate has been signed by the Engineer or authorized official of the Employer and delivered to the Contractor at the end of 'Defect Liability Period, stating the date on which the Contractor completed his obligations related to completion of works and rectification of defects during Defect Liability Period to the Engineer's satisfaction. Only the Performance Certificate shall be deemed to constitute approval of the Works.</p> <p>Notwithstanding anything contained herein the Contractor would continue to remain liable to the Employer for any cost, loss, damage or compensation which arises from hidden or latent defect in the work executed by the Contractor under the Contract, even if such hidden and latent defects arise after the expiry of Defect Liability period or grant of Performance Certificate by the Employer under the Contract to the Contractor.</p>
<b>Unfulfilled Obligations</b>	<b>10.10</b>	After the Performance Certificate has been issued, 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.
<b>Emergency defect rectification</b>	<b>10.11</b>	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.
	<b>11</b>	<b>Contract Price and Payment</b>
<b>The Contract Price Inclusions/</b>	<b>11.1</b>	

## Exclusions

### 11.1.1

(a) The contract price, subject to any adjustment thereto in accordance with the contract shall be inclusive of all taxes (except Goods and Services Tax – GST), duties, levies, cess, royalties, etc. and all other incidental charges including custom duty if any, required to fulfil the tender conditions.

(b) Goods and Services Tax (GST) is excluded in the contract price. The contractor shall maintain details of GST paid to concerned department and the same shall be reimbursed by employer based on submission of:

(i) Monthly Return of GST (GSTR-3B) of the contractor for the relevant period/periods along with detailed statement (GSTR 1 & GSTR 2) and copy of challans in regard to deposit of taxes for Employer project.

(ii) Certificate of the Chartered Accountant in regard to turnover of the contractor relating to Employer project and GST paid/adjusted through Input Tax Credit.

(c) Any taxes, duties, levies cess, which are required / may be required to be paid by the Employer in the fulfilment of the tender condition including on reverse charge basis should also be included by the tenderer in the Contract Price.

(d) Taxes and duties paid to the sub-vendors shall not be paid separately and therefore are to be included in the price.

(e) Tenderers shall submit an undertaking that neither they nor their sub-contractors / sub-vendors shall avail the deemed export benefit as the same shall be availed directly by Employer. 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.

The reimbursement (as per this Sub-clause) of whatsoever nature shall be provided only for Permanent Works. No reimbursement (as per this Sub-clause) shall be provided for Temporary Works and fuel.

### Maintaining Records and Availing Exemptions

### 11.1.2

- i) In the event of exemption of custom duties, GST (CGST/IGST/SGST etc.) or any other cess/levy being granted by the Government in respect of the Works, the benefit of the same shall be passed on to Employer. The Contractor shall therefore maintain meticulous records of all the taxes and duties paid and provide the same as and when required by the Employer, so that the Employer is able to avail the reimbursement for which UPMRC may issue a procedure order separately. Alternatively, the Employer may direct the Contractor to get the reimbursements based on exemption certificates / government's order and it shall be obligatory on part of the Contractor to get the reimbursements from the statutory authorities and pass on the benefit to UPMRC.
- ii) In case of Contractor's failure in availing the exemptions as stipulated above, the recovery of equivalent amount will be made from Contractor's dues.

### Adjust in Contract Price

### 11.1.3

Adjustment in Contract price shall be done if a "Price Variation Formula" is given in the Special Conditions of

**Change in Taxes/Duty 11.1.4**

Contract otherwise it will be a fixed price contract.

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 except for the following:

a) "Change in Taxes/Duties/Levies" means the occurrence or coming into force of the following, at any time after the date of submission of tender.

(i) Any new tax which is imposed on Composite Works Contracts applicable on Metro Project.

(ii) Change in the rate of Good and Services Tax (GST) on Composite Works Contracts applicable on Metro Project as per GST Act.

b) The Contract Price shall be adjusted due to the above condition. Adjustment in Contract Price will be applicable up to the stipulated date of completion of the Work including the extended period of completion where such extension has been granted under Sub-Clause 8.4.1 of GCC or it is specifically mentioned that extension is with adjustment for changes as stated above

c) If the extension of contract period is on account of contractor's fault under Sub-Clause 8.4.3 of GCC, no compensation shall be made towards upward revision towards "Changes in Taxes and Duty" as mentioned at Sl. No. (a) (ii) above. Any benefit on account of downward revision towards "Changes in Taxes and Duty" as mentioned at Sl. No. (a) (ii) above, during the original contract period or extended contract period shall be on employer's account.

d) Any other changes (except on account of Clause (a) (i) above) in existing taxes/ new taxes on supply of materials/ services/ works etc. will not be considered and its impact shall be considered covered in the Price Variation Clause provided in the Contract and in Contract where Price Variation Clause is not provided, the impact on any other change (except on account of Clause (a) (i) above) in existing taxes/ new taxes on supply of materials/ services/ works etc. will be deemed to be included in the quoted contract price

e) Also, the Contract price shall not be adjusted on account of fluctuations in the rates of exchange between the foreign currencies of the Contract and Indian Rupees from the last date of submission of tender.

**Advances 11.2**

**Mobilisation Advance 11.2.1**

(a) Mobilisation Advance shall be generally limited to 5% of Original Contract Value payable in two equal instalments or as mentioned in the Special Conditions of Contract. The first instalment shall be paid after mobilisation has started and next instalment shall be paid after satisfactory utilization of earlier instalment by giving all necessary details to the satisfaction of Engineer duly certified by the Chartered Accountant

(b) Mobilisation Advance shall be paid interest free against acceptable Bank Guarantee from a scheduled commercial bank in India. The value of Bank Guarantee taken towards security of "Mobilisation Advance" shall be 110% of the Advance (inclusive of GST) taken by the Contractor. The



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

#### **Advance against Plant and Machinery 11.2.2**

Plant and Machinery Advance shall generally be limited to 5% of Original Contract Value or as specified in Special Conditions of Contract. This Advance shall be paid interest free against acceptable Bank Guarantee from a scheduled commercial bank in India. The value of Bank Guarantee taken towards Security of "Plant & Machinery Advance shall be 110% of the Advance (inclusive of GST) taken by the Contractor. The Contractor, once the 50% of Plant & Machinery Advance has been recovered, shall have a one-time option to reduce the Bank Guarantee for the Plant & Machinery Advance by the amount recovered. This Advance is payable against Plant, Equipment and Machinery, provided the same have and reached the site or in the case of new items meant specifically for the work, firm purchase order has been placed and the invoices received. The Advance will be given only if the Plant/Machinery has been purchased for this Contract and not for those which are already in the books of the Contractor. The Contractor shall submit a certificate from Chartered Accountant that the Plant Machinery against which the Advance is being claimed was not in the books of the Contractor before award of Contract. The Plant and Machinery shall be valued by the Engineer as follows:

(i)	New Items	80% of purchase price.
(ii)	Second hand items in working order	80% of the depreciated value as assessed by the Engineer.
(iii)	Items valued at less than Rs 5.00 lakh per unit	Not to be considered.

#### **Written Request for Advances 11.2.3**

- a) All Advances as admissible, shall be payable only on Contractor's written request to the Employer.
- b) No advance shall be given after 40% of the original Contract amount has been paid.

#### **Recovery of Advances 11.2.4**

- a) The recovery of Advances shall commence when 20% of the Original Contract Value of the Work has been paid and it will be completed by the time, 85% of the Original Contract Value has been paid or the original completion date whichever is earlier. As far as possible, the recovery of Advances shall be limited to 30% of on-account bill.
- b) The Contractor shall always have the option to have the recoveries commenced and/or completed earlier, and/or to have recoveries affected in instalments of higher amount and also to repay part or whole of the Advance by direct payment rather than through on-account Bills.
- c) In case the Contract is terminated due to default of the Contractor or rescinded / foreclosed, due to any other reason, the Contractor shall return the unrecovered amount of all Advances within 15 days of issue of

		notice of termination / rescission / foreclosure of the Contract and if the Contractor fails to do so due to any reason whatsoever, then interest at rate equal to State Bank of India's Marginal Cost of fund based Lending Rate (MCLR) applicable for the tenure of 01 year prevailing on the date of issue of notice of termination / rescission / foreclosure plus 3% Penal Interest per annum shall be charged on the unrecovered amount of such Advances from 16 <sup>th</sup> day onwards compounded quarterly till the same is returned by the Contractor.
<b>Interest in Case of Delay in Repayment of Advances</b>	<b>11.2.5</b>	Should there be delay in the progress and completion of Work, as a result of which it is not possible to recover the Advances and interest thereon, before the date of completion stipulated in the Contract, then the interest to be charged from the Contractor on the remaining portion of the Advances beyond the original completion date specified in the Contract, shall be equal to State Bank of India's Marginal Cost of fund based Lending Rate (MCLR) applicable for the tenure of 01 year prevailing on the original completion date specified in the Contract plus 3% Penal Interest per annum.
<b>Advances to be Used only for this Work.</b>	<b>11.2.6</b>	<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 Advances at once and pay interest at 15% per annum till the Advances are recovered back from him. The Contractor shall return the Advances and pay the interest in one go without demur.</p> <p>Employer retains the right for any other remedy prescribed for breach of Contract in this regard.</p> <p>The Contractor, if required by the Engineer shall provide the details of utilisation of Mobilization Advance.</p>
<b>Provisional Payment Against Material at Site</b>	<b>11.3</b>	
	<b>11.3.1</b>	A provisional payment on account of main construction materials required for the Permanent Works, shall be paid on request of the Contractor after these materials are brought to Site, against an Indemnity Bond in a form acceptable to Employer is duly executed. The payment shall be limited to 80% of the actual value or assessed value of these materials and the total of such provisional payment on account of construction materials at a time shall be limited to three percent of Original Contract Value or likely average consumption, of such materials for three months whichever is less and at any time the total outstanding provisional payment against material at site shall not exceed four percent of the Original Contract Value. The valuation of the average consumption of such main construction materials shall be approved by the Engineer, whose decision shall be final.
<b>Written Request for Advances/ Provisional Payment against Material at Site</b>	<b>11.3.2</b>	The provisional payments as admissible, shall be payable only on Contractor's written request to the Employer/Engineer.
<b>Recovery of Advances/ Provisional Payment</b>	<b>11.3.3</b>	In case of provisional payment against Materials, the amount consumed every month shall be recovered from the next

**against Material at Site**

month's on-account bill and the recovery to be completed in 3 monthly instalments. In case recovery could not be made due to any reason, interest will be charged at the rate equal to State Bank of India's Marginal Cost of fund based Lending Rate (MCLR) applicable for the tenure of 01 year prevailing on the original/extended completion date specified in the Contract plus 3% Penal Interest per annum.

**Application for Interim Payment Certificates 11.4**

**11.4.1**

In case of 'Lump Sum' Contract with cost centre and Milestone payment, the fixed Lump Sum Price shall be apportioned by the Contractor amongst the various Cost Centres. 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:

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

The Contractor shall submit a statement in three 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) the amount due in respect of Milestones is certified by the Engineer as achieved 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) 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.

**11.4.2**

In case of 'Lump Sum' or Item rate' Contracts with payment schedule, the Contractor shall be entitled to be paid from time to time, normally once in a calendar month, by way of 'on-account' bill as per the payment schedule indicated in Bill of Quantity(BOQ) or as finally approved by the Engineer. In case of JV, payment will be made to JV account and in case of Consortium, payment will be made to each member in proportion to their share in consortium.

**Issue of Interim  
Payment Certificates**

**11.5**

No amount will be certified or paid until the Employer has received, and approved, the Performance Security and the Parent Company Undertakings and Guarantees in accordance with Sub-clause 4.2 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**

**11.6**

Unless otherwise stated in Special Conditions of Contract,

- a. After preliminary scrutiny and certification by the Engineer, payment of 80% of the certified interim amount shall be made by the Employer within 07 days. The amount certified shall account for all deductions, including statutory deductions, recoveries for Advances and any amounts due from the Contractor. The balance 20% shall be paid within 28 days, from the date of the preliminary certification of the bill by the Engineer.
- b. Next 80% interim payment shall be made only after 100% payment of preceding interim payment certified has been completed.
- c. Any such payment made to Contractor by Employer, shall not constitute any acceptance of the measurements or bill of quantities by the Employer and the Employer shall have the right to alter, modify, reduce or diminish the quantities or classification entered in the measurement books or bills. The Employer shall have right to recover any excess payment made in either 80% interim payment of bill or earlier bill from balance 20% bill or subsequent bill respectively. However, if such excess payment exceeds the balance 20% bill or subsequent bill respectively, the Contractor shall on demand from the Engineer or Employer immediately refund the extra amount to the Employer within 7 days, failing which the Contractor shall have to pay interest at the rate equal to State Bank of India's Marginal Cost of fund based Lending Rate (MCLR) applicable for the tenure of 01 year prevailing on date plus 3% Penal interest per annum with monthly rest till the said extra amount is paid back by the Contractor.
- d. The Employer shall pay the amount certified in the final payment certificate within 56 days from the date of issue of 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 payment shall be made by the Employer

		accordingly.
<b>Statement at Completion</b>	<b>11.7</b>	<p>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, three copies of a statement at completion with supporting documents, showing in detail, in the form approved by the Engineer under Sub-clause 11.4.:</p> <ol style="list-style-type: none"> <li>The final value of all Work done in accordance with the Contract, up to the date stated in such Taking Over Certificate,</li> <li>Any further sums which the Contractor considers to be due, and</li> <li>An estimate of amounts which the Contractor considers will become due to him under the Contract.</li> </ol> <p>The estimated amounts shall be shown separately in such statement at completion. The Engineer shall certify payment under Sub-clause 11.5.</p>
<b>Application for Final Payment Certificate</b>	<b>11.8</b>	<p>Not later than 56 days after the issue of the Performance Certificate, the Contractor shall submit to the Engineer three copies of a draft final statement with supporting documents showing in detail, in a form approved by the Engineer:</p> <ol style="list-style-type: none"> <li>The value of all Work done in accordance with the Contract, and</li> <li>Any further sums which the Contractor considers to be due to him under the Contract or otherwise.</li> </ol> <p>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.</p> <p>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.</p>
<b>Discharge</b>	<b>11.9</b>	<p>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 Security referred to in Sub-clause 4.2 has been returned to the Contractor.</p>
<b>Issue of Final Payment Certificate</b>	<b>11.10</b>	<p>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 Sub-clause 11.8 and 11.9 respectively, stating:</p> <ol style="list-style-type: none"> <li>the amount which is finally due, and</li> <li>after giving credit to the Employer for all amounts</li> </ol>

previously paid by the Employer and for all sums to which the Employer is entitled, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-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.

Notwithstanding anything contained herein the issue of Final Payment Certificate would not restrict/hinder the right of the Employer in Law/under the Contract to recover from the Contractor in loss, damage, compensation arising out of fraudulent practice/corrupt practices indulged into by the Contractor prior to the execution of the Contract, during the execution of the Contract and after the completion of the Contract.

Notwithstanding anything contained herein, the issue of Final Payment Certificate would not absolve the Contractor from any liability/loss/damage/ compensation towards the Employer in Law and/or under the Contract arising out of latent and hidden defects in the Works executed by the Contractor under the Contract.

<b>Cessation of Employer's Liability</b>	<b>11.11</b>	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 Sub-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.
<b>Calculation of Payments in Foreign Currency</b>	<b>11.12</b>	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 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.
<b>Round off</b>	<b>11.13</b>	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.
<b>Payment By Cheque and E- Payment</b>	<b>11.14</b>	All payments to the Contractor will be made by cheque or "E-Payment" as desired by the Employer.
<b>Tax Deduction at Source</b>	<b>11.15</b>	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.
<b>Production of Vouchers</b>	<b>11.16</b>	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.

- 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.

**Withholding and Lien for Sums Claimed 11.17**

- I. The Employer shall have lien over all or any moneys that may become due and payable to the Contractor under the Contract, and/or over the deposit of Performance Security or other amount or amounts made under the Contract and which may become payable to the Contractor.
- 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 the 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.

**Signature on Receipts for Payments 11.18**

Every receipt of payment to Contractor including refund of the Performance Security 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 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.
<b>Recovery of money due to the Employer</b>	<b>11.20</b>	<p>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, Liquidated Damages) 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 or from Performance Security amount.</p> <p>When the Contractor has as per the provision of the Contract 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.</p>
	<b>12</b>	<b>Variations</b>
<b>Right to Vary</b>	<b>12.1</b>	<p>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.</p> <p>Changes to any sequence, method or timing of manufacture, construction, execution, supply, installation, testing and commissioning including Integrated Testing and Commissioning and changes to any part of the Site or access thereto will not constitute a Variation. However, during execution of work, if any variation in quantities leads to vitiation, the total amount payable to the contractor (To whom contract is awarded) shall be restricted to the amount worked out as per the offer of next lowest bidder's for actually executed quantities. Therefore before executing such variation, the "No objection for acceptability of rates" shall be obtained from the contractor. Engineer in charge shall ensure that, in case of vitiation, the payment is regulated as above.</p>
<b>Contractor's Variations</b>	<b>12.2</b>	
<b>Variation Proposals</b>	<b>12.2.1</b>	<p>The Contractor may submit to the Employer, in writing at its own cost, any engineering proposal as Contractor's Variation 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. Such Variation proposal shall not impair the essential character,</p>



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 Variation 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.

If the Engineer withdraws a variation, the contractor shall have no claim of any kind whatsoever except for that part of direct expenditure incurred prior to this withdrawn. In case the variation involves omission of part of the works, the agreement shall address the issue of reduction in the contract price. The decision of the Engineer in this regard shall be final and binding.

**Contents of Variation 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. General description of the original Contract requirements for the Works and the proposed changes
- b. Detail of all the proposed modifications to the drawings and specifications
- c. Detail of all Work and goods affected by the value engineering proposal
- d. 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 the Variation proposal shall be excluded in determining the estimated net savings in construction costs.

**Employer Review 12.2.3**

The Employer may in his sole discretion, accept or reject the Contractor's Variation 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 such Variation proposal submitted pursuant to this Clause.

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

**Amendments- Employer Issuance 12.2.4**

If the Variation proposal is acceptable to the Employer/Engineer in whole or in parts, it will be accepted by execution of an amendment or by communication in writing. Such amendment/communication in writing shall identify all the changes in the specifications, Contract Period etc. and shall specify net savings on construction costs which shall be adjusted in the Contract value by the Employer.

**Contractor's Acceptance and Payment 12.2.5**

The Contractor shall either accept or reject any proposed amendment/communication in writing executed by the Engineer pursuant to this section within 5 working days of its receipt date from the Employer. If the Contractor does not reject the same in the period stipulated above, the

**Employer's  
Variations**

**12.3**

amendments /communication in writing 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 the Contract value / price shall be adjusted by the amount of saving due to the Variation.

If the Engineer requests a proposal, prior to instructing a variation which may be for additional work or alteration in the work on deletion / reduction in the scope of work, 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 Sub-clause 4.13, and
- c. The Contractor's proposal for adjustment to the Contract Price, Time for Completion and/or modifications to the Contract.

"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 construction, manufacture or installation and changes to any part of the Site or the Works Areas 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) Dive rise to any entitlement to additional payment; or
- (iv) Affect the warranties of the Contractor set out in Clause 4.2 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.

(b) For the Variation in Design and Build Contracts:- 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 & profiles and inflation rate, so as to establish the reasonableness of the variation price.

(c) The Engineer shall determine the amount which should be added to or deducted from the fixed lump sum price as a result

of the Variation and get it approved by the Employer. 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 and the agreed rates if any of major items of work/ activities, labour, plant and machinery and where appropriate the local market rates for these items.

There shall be only deductions in the fixed lump sum price as a result of contractor's variations. The Engineer shall take prior approval of the Employer to the aforesaid valuation. Any such amount determined by the Engineer shall be denominated in the same currency as the relevant parts of the fixed lump sum price.

In case of any variation, once the rates have been finalised by the Engineer and approved by the Employer, the contractor shall be bound to carry out with the same. No claims shall be entertained by the employer in this regard.

(d) If the Engineer withdraws the request for an Employer's Variation, the Contractor shall have no claim of any kind whatsoever arising out of the amount determined above. 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.

**Variation  
Procedure**

**12.4**

The Engineer shall, as soon as practicable after receipt of proposals under sub- 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 Sub-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.

**Variation in the Bill of  
Quantities**

**12.5**

**A. This sub clause shall be applicable to all schedules of BOQ including Lump-Sum schedule for Variations.**

The quantities of items and /or Provisional Sum, shown in different Schedules of BOQ are approximate, and liable to vary during the actual execution of the work. Some items may have to be added or deleted. The Contractor shall be bound to carry out and complete the stipulated work as instructed by the Engineer, irrespective of the magnitude of variations including additions or deletion in the Bill of Quantities. Variations shall be paid as follows:

- a) At the accepted rates of the Contract for positive variation in quantities of items to the extent of 25%. In case of variation in quantities on minus side, Contract rates will be payable at the accepted rates of

the Contract for the executed quantities.

- b) In case, an increase in quantity of a particular Schedule of BOQ by more than 25% of the agreement quantity is considered unavoidable, then same shall be executed at following rates:

(i). Quantities operated in excess of 125% but up to 140% of the agreement quantity of the concerned item, shall be paid at 98% of the rate awarded for that item in that particular tender;

(ii). Quantities operated in excess of 140% but up to 150% of the agreement quantity of the concerned item shall be paid at 96% of the rate awarded for that item in that particular tender;

(iii). Quantities operated beyond 150% will be avoided and would be permitted only in exceptional unavoidable circumstances and shall be paid at 96% of the rate awarded for that item in that particular tender.

**(iv) Variation to quantities of Minor Value Item/ other items not covered in any Schedule of BOQ:**

The limit for varying quantities for minor value items shall be 100% (as against 25% prescribed in (b) above). A minor value item for this purpose is defined as an item whose original agreement value is less than 1% of the total original contract value.

(a) Quantities operated up to and including 100% of the agreement quantity of the concerned minor value item, shall be paid at the rate awarded for that item in that particular tender;

(b) Quantities operated in excess of 100% but up to 200% of the agreement quantity of the concerned minor value item, shall be paid at 98% of the rate awarded for that item in that particular tender;

(c) Variation in quantities of individual minor value item beyond 200% will be avoided and would be permitted only in exceptional unavoidable circumstances and shall be paid at 96% of the rate awarded for that item in that particular tender.

(v) In case of earth work, the aforesaid variation limit of 25% shall apply to the gross quantity of earth work and variation in the quantity of individual classifications of soil will not be subject to this limit.

(vi) In case of foundation work, no variation limit shall apply and the work shall be carried out by the Contractor on agreed rates irrespective of any variation.

**Note:** The variation limit of 25% would be applicable on group of items and not on individual items.

**B. This sub clause shall be applicable to all Schedules of BOQ including Lump-Sum Schedule for deriving rates for New Items / Extra Items/Negotiations.**

In case Engineer introduces an item for which the Contract does not contain any rates or prices applicable to the varied works, the rate of such items shall be derived, wherever possible, from rate for similar items available in the Bill of Quantities of the accepted tender/Last Accepted Rate (LAR). In such a case the rate of item shall be escalated using the price variation formula from the base month of the accepted tender/Last Accepted Rate (LAR) and the current month in which the item is actually executed. However, in case this is not possible, the rate may be decided on the following basis:

- a) Cost of Materials at current market price, as actually utilised in the final finished Permanent Works, including a reasonable percentage for wastage and transportation.
- b) Cost of enabling works if any (unless provided for separately) worked out on the above basis but with less stringent quality. Specifications minus salvage value of serviceable material released after completion of Work and cost of material released as scrap.
- c) Cost of labour actually used at the site of Work at rates under Payment of Minimum Wages Act for the area of Work for each category of worker, further enhanced by a percentage of 10% of the aforesaid rates to account for labour not directly utilised at Site and other ancillary and incidental expenses on labour.
- d) Hire charges for Plant & Machinery, scaffolding, shuttering, forms, etc., required to be used at the site of the work. The tools used by the various trades shall not be counted as Plant & Machinery for this purpose.
- e) An amount of 20% of items mentioned in B.(a), b), c) and d) above to allow for Contractor's overheads including water/electricity charges and labour cess etc., profits and corporate taxes etc. No such percentage shall be applicable to the estimated cost of Materials supplied free of cost to the Contractor.
- f) In all cases where extra items of Work are involved, for which there are no rates in the accepted Bill of Quantities, the Contractor shall give a notice to the Engineer, of at least 7 days before the need for its execution arises.

**Note: No further Price Variation shall be applicable on New items/Extra Items in case the rate of extra item is fixed as per Clause 12.5 (B) above.**

**(C) Day work**

For payment of extra items, the Engineer may decide to pay on the basis of 'Day Work' concept instead of paying as per clause no. 12.5 A (ii) above. In such a case the Engineer

may, if in his opinion it is necessary or desirable issue an instruction that any varied work or new item of work shall be executed on a day work basis. The Contractor shall be then paid for such item based on the actual expenditure made on daily basis under the terms set out in day work schedule included in the Contract and at the rates and prices affixed by him in the tender.

The Contractor shall furnish such receipts or other vouchers as may be necessary to prove the amounts paid and before ordering Materials shall submit to the Engineer the quotations for the same for his approval. The Contractor shall furnish to the Engineer or his representative, a daily list (with name, occupation and shift time) of all workmen deployed on the work, in duplicate for checking and approval. The Contractor shall submit to the Engineer a priced statement of labour, material, plant, etc., actually used on the work, together with the output of work at the end of each calendar month and / or as soon as the work is completed. The payment for the new item of work will be certified by the Engineer based on this submission of contractor.

**Payment in Applicable Currencies 12.6**

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**

**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 Sub-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 21 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 Clause 4.33

**13.2.2** In any one of these events or circumstances, the Employer may upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in case of sub-paragraph (e) or (k), the Employer may by notice of 7 days to the Contractor, terminate the Contract immediately.

**13.2.3** For the purpose of sub-para (c) above, of this clause, reasonable excuse shall be the one, which in the opinion of the Engineer has resulted from, any 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.

**13.2.4** In case of Sub-para (g), the Engineer at its sole discretion may terminate only part of the Contract also by taking out some part of the total scope of Work and may get it completed or arranged from any other entity through the process of Open/Limited/Single Tender or by calling quotations, to do so at the risk and cost of the Contractor. In such case Performance Security amount shall not be forfeited. However, if it is not possible to recover adjust the risk and cost amount from any on-account final bill of the Contractor under the Contract or any other Contract between the Employer and the Contractor, in that case, the risk and cost amount shall be recovered from the amount of Performance Security by forfeiting it to that extent..

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

**13.2.6** On termination of Contract due to Contractor's default, the Performance Security shall be forfeited by encashing the Bank Guarantee and the balance Work shall be got done independently without risk and cost of the failed Contractor. The failed Contractor shall be debarred from participating in the Tender for executing the balance Work. If the failed Contractor is a JV/Consortium or a partnership Firm, then every member/partner of such JV/Consortium or partnership Firm shall be debarred from participating in the Tender for the balance Work either in his/her individual capacity or as a partner of any other JV/Consortium or partnership Firm.

**13.2.7** The Engineer shall not make a claim under the Performance Security except for amounts to which the UPMRC is

		<p>entitled under the Contract (Not withstanding and/or without prejudice to any other provisions in the Contract Agreement) in the event of:</p> <ul style="list-style-type: none"> <li>i) Failure by the Contractor to extend the validity of the Performance Security as described herein above, in which event the Engineer may claim the full amount of the Performance Security.</li> <li>ii) Failure by the Contractor to pay UPMRC any amount due, either as agreed by the Contractor or determined under any or the Clauses/Conditions of the Agreement, within 30 days of the service of notice to this effect by Engineer.</li> <li>iii) The Contractor being determined or rescinded under provision of the GCC in which event, the Performance Security shall be forfeited in full and shall be absolutely at the disposal of the UPMRC.</li> </ul>
<b>Valuation at the date of Termination</b>	<b>13.2.8</b>	<p>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.</p>
<b>Payment after Termination</b>	<b>13.2.9</b>	<p>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 and recovered.</p> <p>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 13.2.8. If there are no such extra costs, the Employer shall pay any balance to the Contractor.</p>
<b>Non-exercise of power not to constitute waiver</b>	<b>13.2.10</b>	<p>Provided always that in case any of the powers conferred upon the Employer by Sub-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.</p>
<b>Default of Employer</b>	<b>13.3</b>	
<b>Notice by Contractor</b>	<b>13.3.1</b>	<p>In the event of the Employer:</p> <ul style="list-style-type: none"> <li>a. failing to pay the Contractor, without reasonable cause, the certified amount due under any certificate of the Engineer within 56 days after the expiry of the time stated in Sub-clause 11.6 within which payment has to be made, subject to any deduction that the Employer is entitled to make under the Contract, or</li> <li>b. becoming bankrupt or, being a Company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation,</li> </ul> <p>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</p>



		compensated as per Sub clause 13.3.4.
		The Engineer's decision on the certified amount payable on this account shall be final and binding.
<b>Contractor's Entitlement to Suspend the Work</b>	<b>13.3.2</b>	<p>The Contractor may, if the Employer fails to pay the Contractor the certified amount due under any certificate of the Engineer within 56 days after the expiry of the time stated in Sub-clause 11.6, 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 progress of Work.</p> <p>If the Contractor suspends Work or reduces the rate of progress 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:</p> <ol style="list-style-type: none"> <li>Any extension of time to which the Contractor is entitled under Sub-clause 8.4, and</li> <li>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.</li> </ol>
<b>Cessation of Work by Contractor</b>	<b>13.3.3</b>	<p>After termination under Sub-clause 13.3.1, the Contractor shall:</p> <ol style="list-style-type: none"> <li>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,</li> <li>Hand over all Construction and/or Manufacture Documents, Plant, Rolling stock, and Materials for which the Contractor has received payment,</li> <li>Hand over those parts of other Works executed by the Contractor up to the date of termination, and</li> <li>Remove all Contractor's Equipment if not required by the Employer which is on the Site and repatriate all his staff and labour from the Site.</li> </ol> <p>Any such termination shall be without prejudice to any other right of the Contractor under the Contract.</p>
<b>Payment on Termination</b>	<b>13.3.4</b>	<p>After termination under Sub-clause 13.3.1, the Employer shall return the Performance Security, if not invoked and shall pay the Contractor an amount calculated and certified in accordance with the following conditions:.</p> <ol style="list-style-type: none"> <li>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</li> <li>Value of Work completed up to date by the Contractor at rates specified in the Contract, after taking into account any deductions, retentions, setoff, damages, compensation, loss payable to Employer etc.</li> <li>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.</li> </ol> <p>The payment as above shall be the full compensation for termination under this Clause and the Contractor shall have no claim for damages or other entitlements whether under the</p>

Contract or otherwise.

- 13.3.5** In case termination/foreclosure of the Contract under whatsoever circumstances, any remaining Tools, Plants, Equipment and surplus materials of Employer with Contractor will be returned to the Employer in good condition at Employer's depot at 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. The decision of the Engineer of the amount to be recovered will be final 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, Plant, Equipment and Tools from the Contractor where such material have been supplied free of cost or on lease basis to the Contractor as stipulated in the Conditions of Contract.

#### **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 Sub-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, and
- f) 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**

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.

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:

		<ul style="list-style-type: none"> <li>a) Extension of time for any such delay, if completion is or will be delayed, under Sub-clause 8.4, and</li> <li>b) Amount of such cost,</li> </ul>
<b>Contractor's Risks</b>	<b>14.5</b>	The Contractor's risks are all risks other than the Employer's risks given in Sub-clause 14.3.
<b>Limitation of Liability</b>	<b>14.6</b>	<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. Except that this Sub-clause shall not limit the liability of the Contractor:</p> <ul style="list-style-type: none"> <li>a) Under Sub-clauses 4.18, 4.19, 5.7, 8.6, and Clauses 7.10 and 7.11</li> <li>b) Under any other provisions of the Contract which expressly impose a greater liability,</li> <li>c) In cases of fraud, wilful misconduct or illegal or unlawful acts, or</li> <li>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.</li> </ul>
	<b>15</b>	<b>Insurance</b>
<b>Professional Indemnity Insurance</b>	<b>15.1</b>	<p>The Contractor shall effect and maintain Professional Indemnity Insurance, preferably in the name of UPMRC, for the amount in Indian Rupees stipulated in Appendix 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 5 years after the date of issue of Performance Certificate. Alternatively the Contractor shall renew the insurance before the expiry of the Yearly Insurance in such a way that the entire validity period is covered.</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>
<b>Insurance for Works and Contractor's Equipment</b>	<b>15.2</b>	<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 Sub-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. However for the Works having multiple Sections / Parts in one Contract, 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 respective Part of Works. The Contractor shall extend such</p>

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 7.10, 7.11 and 10).

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 Sub-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.

**Insurance against  
injury to Persons and  
Damage to Property**      **15.3**

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 Sub-clause 15.2) or to any order given by the Engineer (except persons insured under Sub-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.

**Insurance for Workers**      **15.4**

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 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.

**General  
Requirements for  
Insurances**      **15.5**

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 Sub-clause 15.1, 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. The Contractor would obtain waiver of right of subrogation from the insurer on the aforesaid policies of insurance. Each Policy insuring against loss or damage shall provide for payments to be made in the currencies

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 Sub-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.

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.

The Employer would be entitled to deduct from the Contract price, the premium of Insurance Policies which have not been paid or the premium of the Insurance Policies which have not been taken by the Contractor, in breach of the Contract conditions.

Insurance amount shall be enhanced after receipt of payment beyond original contract value. In case of negative variation, there shall not be any depreciation on the insurance value.

- (c) The guidelines regarding compliances of insurance policies shall be as follows: -
  - (i) First Running on Account Bill and Advances such as mobilization advance, plant & machinery advance, material advance etc. shall not be released unless Contractor has taken all insurance policies in terms of clause 15 of GCC & Appendix-1 of FOT. If any, initial lapse period is observed in insurance policies submitted by the Contractor, recovery shall be made 1.5 times the premium amount worked out on pro-rata basis.
  - (iii) It shall also be ensured that premium for the insurance taken by the Contractor are regularly paid by the Contractor before releasing subsequent Running on Account Bill. If any, lapse period is observed in between the validity of insurance policies submitted by the Contractor, recovery shall be made 1.5 times the premium

amount worked out on pro-rata basis.

(iii) Final on Account Bill shall be released to the Contractor after ensuring the validity of all insurance policies up to or beyond the required validity in terms of clause 15 of GCC.

	<b>16</b>	<b>Force Majeure</b>
<b>Definition of Force Majeure</b>	<b>16.1</b>	<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"> <li>a) Act of God;</li> <li>b) War, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo;</li> <li>c) Rebellion, revolution, insurrection, or military or usurped power, or civil war;</li> <li>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;</li> <li>e) Not, commotion or disorder, unless solely restricted to employees of the Contractor or of his Sub-contractors currently or formerly engaged on the Works.</li> </ul> <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 no effect as such.</p>
<b>Effect of Force Majeure Event</b>	<b>16.2</b>	<p>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 issue of the LOA/ 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.</p>
<b>Contractor's Responsibility</b>	<b>16.3</b>	<p>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.</p>
<b>Employer's Responsibility</b>	<b>16.4</b>	<p>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.</p>
<b>Payment to Contractor</b>	<b>16.5</b>	<p>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.</p>
<b>Resumption of Work</b>	<b>16.6</b>	<p>The obligations under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.</p> <p>In case of doubt or dispute, whether a particular occurrence should be considered an "event" as defined under this Clause,</p>

**Optional Termination,  
Payment and Release**      **16.7**

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.

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 Sub-clause 16.1, either Party may give to the other party a notice of termination of the Contract which shall take effect in 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 Sub-clause 16.7, if the Contract had been terminated under that Sub-clause.

**17**

**Claims, and Dispute Resolution**

**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 written notice to the Engineer describing the event or circumstances giving rise to the claim as soon as possible, but no later than 30 days of the start of the event. The Contractor shall also submit any other notices as required by the Contract, and supporting particulars relevant to the claim.

The Contractor shall keep such contemporary records necessary to substantiate any claim, either on the Site or at any other location acceptable to the Engineer. Upon receipt of notice, the Engineer shall, without admitting the liability to the Employer may, inspect such records, monitor the record-keeping and/or 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 30 days of initial notice, or any other time agreed by the Engineer, the Contractor shall submit to the Engineer a fully detailed claim including all supporting particulars and additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- a) The initial detailed claim shall be considered as interim;
- b) The Contractor shall submit further interim claims at monthly intervals, showing the accumulated claim amount, and additional particulars requested by the Engineer and
- c) The Contractor shall submit a final claim within 30 days after the conclusion of the event effects or such other period as may be proposed by the Contractor and agreed by the Engineer.



		<p>Failure by the Contractor to comply with these provisions shall result in forfeiture of the right to claim additional payment.</p> <p>Within 60 days after receiving a claim or any supplementary particulars supporting the claim, or such other period as may be proposed by the Engineer and accepted by the contractor, the Engineer shall respond with approval, disapproval with detailed comments, or may request further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.</p> <p>Within the above defined period of 60 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub- Clause 8.4 (Extension of Time for Completion), and/or (ii) the additional payment (if any) to which contractor is entitled under the contract.</p> <p>If the Engineer does not respond within the timeframe defined in the clause, The contractor may consider that the claim is rejected by the Engineer and The Contractor may give "Notice of Dispute" in accordance with sub-Clause 17.4 and seek to initiate adjudication for dispute resolution.</p>
<b>Payment for Claims</b>	<b>17.2</b>	<p>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.</p>
<b>Dispute Resolution Process</b>	<b>17.3</b>	<p>All disputes and differences between the parties, as to the construction or operation of the contract, or the respective rights and liabilities of the parties on any matter in question; dispute or difference or any other account whatsoever, but excluding the Excepted Matters (detailed below); arising out of or in connection with the contract, whether before or after the completion/ termination of the contract, that cannot be resolved amicably between the Employer and the Contractor within the time frame as stipulated above from aggrieved Party notifying the other Party of such matters, shall be hereinafter called the "Dispute".</p> <p>The Dispute shall be attempted to be resolved without recourse to courts through dispute resolution mechanisms detailed subsequently, in the sequence as mentioned below, and the next mechanism shall not be invoked unless the earlier mechanism has been invoked or has failed to resolve it within the deadline mentioned therein.</p> <p>a) Adjudication</p> <p>b) Mediation</p>
<b>Notice of Dispute</b>	<b>17.4</b>	<p>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 30 days after the date of issue of Performance Certificate by the Engineer.</p>
<b>Excepted Matters</b>	<b>17.5</b>	<p>Matters for which provision has been made in any clause of the contract shall be deemed as 'excepted matters' (matters not disputable/ arbitral), and decisions of the Employer, thereon shall be final and binding on the contractor. The 'excepted matters' shall stand expressly excluded from the purview of the Dispute Resolution Mechanism, including Arbitration. However, where the Employer has raised the dispute, this sub-clause</p>

shall not apply. Unless otherwise stipulated in the contract, excepted matters shall include but not limited to:

- (a) any controversies or claims brought by a third party for bodily injury, death, property damage or any indirect or consequential loss arising out of or in any way related to the performance of this Contract ("Third Party Claim"), including, but not limited to, a Party's right to seek contribution or indemnity from the other Party in respect of a Third-Party Claim.
- (b) Issues related to the pre-award tender process or conditions.
- (c) Issues related to ambiguity in contract terms shall not be taken up after a contract has been signed. All such issues should be highlighted before the signing of the contract by the contractor.
- (d) Issues related to contractual action/ termination of contract etc., by the Employer on account of fraud, corruption, debarment of contractors, criminal or wilful negligence of the contractor etc.
- (e) Issues that are already under investigation by CBI, Vigilance, or any other investigating agency or government.
- (f) Provisions incorporated in the contract, which are beyond the purview of the employer or are in pursuance of policies of Government, including but not limited to:
  - (i) Provisions of restrictions regarding local content and Purchase Preference to Local suppliers in terms of Make in India policy of the Government.
  - (ii) Provisions regarding restrictions on Entities from Countries having land-borders with India in terms of the Government's policies in this regard.
  - (iii) Purchase preference policies regarding MSEs and Start-ups.

## Adjudication

### 17.6

1. After exhausting efforts to resolve the Dispute with the employer, the contractor shall give a 'Notice of Adjudication' within 30 days of exhausting efforts to resolve the issues amicably specifying the matters which are in question, or subject of the dispute or difference indicating the relevant contractual clause, as also the amount of claim item-wise to the Employer ie MD UPMRC or his authorised representative (hereinafter called the Adjudicator) for invoking resolution of the dispute through Adjudication.
2. Where necessary, e.g. matters of high value, Employer may proceed with adjudication by a high-level committee as per clause 17.8 below.
3. During his adjudication, the Adjudicator shall give the Contractor an adequate opportunity to present his case. Within 60 days after receiving the representation, the Adjudicator shall make and notify decisions in writing on all matters referred to him. The parties shall not initiate, during the adjudication proceedings, any mediation or judicial proceedings in respect of a dispute that is the subject matter of the adjudication proceedings.
4. If not satisfied by the decision in adjudication, or if the Adjudicator fails to notify his decision within the abovementioned time-frame, the contractor may proceed to

invoke the process of Mediation as follows.

<b>Mediation</b>	<b>17.7</b>	
<b>Notice for Mediation</b>	<b>17.7.1</b>	<p>Any party may invoke Mediation by submitting “Notice of Mediation” to the other party within 30 days of the decision of the Adjudicator. The Mediation shall be conducted as per The Mediation Act 2023.</p> <p>Mediation proceedings shall be initiated within 30 days of Contractor giving the Notice of Dispute seeking initiation of Mediation. Mediation shall commence when Engineer accepts the contractor’s request of Mediation in writing. If the contractor does not receive a reply within 30 days from the date on which it sends the Notice of Dispute seeking Mediation, it may elect to treat this as a rejection by the Engineer to mediate and inform the Engineer accordingly.</p>
<b>Constitution of High-Level Committee (HLC)/Mediation Forum</b>	<b>17.7.2</b>	<p>The Mediation shall be undertaken by:</p> <p>(a) A Single External Mediator for small value disputes of up to Rs. 1.00 Crores.</p> <p>(b) High Level Committee (HLC) /Mediation Forum maintained by UPMRC consisting of three Mediators, in case of large value disputes having financial implication of more than Rs. 1.00 crores.</p>
<b>Qualification of Mediator</b>	<b>17.7.3</b>	<p>High Level Committee (HLC) /Mediation Forum will be consisting of independent and impartial members from a Panel/Form whose members will be:</p> <p>(i) Retired Govt. or Retired UPMRC/Metro officials (Technical/Finance expert)</p> <p>(ii).Not less than 55 years and not more than 75 years of age on date of appointment.</p> <p>(iii). In case of retired government officials, should have retired from working level-14 (SAG/HOD or higher) as per 7th CPC or equivalent with minimum 5 years’ experience in level-14, having experience in Contract Management/Arbitration/ Mediation handling of Construction Contracts.</p> <p>(iv). In case of retired PSU/UPMRC/Metro Officials, should have retired from working level not below E-8 grade in a UPMRC/Metro with minimum 5 years’ experience in E-8 grade having experience in Contract Management of Construction Contracts.</p>
<b>Procedure for Appointment of Mediator</b>	<b>17.8</b>	
	<b>17.8.1</b>	<p>UPMRC shall offer the choice of Two High Level Committee (HLC) /Mediation Forum/ (a Mediation forum may consist of 3 Mediators or single Mediator) to the Contractor within 30 days from receipt of request for Mediation to choose one High Level Committee (HLC) /Mediation Forum. Both UPMRC and other party should represent before High Level Committee (HLC) through their senior management and not through any hired legal professional.</p>
	<b>17.8.2</b>	<p>Mediation proceedings are to be completed:</p> <p>a) In case of Sole Mediator - within a period of not more than 03 (three) months commencing from the date of reference to the Sole Mediator, and.</p> <p>b) In case of High Level Committee (HLC) /Mediation Forum - within a period of not more than 06 (six) months commencing</p>

		from the date of reference to the High Level Committee (HLC) /Mediation Forum.
		The said periods may be extended for a further period of 30 days for reasons to be recorded in writing.
	<b>17.8.3</b>	In case of long-duration works contracts, where a renegotiation of the terms may best serve public interest due to unforeseen major events, in such circumstances, the terms of the tentative re-negotiated contract may be placed before a suitably constituted High-Level Committee/Mediation Forum before approval by the competent authority.
	<b>17.8.4</b>	Approval of the head of the procuring entity is required to be obtained for the final accepted solution.
	<b>17.8.5</b>	After a mediator is appointed, they must disclose any conflict of interest. Either party can seek a replacement of the Mediator after such disclosure.
<b>Venue of Mediation</b>	<b>17.9</b>	Mediation proceedings shall be held at Lucknow, Uttar Pradesh, India and the language of the mediation proceedings and that of all documents and communications between the Parties shall be in English.
<b>Mediation Process</b>	<b>17.10</b>	
<b>Confidentiality:</b>	<b>17.10.1</b>	All the acknowledgements, opinions, suggestions, promises, proposals, apologies, and admissions made during the mediation; acceptance/ willingness to accept proposals in the mediation; documents prepared solely for the conduct of mediation are strictly confidential. These can neither be relied upon as evidence in any subsequent court proceedings nor be asked to be disclosed by any court/ tribunal. No audio or video recording of the mediation proceedings shall be made or maintained by the parties or the participants, including the mediator and mediation service provider, whether conducted in person or online, to ensure the confidentiality of the mediation proceedings.
<b>Online Mediation</b>	<b>17.10.2</b>	The Act allows parties to opt for online/ virtual Mediation, which shall be deemed to occur within the jurisdiction of a competent court. The Act also requires online mediation communication mechanisms to ensure confidentiality.
<b>Mediation Proceedings</b>	<b>17.10.3</b>	The mediator initially meets the parties separately and communicates the view of each party to the other to the extent agreed upon by them. He assists them in identifying issues, advancing better understanding, clarifying priorities, and exploring areas of the parties' responsibility, identifying common interests, and encouraging compromise. He then meets them jointly to encourage a mutually acceptable resolution. At any stage of the mediation proceedings, at the parties' request, the mediator may suggest a dispute settlement in writing.
<b>Termination of Mediation Proceedings</b>	<b>17.10.4</b>	The process must be completed within 120 days, though parties can extend it by another 60 days through mutual consent. If Mediation is not completed within this timeline, the Mediator shall prepare a non-settlement report without disclosing the cause of non-settlement or any other matter or thing referring to their conduct during mediation for the parties. Mediation shall also stand terminated on a declaration of the mediator, after consultation with the parties or otherwise, that further efforts at mediation are no longer justified or on communication by a party(ies) in writing, addressed to the

		mediator and the other parties that they wish to opt out of mediation. On termination of Mediation, if the dispute is still alive, the aggrieved party shall be free to invoke Judicial process.
<b>Mediated Settled Agreement (MSA)</b>	<b>17.10.5</b>	If the Parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement duly authenticated by the Mediator for the parties. When the Parties sign the MSA, it shall be final and binding on the Parties and persons claiming under them respectively. The settlement agreement arrived at shall be signed only after obtaining the prior written consent of the competent authority i.e. MD/UPMRC.
<b>Cost of Mediation</b>	<b>17.10.6</b>	The parties shall equally bear all costs of mediation, including the fees of the mediator.
<b>Challenge to MSA/ Execution of MSA</b>	<b>17.10.7</b>	MSA can be challenged within 90 days on limited grounds of (a) fraud, (b) corruption, (c) impersonation, and (d) subject matter being unfit for Mediation.  If there is no challenge or a challenge is unsuccessful, the Act ensures that the MSA is binding and enforceable, akin to a judgment or decree. This means that if one party fails to comply with the MSA, the non-defaulting party has a right to enforce it through the Court.
<b>No Claim of Interest</b>	<b>17.10.8</b>	No claim of Interest during Mediation proceedings: Parties shall not claim any interest on claims/counter-claims from the date of notice invoking Mediation till the execution of the settlement agreement if so arrived. If parties cannot resolve the dispute, either party shall claim no interest from the date of notice invoking Mediation until the date of Termination of Mediation Proceedings.
<b>No legal action during Mediation</b>	<b>17.11</b>	The parties shall not initiate, during the mediation proceedings, any judicial proceedings in respect of a dispute that is the subject matter of the mediation proceedings.
	<b>17.12</b>	If the Contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Employer/Engineer that the final bill is ready for signature of the Contractor(s), he/they will be deemed to have waived his/their claim(s) and the Employer shall be discharged and released of all liabilities under the Contract in respect of these claims.
<b>Jurisdiction of Courts</b>	<b>17.13</b>	Where recourse to a Court is to be made in respect of any matter, dispute, issue arising out of or under the Contract or connected with the Contract the Appropriate court at Lucknow shall have the exclusive jurisdiction to try all disputes issues, dispute arising out of or under the Contract or connected with the Contract between the Parties.
<b>Suspension of Work on Account of Adjudication/ Mediation</b>	<b>17.14</b>	The reference to Adjudication/Mediation 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 dispute resolution process 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 Mediation and payments to the Contractor shall continue to be made in terms of the Contract.
	<b>18</b>	<b>Service of Notices</b>
<b>Notice to Contractor</b>	<b>18.1</b>	a) All notices to the Contractor, shall be served by post or

telex or telefax or e-mail 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.

<b>Notice to Employer and Engineer</b>	<b>18.2</b>	All notices to the Employer or Engineer shall be served by post or telex or telefax, or by e-mail or by delivering by hand to the address nominated for the purpose.
<b>Change of Address</b>	<b>18.3</b>	Parties to the Contract may change their address by Employer with a notice to all concerned.

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

## **TENDER DOCUMENTS**

### **VOLUME 2**

#### **SPECIAL CONDITIONS OF CONTRACT (SCC)**

#### **AND**

#### **ADDITIONAL SPECIAL CONDITIONS OF CONTRACT (SCC) FOR E&M WORKS**

### **Table of Contents**

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

<b>SCC Clause No.</b>	<b>Reference to GCC Clause No.</b>	<b>Description</b>	<b>Page No.</b>
1.	1	Preamble	95
2.	4.2.4	Guarantees, Warranties and Undertakings	95
3.	4.5	Sub-contractors	95
4.	4.13	Programmes	96
5.	5.3	Construction and/or Manufacture Documents	99
6.	10.1	Defect Liability period	101
7.	11.1.3	Adjust in Contract Price	102
		<b>Additional Special Condition for E&amp;M Works</b>	109
1.	11.2.1	Mobilisation Advance	109
2.	11.2.2	Advance against Plant and Machinery (For E&M Part)	109
3.	Additional clause	Retention Money (For E&M works)	109
4.	Additional clause	Manufacture, Construction, Execution, Supply, Installation, Testing and Commissioning	110
5.	Additional clause	Operation and Maintenance	110
6.	Additional clause	Spares	111
7.	Additional clause	Deployment of Personnel by the Employer	112
8.	Additional clause	Stage Payment	112
9.	Additional clause	Part Termination	113
10.	Additional clause	Operation and Maintenance Manuals	113
	Schedule 1	Contractor's Warranty	114
	Schedule 2	Parent Company Undertaking	117
	Schedule 3	Parent Company Guarantee	120
	Schedule 4	Sub-Contractor's/Vendor's Warranty	123
	Schedule 5	Indenture for Stage Payment	126
	Schedule 6	Guarantee for Safe Custody	128



### **Special Conditions of Contract (SCC)**

#### **1. Preamble**

SCC is to be read in conjunction with GCC. Entire clause of GCC is not replaced unless specifically mentioned in SCC against the relevant Clause. In case of any ambiguity in between GCC and SCC, Clauses mentioned in SCC shall supersede with GCC.

#### **2. Clause 4.2.4**

##### **Guarantees, Warranties and Undertakings**

*Following is added in the GCC Clause 4.2.4:*

The forms of Parent Company Undertaking, Parent Company Guarantee, Contractor's Warranty, Sub-Contractor's Warranty, Advance Payment Guarantee, Indemnity Bond and Safe Custody Guarantee shall be in the formats given in the Schedules 1, 2, 3, 4, 5, and 6 respectively to these Special Conditions of Contract. All these Guarantees and Undertakings should be submitted before signing of the contract agreement except Sub Contractor's Warranty, Advance Payment Bank Guarantee, Indemnity Bond and Safe Custody Bank Guarantee which will be required as per contract conditions.

The amount of safe custody Bank Guarantee shall be equal to 95% percent of the amount due as per the relevant clause of (BOQ) wherever applicable. The value of the Safe Custody Bank Guarantee would be adjusted for the equipment already commissioned.

#### **3. Clause 4.5**

##### **Sub-Contractors**

*Following is added to Clause 4.5.1 of GCC:*

The sub-contracting, excluding design work shall be limited to 50% of the Contract Value. The value of a sub-contract, other than for Design work should be intimated by the Contractor to the Engineer and it should also be certified that the cumulative value of the sub-contracts awarded so far is within the aforesaid limit of 50%. The above limit of 50% shall not apply to the engagement of Vendor /manufacturer for supply of material.

For all major sub-contracts for supply / works, a copy of the contract between the Contractor and Sub-Contractor shall be given to the Engineer within 15 days of signing and in any case 7 days before the Sub Contractor starts the Work and thereafter the Contractor shall not carry any modification without the consent in writing of the Engineer. The terms and conditions of sub-contracts and the payments that have to be made to the sub-contractors shall be the sole responsibility of the Contractor. Payments to be made to such sub-contractors will be deemed to have been included in the Contract price. However, for major sub-contracts (each costing over Rs Five million), it will be obligatory on the part of the Contractor to obtain consent of the Employer. The Employer will give his consent after assessing and satisfying himself of the capability, experience and equipment resources of the sub-contractor. In case the Employer intends to withhold his consent, he should inform the

Contractor within 15 days to enable him to make alternative arrangements to fulfil his programme.

The Contractor shall provide sufficient superintendence, whether on the site or elsewhere, to ensure that the work to be carried out by a sub-contractor complies with the requirements of the Contract.

In the case of sub-contracts for electrical and mechanical works, which the Contractor intends to procure on the basis of outline design, design briefs and performance specification, the Contractor shall, prior to inviting tenders from sub-contractors, submit such documents to the Engineer for review. The proposed sub-contractor should have satisfactorily completed one similar work at least amounting to 80% of BOQ values or two similar work amounting to 50% of BOQ values each or three similar work amounting to 40% of BOQ values each in last seven year ending previous month of submission end date of tender. Similar Work shall mean the work having similar scope of work which is to be sub-contracted.

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

Notwithstanding any consent to sub-contract given by the Engineer, if in his opinion it is considered necessary, the Engineer shall have full authority to order the removal of any sub-contractor from the Site or off-Site place of manufacture or storage.

#### **4. Clauses 4.13**

#### **Programmes**

*Clause 4.13 of GCC is replaced as under:*

The Contractor shall prepare and submit his detailed Programme of Work along with details of resources including but not limited to manpower, materials/ consumables and machinery so as to achieve key dates of various activities, The Contractor shall complete the work in a phased manner fixing priorities to the different stretches of the work to give access to other interfacing contracts as per the requirement of project from time to time

The Engineer on receipt of a programme shall inform the Contractor in writing within 21 days after receipt of the above information;

- (a) that the programme has received his consent; or
- (b) that the programme is rejected, in which case reasons for such rejection shall be given; or

- (c) that further information is required to clarify or substantiate the programme or to satisfy the Engineer as to its reasonableness, or
- (d) that the programme has received his consent subject to incorporation of comments attached to the Notice of No Objection.

Provided that if none of the above actions is taken within the 30-day period, the Engineer shall be deemed to have given consent to the programme submitted.

The Contractor shall, within 21 days of receiving notification under sub-paragraphs (c) or (d) above, provide further information requested or the programme shall be deemed to have been rejected. The Engineer shall, within 21 days of receipt of such further information, either reject the programme or give his consent.

In the event of a programme being rejected, or deemed to have been rejected, the Contractor shall, within 21 days thereafter, submit a revised programme taking account of the reasons given for the rejection or incorporating further information requested by the Engineer, as the case may be.

The Contractor, following receipt of consent to the Works Programme, may at any time, submit to the Engineer an amended version. In the event that the Engineer grants an extension of time, instructs an Employer's Variation, or on the occurrence of any event or happening or situation, which could materially affect the progress of the Works, the Contractor shall submit a revised programme to the Engineer for his consent.

If the Engineer feels that there is a significant deviation between the actual or anticipated progress of the Works and the Works programme, the Engineer may require the Contractor to submit a revised/modified programme to ensure timely completion of Whole of Works or a Key Date or a milestone. The Contractor shall submit such revised programme within 14 days of the Employer's Representative's instruction or within such other time as the Employer's Representative will allow in writing.

Unless and until an amended version has the consent of the Engineer, the existing programme shall remain as the Works Programme for all purposes of the Contract.

Consent by the Engineer to a Works Programme shall not relieve the Contractor of any of his duties or responsibilities under the Contract, nor in the event that a Works Programme indicates that a Key Date has not or will not be met, constitute any form of acknowledgement that the Contractor is or may be entitled to an extension of time in relation to such Key Date or a Mile Stone.

#### **Design Submission Programme**

The Contractor shall submit to the Engineer, the Design

Submission Programme and updated versions thereof in the form and content and at the times prescribed in the Contract, including the dates on which major decisions should be made.

In the second and subsequent submissions of the Design Submission Programme, the Contractor shall not, without the prior written consent of the Engineer:

- (a) revise the description or content of any design package identified in the initial version of Design Submission Programme;
- (b) reduce the periods provided for review by the Engineer of any submission of Design Data as set out in the initial version of the Design Submission Programme;
- (c) revise the sequence of submissions of Design Data shown in the initial version of the Design Submission Programme.

Any amendment of the Design Submission Programme in breach of the above requirements shall have no effect whatsoever under the Contract.

#### **Manufacture, Installation and Construction Methods**

The Contractor shall submit complete documents and information pertaining to the methods of manufacture and installation where ever applicable and method of construction which the Contractor proposes to adopt or use, (and if applicable such calculations of stresses, strains and deflections and the like that will or may arise in the Works or to the other works comprising the Project or any parts thereof during installation from the use of such methods). The Engineer will then check to see whether, if such methods are adhered to, the Works can be executed in accordance with the Contract and without detriment to the Works (when completed) and to other works comprising the Project and, in a manner, which minimises disruption to road and pedestrian traffic.

The Engineer shall inform the Contractor in writing within 21 days after receipt of the above information;

- (a) that the Contractor's proposed methods of manufacture, installation and construction have the consent of the Engineer; or
- (b) in what respects, in the opinion of the Engineer the Contractor's proposed methods of manufacture, installation and construction:
  - (i) fail to comply with the Employer's Requirements and/or the Definitive Design and/or the Final Design;
  - (ii) would be detrimental to the Works and/or to the other works comprising the Project;
  - (iii) do not comply with the other requirements of the Contract; or

- (c) as to the further documents or information which are required to enable the Engineer to properly assess the proposed methods of manufacture, installation and construction.

In the event that the Engineer does not give his consent, the Contractor shall take such steps or make such changes in the said methods or supply such further documents or information as may be necessary to meet the Engineer's requirements and to obtain his consent. The Contractor shall not change the methods of manufacture, installation and construction which have received the Engineer's consent without further review and consent in writing of the Engineer.

Notwithstanding the foregoing provisions of this Clause, or that certain of the Contractor's proposed methods of manufacture, installation and construction may be the subject of the consent of the Engineer, the Contractor shall not be relieved of any liability or obligation under the Contract.

The Works Programme shall be submitted within the period stipulated in the Employer's Requirements. Programme and any other document submitted along with the Tender shall not in any event be construed as a submission of the Programme under Employer's Requirements.

## **5. Clause 5.4**

### **Construction and/or Manufacture Documents**

Following is added to Clause 5.4 of GCC: -

The Contractor shall submit drawings and documents, as required by the Contract, to the Engineer in accordance with any submittal schedule agreed with the Engineer. This submittal shall be made sufficiently before the Works are to be carried out to give the Engineer/Employer reasonable time to examine the drawings or other documents, to prepare comments and for any changes to be accommodated by the Contractor.

Where the consent of the Engineer is required, the Engineer shall notify the Contractor in writing of his decision either within such period as may expressly be stipulated in the Contract or otherwise within a reasonable time.

If the Engineer has reasonable cause for being dissatisfied with the proposals set out in the Contractor's drawings or documents, the Engineer shall, within a period of 28 days from the date of submittal, require the Contractor in writing to make such amendments thereto as the Engineer may consider necessary. The Contractor shall make and be bound by such amendments at no additional expense to the Employer and shall resubmit the amended drawings or documents for Engineer's consent.

Within 14 days of notification of the Engineer's consent the Contractor shall provide the Engineer with the type and number of sets of the relevant drawings or documents as stipulated in the Employer's Requirement.

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..

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.

Prior to commencement of the Tests on completion, the Contractor shall prepare, and submit to the Employers' Representative, As Built Drawings of the system and interactive Operation & Maintenance Manuals in soft copy and hard copy with Four (4) sets of each as 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 for the purposes of Completion until such Operation and Maintenance Manuals have been submitted to the Employer's Representative and received his consent

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 Employer's Representative.

### **Submission of Design Data**

In the case of submissions subsequent to the Definitive Design, the Design Data shall be in accordance with Employer's Requirements and the Definitive Design.

The Contractor shall submit to the Engineer all Design Data, together with the relevant Design Certificates certified by the Contractor, on or before the respective dates for submission shown on the Design Submission Programme or, as the case may be, the Works Programme. In the event that a re-submission of Design Data is required, such re-submission shall be made as soon as practicable after the receipt of the relevant statement of objections. All submissions of Design Data shall include the copies as stipulated in the Employer's Requirements.

Following receipt of a submission of Design Data the Engineer shall, within 28 days, return one copy of the Design Data to the Contractor, together with either a Notice of No Objection, or a statement of objections which shall identify the aspects of the

Design Data which do not conform to the above requirements. If the Engineer returns any Design Data with a Notice of No Objection, the Contractor shall proceed with the Works in accordance with the Contract.

If the Engineer provides that revisions to a submission of Design Data are appropriate but that such revisions are of minor design significance, the Engineer may issue a Notice of No Objection subject to an appended schedule of comments identifying the relevant revisions. The Contractor shall revise such Design Data in accordance with such comments but shall not be obliged to re-submit such Design Data solely on account of such revisions.

If the Engineer returns any Design Data with a statement of objections the Contractor shall revise the Design Data to take account of the stated objections and re-submit such Design Data to the Engineer, together with new Design Certificates signed by the Designer and the Contractor.

The issue of a Notice of No Objection in relation to any submission of Design Data shall be entirely without prejudice to the review of subsequent submissions of Design Data or to any subsequent request for a Contractor's Variation, and shall not bind or fetter the Engineer in any manner whatsoever when deciding whether or not to raise objections in relation to any subsequent submission of Design Data or when dealing with a subsequent request for a Contractor's Variation.

Neither an objection raised to the Design Data nor revisions of minor design significance under this Clause will, under any circumstances, constitute an Employer's Variation.

## **6. Clause 10.1**

### **Defect liability period**

Following is added to Clause 10.1 of GCC:-

The Defect liability period (DLP) shall be **104 week for Lift & Escalator works**. If Taking over Certificate is issued in parts, the defect liability period for different parts of works shall start from the date mentioned in the taking Over Certificate for that part of work.

During the Defects Liability Period the Contractor shall provide, free of cost, competent and skilled personnel and maintain adequate stock of spares so as to promptly fulfil his obligations during the Defects Liability Period as stated above and Employer's Requirements. A penalty of Rs.10000/- per day in DLP period will be imposed if major equipment (as defined in the contract documents) or any complete system is not working for more than 24 Hrs.

### **Maintenance during Defects Liability Period**

Contractor shall establish an office for the purpose with communication facility so as to facilitate communication for reporting failures and liaison with maintenance staff manning the stations round the clock. The supervisor in-charge should be

provided with mobile communication facility to ensure his presence at the site immediately after reporting. Contractor shall ensure restoration /rectification/replacement, within reasonable time, to the satisfaction of Engineer. The Engineer in case of the delay as deems fit shall be empowered to carry out the maintenance at the risk and cost of the Contractor.

· **Routine Maintenance**

Submit Monthly status report to the Engineer –in – Charge.

· **Repairs**

All equipment that requires repairing shall be immediately serviced and repaired.

· **Complaints**

The Contractor shall receive calls for any and all problems experienced in the operation of the systems, attend to these within 120 minutes of receiving the complaints and shall take steps to immediately correct any deficiencies that may exist.

· **Maintenance Log Book.**

The Contractor shall maintain a Maintenance Log Book at each Station, the format for which shall be approved by Engineer – in – charge. In the Maintenance Log book the details about date of Routine Maintenance, Routine Maintenance activities performed, Details of Call – out visit / Break – down maintenance, etc. shall be maintained. Copy of relevant pages of the Logbook to be submitted to the Engineer – in – charge with the Monthly status report.

· **Failure Analysis Report.**

The Contractor shall submit a report for the Failure Analysis in the format approved by the "Engineer" giving the details of the type of fault, cause of fault, analysis of faulty component, etc correlated with the details of last preventive maintenance activity performed

**Work by persons other than 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 defect liability period 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.



## 7. Clause 11.1.3 Adjust in Contract Price

GCC Clause 11.1.3 is replaced as under: -

*Following provisions for adjustment in Contract Price due to inflation shall be applicable for this contract: -*

### (i) Adjustment in contract price on account of inflation for Civil works shall be as under: -

- (a) The rates as per the accepted Bill of Quantities shall be applicable till the completion of the Work and will be varied only to the extent of permissible price variation under this Clause. However, this adjustment shall be to the extent that full compensation for any rise or fall in costs to the Contractor if not covered by the Price variation formula, the rates in the accepted Bill of Quantities shall be deemed to include amounts to cover the contingency of such rise or fall in costs.

The price variation will be payable only on the Indian currency component (no adjustment for Foreign currency component) of the Contract Price as per the follow price variation formula.

Payment as per the contract shall be subject to adjustment in accordance with the following Price Variation formula, and other terms given herein, to provide for variation in the market rates of inputs like labour, materials and fuel / energy during the currency of the Contract:

$$V = VI + Vs + Vc + Vf + Vm$$

Where,

V = Total adjustment on account of all factors

VI= Adjustment on account of labour component

$$= p \times R \times (I - I_0) / I_0$$

Vs = Adjustment on account of Steel component

$$= q \times R \times (W_s - W_{s0}) / W_{s0}$$

Vc = Adjustment on account of Cement component

$$= r \times R \times (W_c - W_{c0}) / W_{c0}$$

Vf = Adjustment on account of Fuel/Lubricant component

$$= s \times R \times (W_f - W_{f0}) / W_{f0}$$

Vm = Adjustment on account of Machinery and Equipment

$$= t \times R \times (W_m - W_{m0}) / W_{m0}$$

p = Cost Coefficient of Labour to the Total Cost

$$= 0.22$$

q = Cost Coefficient of Steel to the Total Cost

$$= 0.25$$

R = Cost Coefficient of Cement to the Total Cost

$$= 0.15$$

s = Cost Coefficient of Fuel and Lubricant to the Total Cost

$$= 0.05$$

t = Cost Coefficient of other Machinery and Equipment to the Total Cost

$$= 0.18$$

**Note** :  $p + q + r + s + t = 0.85$ , balance 0.15 shall be fixed component

R = Gross value of the work done by the Contractor for the period of work under consideration, after excluding there from the cost of any materials supplied free or at fixed rate to the Contractor.

Io = Consumer Price Index for Industrial workers, published in the Labour Bureau Indices (Ministry of labour & employment) Bulletin, as applicable to work site area for the month in which the tender was opened.

I = Average of monthly Consumer Price Index for Industrial workers published in the Labour Bureau Indices (Ministry of labour & employment) Bulletins as applicable to work site area for the period of work under consideration.

Wso = All India Price Index (with base Oct'12 = 100) for Reinforcement bars (TMT-500) for primary manufacturers, issued by Central Public Works Department (CPWD) for the month in which the tender was opened.

Ws = All India Price Index (with base Oct'12 = 100) for Reinforcement bars (TMT-500) for primary manufacturers, issued by Central Public Works Department (CPWD) for the period of work under consideration.

Wco = All India Price Index (with base Oct'12 = 100) for Cement (OPC) issued by Central Public Works Department (CPWD) for the month in which the tender was opened.

Wc = All India Price Index (with base Oct'12 = 100) for Cement (OPC) issued by Central Public Works Department (CPWD) for the period of work under consideration.

Wfo = Whole Sale Price Index (Averages) for Fuel & Power, as published in the Labour Bureau Indices (Ministry of labour & employment) Bulletin for the month in which the tender was opened.

**Wf = Wholesale Price Index (Averages) for Fuel & Power, as published in the Labour Bureau Indices (Ministry of labour & employment) Bulletins for the period of work under consideration.**

**Wmo = Whole Sale Price Index (Averages) for Machinery and Equipment as published in the Labour Bureau Indices (Ministry of labour & employment) Bulletin, for the month in which the tender was opened.**

**Wm = Wholesale Price Index (Averages) Machinery and Equipment as published in the Labour Bureau Indices (Ministry of labour & employment) Bulletins for the period of work under consideration.**

**Period of Work under consideration will mean as under:**

- i) In the case of first "On-account Bill" the period from the month of tender submission to the month of measurement of the first bill.
- ii) In the case of second and subsequent "On-account" and Final bills, the Period from the month of measurement for previous bill to the month of measurement of that bill.

**Note :** 1) Responsibility of arranging the Labour Bureau Indices (Ministry of labour & employment) Bulletins and price index issued by CPWD desired by the Employer or the Engineer shall rest with the Contractor.

- 2) If at any date during the execution of Contract, Labour Bureau Indices (Ministry of labour & employment) or CPWD has modified its base year of the Indices then the Price adjustment from that date shall be adjusted based on the revised indices.
- 3) If for some reason at any latter date during the execution of Contract, Labour Bureau Indices (Ministry of labour & employment) or CPWD has modified the methodology, then the adjustment shall be made based on mutually agreement between the parties.

**Procedure in case of Delay in Availability of Final Indices**

Where the final Price Indices are not available in the Labour Bureau Indices (Ministry of labour & employment) Bulletins or by CPWD while making payment towards on-account bills, payment towards Price Variation will be made on provisional basis based on the indices available, to be adjusted in subsequent bills as and when the final Indices figures become available.

**b) Adjustment on Account of Price adjustment**

Adjustment on account of Price Variations may be positive (in which case extra amount shall be paid to the Contractor), or negative (in which case the amount of Price Variation shall be

recovered from the Contractor). Adjustment on account of Price Variation shall be calculated separately, for each period, between two successive dates of measurements for bills and paid along with each bill or separately as claimed by the contractor.

The price adjustment shall be applicable only beyond 2 percentage of variation of the contract price i.e. where the resultant increase is lower than two per cent of the contract price, no price adjustment will be made in favour of the contractor. However, in case the resultant increase is more than 2 percent of the contract price, then full price adjustment shall be payable.

Where advances and stage payments are made after consideration of inflation, no price variations will be admissible on such portions of the price, after the dates of such payment.

Where deliveries are accepted beyond the scheduled delivery date subject to levy of liquidated damages as provided in the contract, the LD (if a percentage of the price) will be applicable on the price as varied by the operation of the PVC.

The de-escalation bill on account of negative price variation shall be submitted by the Contractor along with normal RA bills. In case of delay in submission of de-escalation bill by Contractor leading to delay in making recovery, interest rate of State Bank of India's Marginal Cost Based Fund Lending Rate (MCLR) applicable for tenure of 01- year prevailing on the date of recovery plus 3% penal interest per annum shall be charged. The interest will be charged from the date of submission of normal RA bill of the month plus one month or date of payment of normal RA bill whichever is earlier.

(c) The price adjustment shall be generally limited to 25 per cent of contract value (including variations in BOQ). However, higher percentage may be considered on case to case basis.

**(d) Price adjustment during Extended Period of Completion**

The price adjustment as worked out above i.e. either increase or decrease will be applicable up to the stipulated date of completion of the work including the extended period of completion where such extension has been granted under SubClause 8.4.1 of GCC or it is specifically mentioned that extension is with price variation also. However, where extension has been granted under Sub-Clause 8.4.3 of GCC, price adjustment will be due as follows:

In case the indices increase above the indices applicable to a bill made on the last date of original completion period or the extended period under Sub-Clauses 8.4.1 of GCC, the price adjustment for the period of d under Sub-Clause 8.4.3 of GCC will be limited to the amount payable as per the indices applicable to a bill made on the last date of the original completion period or the extended period under Sub-Clauses 8.4.1 of GCC as the case may be.

In case the indices fall below the indices applicable to a bill made on the last date of the original or extended period of completion, then the lower indices will be adopted for Price Adjustment for the period of extension under Clause 8.4 of GCC unless the extension has been granted due to Contractor's fault.

**(ii) Adjustment in contract price on account of inflation for E&M/Lift & Escalator works shall be as under: -**

The rates as per the accepted Bill of Quantities shall be applicable till the completion of the Work and will be varied only to the extent of permissible price variation under this Clause.

However, this adjustment shall be to the extent that full compensation for any rise or fall in costs to the Contractor if not covered by the Price variation formula, the rates in the accepted Bill of Quantities shall be deemed to include amounts to cover the contingency of such rise or fall in costs.

The price variation will be payable as per the following price variation formula. Payment as per the contract shall be subject to adjustment in accordance with the following Price Variation formula, and other terms given herein, to provide for variation in the market rates of inputs like labour, materials and fuel / power during the currency of the Contract:

$$V = VI + Vf + Vm$$

Where,

V = Total adjustment on account of all factors

VI = Adjustment on account of labour component

$$= p \times R \times (I - I_0) / I_0$$

Vf = Adjustment on account of Fuel and power component

$$= q \times R \times (W_f - W_{f0}) / W_{f0}$$

Vm = Adjustment on account of Material =

$$r \times R \times (W_m - W_{m0}) / W_{m0}$$

p = Cost Coefficient of Labour to the Total Cost

= 0.20 q = Cost Coefficient of Fuel and power to the Total

Cost

= 0.05 r = Cost Coefficient of other Material to the Total

Cost

= 0.45

Note: p + q + r = 0.70, balance 0.30 shall be fixed component

R = Gross value of the work done by the Contractor for the period of work under consideration, after excluding there from the cost of any materials supplied free or at fixed rate to the Contractor.

The Indices applicable for the items / work for which Gross value of work is provided in INR are as under:-

$I_o$  = Consumer Price Index for Industrial workers, published by Labour Bureau, Govt. of India as applicable to Lucknow area for the previous month in which the tender was opened.

$I$  = Average of monthly Consumer Price Index for Industrial workers published by Labour Bureau, Govt. of India as applicable to Lucknow area for the period of work under consideration.

$W_{fo}$  = Whole Sale Price Index (Averages) for Fuel & Power, as published in the RBI Bulletin for the previous month in which the tender was opened.

$W_f$  = Wholesale Price Index (Averages) for Fuel & Power, as published in the RBI Bulletins for the period of work under consideration.

$W_{mo}$  = Whole Sale Price Index (Averages) for 'Manufacture of Electrical Equipment' as published in the RBI Bulletin, for the previous month in which the tender was opened.

$W_m$  = Whole Sale Price Index (Averages) for 'Manufacture of Electrical Equipment' as published in the RBI Bulletins for the period of work under consideration.

Note:

- The Wholesale Price indices as published by Economic Advisor, Ministry of Commerce and Industry are based on 2011- 12 series
- In case of foreign currency component, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment. The base date shall be the last date of the previous month in which the bid was opened. The date of adjustment shall be the mid-point of the period of work under consideration.

**For example:**  $X$  = SBI Exchange Rate (Selling) in INR at the Base Date

$Y$  = SBI Exchange Rate (Selling) in INR at the date of adjustment.

Then, correction factor to be applied for foreign currency component on account of fluctuation in foreign exchange rate shall be  $(X-Y)/X$

**Period of work under consideration will mean as under;**

- i). In the case of first "On-account Bill" the period from the month in which the tender was **awarded** to the month of measurement of the first bill.

- ii) In the case of second and subsequent "On-account" and Final bills, the Period from the date of measurement for previous bill to the date of measurement of that bill.

Note: Responsibility of arranging the published indices desired by the Employer or the Engineer shall rest with the Contractor.

**Procedure in case of Delay in Availability of Final Indices:**

Where the final Price Indices are not available, while making payment towards on-account bills, payment towards Price Variation will be made on provisional basis based on the indices available, to be adjusted in subsequent bills as and when the final Indices figures become available.

In case any particular index is discontinued during the contract period, then the alternate index issued by the government institution shall be adopted in agreement with the contractor. However, in case of dispute decision of the Employer shall be final.

**(a) Adjustment on account of price variation**

Adjustment on account of price variation may be positive (in which case an additional amount shall be paid to the Contractor), or negative (in which case the amount of price variation shall be recovered from the Contractor). Adjustment on account of Price Variation shall be calculated separately, for each period between two successive dates of measurements for bills and paid along with each bill.

After verifying the bill, the engineer shall certify the adjustment amount and advice the same to the employer along with the "on Account bill". Should any extra amount be due to contractor, the employer shall pay the same.

Any amount due from the contractor on account of negative adjustment shall be recovered from his pending payments at the earliest.

**(b) Price Variation during Extended period of completion.**

The price adjustment as worked out above i.e. either increase or decrease will be applicable up to the stipulated date of completion of the work including the extended period of completion where such extension has been granted under clause 8.4 of GCC or it is specifically mentioned that extension is with price variation also.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the works, or (ii) the current index or price: whichever is more favourable to the Employer.

### **Additional Special Condition for E&M/ Lift & Escalator Works**

#### **1. Sub Clause 11.2.1 Mobilisation Advance**

*Following is added in the GCC Clause 11.2.1 (a) for E&M/ Lift & Escalator part only:*

Mobilisation advance shall be equal to 10% of the contract value. The advance shall be paid in two instalments of 5% each. The first instalment shall be paid after mobilisation has started and next instalment shall be paid after satisfactory utilization of earlier instalment by giving all necessary details to the satisfaction of Engineer duly certified by the Chartered Accountant.

(a) In Design & Build Contracts, the second instalment will be paid after approval of Definitive design and acceptance of prototype test.

(b) In case of BOQ contracts, the second instalment will be paid after satisfactory utilization of earlier instalment for the contract after achieving the key date of detail engineering & submittal of technical proposal of major equipment/subcontractors.

#### **2. Sub-Clause 11.2.2 Advance against Plant and Machinery (For E&M Part)**

GCC Clause 11.2.2 shall not be applicable for E&M part.

#### **3. Additional Clause Retention Money (For E&M/ Lift & Escalator works)**

Retention money equal to 10 percent of the amount due to the Contractor from each on account payment will be retained, so as to maintain a reserve in the hands of the Employer equal to 5 percent of the Contract Price.

The Retention money 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 payable by the Employer in respect of Retention money.

The contractor may, at his option, replace the retention amount with an unconditional BG from a scheduled commercial bank at the following stages:

- i) After the amount reaches half the value of the limit of retention money; and
- ii) After the amount reaches the maximum limit of retention money. One-half of the retention money (or BG, which replaced retention money) shall be released on the issue of the taking over certificate; if the Taking Over Certificates (TOCs) are issued in parts, then in such proportions as the engineer may determine, having regard to the value of such part or section.



The other half of the retention money (or BG, which replaced the retention money) shall be released upon expiration of 365 days after the DLP of the works or final payment, whichever is earlier, on certification by the engineer. In the event of different defect liability periods being applicable to different sections or parts, the expiration of defect liability period shall be the latest of such periods.

#### **4. Additional Clause**

##### **Manufacture, Construction, Execution, Supply, Installation, Testing and Commissioning (Including Integrated Testing and Commissioning) Methods**

The Contractor shall submit complete documents and information pertaining to the methods of manufacture, construction, execution, supply, installation, testing and commissioning (including Integrated Testing and Commissioning) which the Contractor proposes to adopt or use. The Engineer will then check to see whether, if such methods are adhered to, the Works can be executed in accordance with the Contract and without detriment to the Works (when completed) and to other works comprising the Project.

The Engineer shall inform the Contractor in writing within a reasonable period after receipt of the above information;

- a) that the Contractor's proposed methods of manufacture, construction, execution, testing and commissioning (including Integrated Testing and Commissioning) have the approval of the Engineer; or
- b) in what respects, in the opinion of the Engineer, the Contractor's proposed methods of manufacture, construction, execution, etc:
  - I. fail to comply with the Employer's Requirements;
  - II. would be detrimental to the Works and/or to the other works comprising the Project;
  - III. do not comply with the other requirements of the Contract; or
- c) as to the further documents or information which are required to enable the Engineer to properly assess the proposed methods of manufacture, etc.

In the event that the Engineer does not give his approval, the Contractor shall take such steps or make such changes in the said methods or supply such further documents or information as may be necessary to meet the Engineer's requirements and to obtain his approval. The Contractor shall not change the methods of manufacture, construction, execution, supply, installation, testing and commissioning (including Integrated Testing and Commissioning) which have received the Engineer's approval without further review and approval in writing of the Engineer.

Notwithstanding the foregoing provisions of this Clause, or that certain of the Contractor's proposed methods of manufacture, etc. may be the subject of the approval of the Engineer, the Contractor shall not be relieved of any liability or obligation under the Contract.

**5. Additional Clause Operation and Maintenance**

The Contractor shall provide Expert team for Maintenance and operation till the end of DLP. The deployment of these Experts and team shall be continuous. These Experts and team shall work under the administrative control of the Employer. These Experts and team shall also ensure that the Client's maintenance staff acquire necessary skills and follow correct procedures and practices in the maintenance, overhaul and repair of various components for the system as well as for the maintenance of the related software (if any) after the DLP. The qualification and experience of the Experts to be deployed by the Contractor shall be as prescribed in the Employer's Requirements. Prior approval of the Employer shall be necessary before the Experts are deployed for maintenance and operation. The Contractor shall replace promptly, Contractor's experts who are not considered suitable by the Engineer.

**6. Additional Clause Spares**

The Contractor shall supply spare parts as per the Employers requirement.

(a) The Contractor shall submit a schedule of spare parts duly indicating, for each item of spares, its description, part number, drawing number, lead time, shelf life and number of units required for the system during the first ten years, principal as well as secondary sources of supply, and also the unit price with escalation/de-escalation clause.

(b) The Employer may, during a period of ten years from the date of taking-over of the whole of the Works, purchase as many parts as required by him, at the rates indicated in the pricing document and accepted by the Employer.

(c) If during the period of ten years, the Contractor intends to discontinue the manufacture of spare or replacement parts for the any equipment / Machine the Contractor shall immediately give notice to the Employer of such intention. The Employer shall be given the opportunity of ordering at reasonable prices such quantities of such spare or replacement parts as the Employer requires in relation to the anticipated life of the equipment.

In the event of Contractor failing to supply the spare parts in accordance with this Clause, he shall in respect of each item of spare, furnish free of cost to the Employer, the drawings, specifications, patterns and other information to enable the Employer to make or have made such spare parts. The

Employer shall be entitled to retain the aforesaid drawings etc., for such time only as is necessary for the exercise by the Employer of his rights under this clause and the drawings, if the Contractor so requires, shall be returned by the Employer to the Contractor in good order and condition (fair wear and tear excepted).

Under such circumstances, the Contractor shall also grant to the Employer, without payment of any royalty or charge, full right and liberty to make or have made spare or replacement parts as aforesaid and for such purposes only to use, make and have made copies of all drawings, patterns, specifications and other information supplied by the Contractor to the Employer pursuant to the Contract.

The Contractor will so far as it is reasonably able to bind his subcontractors to conform with the requirements of this Clause and shall, prior to entry into any sub-contracts, provide the Employer with full details of any sub-contractor who will not so conform in which event the Employer may direct the Contractor to seek an alternative sub-contractor.

If the Contractor fails to provide spare or replacement parts as described in this Sub-clause and these are available from the Contractor's sub-contractor, the Employer shall have the right to obtain such spare and replacement parts from the sub-contractor or any other supplier and any additional cost incurred by the Employer shall be recoverable from the Contractor.

(d) The Employer may require the Contractor to enter into a Maintenance Contract with the Employer for the System / Machine provided under the Contract under terms and conditions to be mutually agreed.

#### **7. Additional Clause 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.

#### **8. Additional Clause Stage Payment**

- a) Application for payments in respect of part deliveries of completed items may be made by the contractor as the work proceeds.
- b) Notwithstanding anything stated herein the employer's representative retains the right to withhold

payment on any item due for payment when the services is to be performed is not performed, or is not carried to satisfaction of employers satisfaction.

- c) Payment shall be made as per Preamble to BOQ

#### **9. Additional Clause Part Termination**

The contractor shall be responsible for site progress for meeting the deadlines set by the engineer for meeting the key dates/ROD. In the event of failure of the contractor in the opinion of the engineer for performance of any part activity, employer reserves the right to notify the contractor and if contractor does not improve in the next 15 days, Employer may decide to off – load the part of the work and get this work done through other contractors. The additional cost of the work, if any, incurred by the employer shall be recovered from the contractor's payment Entry with full preparation as per SHE.

#### **10. Additional clause Operation and Maintenance Manuals**

Prior to commencement of Tests on completion, the Contractor shall prepare, and submit to the ENGINEER-IN-CHARGES Representative, Operation and Maintenance Manuals in accordance with the ENGINEER-IN-CHARGE's Requirements and in sufficient detail for the ENGINEER-IN-CHARGE to operate, maintain, dismantle, reassemble, adjust and repair the Works. The Works shall not be considered to be completed for the purposes of Completion until such Operation and Maintenance Manuals have been submitted to the ENGINEERIN- CHARGE's Representative and received his consent. The operation and Maintenance Manuals and drawings submitted by the contractor shall, if required, be updated be him during the defects Liability period and re-submitted and approved by the Engineer.

### **SCHEDULE 1 CONTRACTOR'S WARRANTY**

(Refer Sub-Clause 4.2.4 of GCC)

THIS AGREEMENT is made on the ..... day of ..... between:

- (1) [.....] of [.....] [and [see Note 1]]  
([jointly] "the Contractor")
- (2) [Uttar Pradesh Metro Rail Corporation Limited] [of]/[whose registered office is at]  
[Administrative Building, Vipin Khand, Gomti Nagar, Near Dr. Bhimrao Ambedkar  
Samajik Parivartan Sthal, Lucknow-226010, Uttar Pradesh, India] (together with its  
successors and assigns, "the Employer").

#### **WHEREAS**

- (A) By a contract \_\_\_\_ dated [ ] ("the Contract") made between (1) the Uttar Pradesh Metro Rail Corporation Limited ("the Employer") and (2) the Contractor, the Contractor has agreed to design, execute, complete, test and commission (including

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

Integrated Testing and Commissioning) 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 that:

- a) He will 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) He owes a duty of care to the Employer in relation to the performance of its duties under the Contract; and
- c) He will replace free of cost to the Employer any defect or failure of equipment provided in the Works for a period of 36 months from the date of Taking Over of the last

Section of the Works; and

- d) He agrees that should any design modification be required to any section or component due to any defect, the period of 36 months shall re-commence from the date when the modified part is commissioned into service, and such modification shall be carried out free of cost to the Employer in all sub-systems and systems for all sections; and
- e) He shall maintain the manufacture or spare of replacement parts for at least 10 years.

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 sublicences) 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 Mass Rapid Transport System including without limitation the design, execute, complete, test and commission (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.

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

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: -

- (a) upon the Employer at [ ] India. [Note 4]
- (b) upon the 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. (a) 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. "Dispute" as defined in the Contract shall be deemed to include any such dispute or difference between the Employer and Contractor.

(b) 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.

(c) 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.

(d) Subject to the foregoing provisions of this clause 9, the Employer and the Contractor shall submit to the jurisdiction of the Courts of India at Lucknow.

IN WITNESS whereof, this Warranty has been executed as a deed on the date written at the head hereof.

THE COMMON SEAL of

[.....]

was affixed hereto in the presence of

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.

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

## SCHEDULE 2 PARENT COMPANY UNDERTAKING

(Refer Clause 4.2.4 of GCC)

THIS UNDERTAKING is made the \*.... Day of

BY [ ] [whose registered office is at]/ [of] [ ] ("the Parent Company").

TO THE UTTAR PRADESH METRO RAIL CORPORATION LIMITED together with its successors and

assigns, "the ENGINEER-IN-CHARGE") of:

Administrative Building,  
Vipin Khand, Gomti Nagar,  
Near Dr. Bhimrao Ambedkar Samajik Parivartan Sthal,  
Lucknow-226010, Uttar Pradesh, India

### WHEREAS

A. By a Contract [ ] dated [ ] ("the Contract") made between (1) the Uttar Pradesh Metro Rail Corporation Limited ("the ENGINEER-IN-CHARGE") and (2) [ ] 1 (the Contractor) the Contractor has agreed to execute, complete and remedy any defects in the works ("the Works") upon the terms and conditions contained in the Contract.

B. Pursuant to the Contract, the Contractor has agreed to procure the provision of an undertaking in the terms thereof.

C. The Parent Company is the beneficial owner capital of [ ]% [see Note 2] of the issued share capital of [the Contractor] [see Note 2].

D. At the request of the Contractor, the Parent Company has agreed to provide this under taking.

NOW IT IS HEREBY UNDERTAKEN AND AGREED as follows:

1. In consideration of the ENGINEER-IN-CHARGE entering into the Contract with the Contractor the Parent company hereby undertakes to the ENGINEER-IN-CHARGE that

(a) the parent company will inform the ENGINEER-IN-CHARGE in the event that it sells, transfers, assigns or otherwise disposes of or deals with the ownership of the whole



or any part of the shareholding or other interest in the subsidiary (the Contractor) of the Parent Company, and

(b) In case of transfer of ownership/control of the subsidiary or of the Parent Company, an updated parent company guarantee and parent company undertaking will be provided from the new Holding/Parent Company.

(c) not take any action which may result in the Contractor being unable to comply with his obligations or perform in any way his duties under the Contract (or take any action which may result in (the subsidiary forming part of the Contractor) [see Note 37 being unable to comply with his obligations or perform in any way his duties under the joint venture or other relevant) agreement [see note 6]] without the written consent of the ENGINEER-IN-CHARGE

(d) To provide full technical support including providing support with available patent rights, registered design copyright design, trademark, trade name, know how or other intellectual property right to our subsidiary during currency of the contract which may be deemed necessary to successfully comply with all obligations under this contract and for the Service Life of System /Equipment until such time as the Works shall have been completed, all the contractor's obligations under the Contract shall have been performed and the Maintenance and Defects Liability Period (as define in the Contract) for the whole and every part of the Works shall have elapsed and further that it will ensure that the subsidiary forming part of the Contractor will take all steps necessary to ensure (see Note 6 ]] compliances by the contractor with the provisions of the Contract.

2. The obligations of the Parent Company under this Undertaking shall remain in full force and effect and shall not be affected or discharged in any way and the Parent Company hereby waives notice of-

(a) Any suspension of the Works, variation or amendment to the Contract (including without limitation extension of time for performance) or any concession or waiver by the ENGINEERIN- CHARGE in respect of the Contractor's obligations (and/or the obligations of [ ] [see Note 7];

(b) Any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;

(c) the termination of the Contract or of the employment of the Contractor fand/or [ ]] [see Note 7] under the Contract for any reason;

(d) any forbearance or waiver of any right of action or remedy the ENGINEER-IN-CHARGE may have against the Contractor [and/or[ ]] [see Note 7] or negligence by the ENGINEER-IN-CHARGE in enforcing any such right of action or remedy.

(e) any bond undertaking, security or other guarantee held or obtained by the ENGINEERIN-CHARGE for any of the obligations of the Contractor [and/or[ ]] [see Note 7] under the Contract or any release or waiver thereof.

3. This undertaking shall extend to any variation of or amendment to the Contract and to any agreement supplemental there to agreed between the ENGINEER-IN-CHARGE and the Contractor [and/or [ ] [see Note 7] and for the avoidance of doubt the Parent Company hereby authorizes the ENGINEER-IN-CHARGE and the Contractor [and/or [ ] [see Note 7] to make any such amendment, variation or supplemental agreement.

4. All documents arising out of or in connection with this Undertaking shall be reserved:

(a) Upon the ENGINEER-IN-CHARGE at [ ] marked for the attention of [ ]:

(b) Upon the Parent Company at [ ] India. [Note 8]

5. The ENGINEER-IN-CHARGE and the Parent Company may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.

6. This Undertaking shall be governed by and constructed according to the laws for time being in force in India and the Parent Company agrees to submit to the jurisdiction of the courts of Lucknow.

IN WITNESS where of this undertaking has been executed as a deed on the date first before written.

THE COMMON SEAL of )

( ) )

was affixed here to )

in the presence of:- )

Notes: (for preparation of but not for inclusion in the engrossment of this Undertaking)

1. If the Parent Company is not the immediate parent company, the chain of ownership must be recited, identifying each company in the chain and the shareholdings or other interests in each subsidiary.
2. If the Contractor comprises more than one company, that fact and the joint venture or other relevant agreement must be recited. In such case, insert the name of the subsidiary forming part of the joint venture, partnership or consortium, and in respect of which the parent company undertaking is being given.
3. If Note 2 applies, refer to the subsidiary of the Parent Company and not the contractor.
4. If Note 1 applies, use this alternative.
5. If Note 1 applies, add this provision.
6. If Note 2 applies, add this provision.
7. If Note 2 applies, add this provision and insert the name of the subsidiary.
8. The address for service shall be India.

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

### SCHEDULE 3 PARENT COMPANY GAURANTEE

(Refer Clause 4.2.4 of GCC)

THIS GUARANTEE is made on the ..... day of ..... between

(1) [.....] whose registered office is at [.....] and [.....] whose registered office at [.....](THE GUARANTOR")

(2) The UTTAR PRADESH METRO RAIL CORPORATION LIMITED (together with its successors and assigns. (the ENGINEER-IN-CHARGE") of:

Administrative Building,  
Vipin Khand, Gomti Nagar,  
Near Dr. Bhimrao Ambedkar Samajik Parivartan Sthal,  
Lucknow-226010, Uttar Pradesh, India

#### WHEREAS

(A) By a contract [No] dated [.....] ("The contractor") made between (1) the Uttar Pradesh Metro Rail Corporation Limited (the ENGINEER-IN-CHARGE") and (2) [.....] (the Contractor"), the Contractor has agreed to design, execute, complete and remedy any defects in the Works upon the terms and conditions in the Contract.

(B) Pursuant to the terms of the Contract, the Contractor has agreed to procure the provisions of a guarantee in the terms hereof. [See Note 1).

(C) At the request of the Contractor, the Guarantor has agreed to guarantee performance of the Contract by the [Contractor][see Note 2) as set out herein.

#### IT IS HEREBY AGREED AS FOLLOWS:

1. In consideration of the ENGINEER-IN-CHARGE entering into the Contract with the Contractor, the Guarantor irrevocably and unconditionally guarantees to the ENGINEER-IN-CHARGE as a primary obligation and not as a surety for due performance by the [Contractor][see Note2] of all its obligations and liabilities under and in accordance with the Contract save that nothing herein shall be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the [Contractor] [see Note2] in the Contract.

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

2. The obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by and the Guarantor hereby waives notice of

(a) any suspension of the Works, variation to or amendment of the Contract (including without limitation extension of time for performance) or any concession or waiver by the ENGINEER-IN-CHARGE in respect of the Contractor's obligations [and/or the obligations of [ ]] [see Note3] under the Contract;

(b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;

(c) the termination of the Contract or of the engagement of the

Contractor[and/or[.....]] [see Note3] under the Contract for any reason; (d) Any forbearance or waiver of any right of action or remedy the ENGINEER-IN-CHARGE may have against the Contractor [and/ or [ ..... ] ] [see Note3] or negligence by the ENGINEER-IN-CHARGE in enforcing any such right of action or remedy.

(e) Any bond, undertaking, security or other guarantee held or obtained by the ENGINEER-IN-CHARGE for any of the obligations of the Contract [and/or [...]] [see Note 3] under the Contract or any release or waiver thereof.

3. This Guarantee shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the ENGINEER-IN-CHARGE and the Contractor [and/or [.....]] [see Note3] and for the avoidance of doubt the Guarantor hereby authorizes the ENGINEER-IN-CHARGE and the Contractor[and/or[.....]] [see Note3] to make any such amendment, variation or supplemental agreement.

4. This Guarantee is a continuing guarantee and accordingly shall cover all of the obligations and liabilities of the [Contractor][see Note 2] under the Contract and remain in full force and effect until all the said obligations and liabilities of the Contractor shall have been carried out, completed and discharged in accordance with the Contract. This Guarantee is in addition to any other security which the ENGINEER-IN-CHARGE may at any time hold and may be enforce without first having recourse to any such security or taking and steps or proceedings against the Contractor.

5. Until expiry of the Maintenance and Defects Liability Period (as defined in the Contract) for the whole and every part of the Works, the Guarantor shall not on any ground whatsoever make any claim or threaten to make any claim whether by proceedings or otherwise against the Contractor [and/or [.....]] [see Note3] for the recovery of any sum paid by the Guarantor pursuant to this Guarantee. Any such claim shall be subordinate to any claims (contingent or otherwise) which the ENGINEER-IN-CHARGE may have against the

Contractor [and/or[.....] [see Note3] arising out of or in connection with the Contract until such time as such claims shall be satisfied by the Contractor (and/or I see Note 31 or the Guarantor as the case may be. To that intent the Guarantor shall not claim or have the benefit of any security which the ENGINEER-IN-CHARGE holds or may hold for any monies or liabilities due or incurred by the Contractor [and/or[.....]] [see Note 3] to the

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

ENGINEER-IN-CHARGE and, in case the Guarantor receives any sum from the Contractor and/or [.....] [see Note 3] in respect of any payment by the Guarantor hereunder, the Guarantor shall hold such sum in trust for the ENGINEER-IN-CHARGE for so long as any sum is payable(contingently or otherwise) under this Guarantee.

6. The ENGINEER-IN-CHARGE shall be entitled to assign the benefit of this Guarantee at any time without the consent of the Guarantor or the [Contractor][see Note2] being required.

7. All Documents arising out of or in connection with this Guarantee shall be served:

(a) upon the ENGINEER-IN-CHARGE, at [.....] marked for the attention of [.....]

(b) upon the Guarantor, at [.....] India. [Note 4]

8. The ENGINEER-IN-CHARGE and the guarantor may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.

9. This guarantee shall be governed by and construed according to the laws for the time being in force in India and the Contractor agrees to submit to the jurisdiction of the court of India.

IN WITNESS whereof this Guarantee has been executed as a deed on the date first before written

THE COMMON SEAL

of

(.....)

was affixed here to in the presence of-

Notes (for preparation of but not inclusion in the engrossment of this guarantee)

1. If the Contractor comprises more than one company, that fact the joint venture or other relevant agreement and the relationship of the guarantor to its subsidiary forming part of the contractor must be recited.
2. If Note 1 applies, replace the word "Contractor" with name of the subsidiary being guaranteed.
3. If Note 1 applies, add additional wording and insert the name of the subsidiary being guaranteed.
4. The address for service shall be in India.

LKE(02)-02: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-02".

LKE(02)-03 & 04: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-03 & 04".





LKE(02)-03 & 04: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-03 & 04".

2. The Sub-contractor/Vendor 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/Vendor 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/Vendor of his obligations under the Sub-contract.

3. No allowance of time by the Employer hereunder or by the Contractor under the Subcontract 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/Vendor from any liability under this Warranty.

4. The Sub-contractor/Vendor 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/Vendor 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/Vendor 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/Vendor, the Sub-contractor/Vendor 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 Lucknow, Kanpur & Agra Metro rail project, without limitation the supply, installation, 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/Vendor, the Sub-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 Sub-contractor/Vendor 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.

LKE(02)-03 & 04: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-03 & 04".

8. 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 Sub-contractor/Vendor whether in tort or otherwise.
9. Nothing contained in this Warranty shall vary or affect the Sub-contractor's/Vendor's rights and obligations under the Sub-contract.
10. The Employer shall be entitled to assign the benefit of this Warranty at any time without the consent of the Sub-contractor/Vendor being required.
11. All documents arising out of or in connection with this Warranty shall be served:
  - (a) Upon the Employer at [                      ], marked for the attention of [                      ];
  - (b) Upon the Sub-contractor/Vendor, at [                      ] India.
12. The Employer and the Sub-contractor/Vendor may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.
13. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
14.
  - (a) Any dispute or difference of any kind whatsoever between the Employer and the Subcontractor/Vendor arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the Arbitration as described in the Contract.
  - (b) 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 14(1), the Employer may by notice in writing to the Sub-contractor/Vendor require and the Sub-contractor/Vendor 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.
  - (c) 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 objection, assessment or valuation by the Employer's Representative or the Contractor relating to the dispute or difference.

IN WITNESS Whereof this Warranty has been executed as a deed on the date first before written.

THE COMMON SEAL of

[                      ] was

affixed hereto in

the presence of:-

#### SCHEDULE-5

(Refer Clause 2 of ASCC) (To be stamped in accordance with Stamp Act)

### INDENTURE FOR STAGE PAYMENT

THIS INDENTURE made on .....between .....(hereinafter called the contractor) which expression shall where the context do admits or implies be deemed to include its executors, administrators and assigns of the one part and the Uttar Pradesh Metro Rail Corporation Ltd. (hereinafter called UPMRC of the other part.

WHEREAS by the agreement (LOA No ..... dated.....) (hereinafter called the said agreement) the contractor has agreed to "-----"

-----" and whereas the contractor has applied to the UPMRC Ltd. That they may be allowed advance on the security of materials absolutely belonging to them and brought by them to the site of the works covered under the project of the said agreement for use in the construction of such of the work as they have under taken to execute at rates fixed for the finished work (inclusive of the cost of materials and labour and other charges).

AND WHEREAS the UPMRC Ltd. Has agreed to make stage payment to the contractor the total sum of Rs.----- (Rupees -----only) for stage payment Bill. The quantities and other particulars of which are detailed in this bill for the said works signed by the Contractor on "-----" and UPMRC Ltd has reserved to itself option of making any further advances till date on the security of other materials brought by the contractor to site of the said work.

NOW THIS INDENTURE WITNESS that in pursuance of the said agreement and its consideration of the sum of Rs. ----- (Rupees -----only) on or before the execution of these present amount paid to the contractor by the UPMRC Ltd (the receipt where of the contractor) both hereby acknowledge and of such further Stage payment, if any, as may be made to him so aforesaid to the contractor do the covenant and agreed with the UPMRC Ltd and declare as follows:

1. That the said sum of Rs. ----- (Rupees ----- only) so Stage Payment by the UPMRC Ltd to the contractors as aforesaid and all or any further sum or sum's advanced as aforesaid shall be employed by the contractor in or towards the execution of the said works and for no other purpose whatsoever.
2. That the Stage Payment detailed in the said running account bill which have been offered to and accepted by the UPMRC Ltd as security are absolutely the contractor's own property and free from encumbrances of any kind and the contractor's shall not make any application for or receive any further payments on the security of work executed which are not absolutely his own property and free from encumbrances of any kind the Contractor indemnifies the UPMRC Ltd against all claims on any materials in respect of which any Stage Payment has been made to him as aforesaid.
3. That the Stage Payment detailed in the said running account bill and all other stage payments on the security of which further payments or Stage Payment any hereafter be made as aforesaid (hereinafter called the said materials) shall be used by the contractor solely in the execution of the said works in accordance with the directions of the Engineer / UPMRC Ltd and in the terms of the said agreement.
4. That the contractor shall be fully liable for the materials/components and shall make at his own cost all necessary and adequate arrangement for the proper watch, safe custody and protection against all risks including, acts of the God of the said materials/components and provide on approved insurance in favour of UPMRC Ltd that until used in construction as aforesaid the said materials shall remain at the site of said works in the contractor's custody and on his own responsibility and shall at the time be open to inspection by the

LKE(02)-03 & 04: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-03 & 04".

Engineer/UPMRC Ltd. This insurance will be valid for a period until this material is approved and fixed in the building or advance has been fully recovered from contractor.

5. That the said materials/components shall not on any account be removed/shifted from the site of the works except with the written permission of the Engineer/UPMRC Ltd.

6. That issue of any Stage Payment excess of what is finally required to be used at site would be the contractor's property without any liability on UPMRC Ltd., who would recover the cost of this from the contractor.

7. That the contractor hereby charges all the said materials components with the repayment to the Employer of the said sum of Rs. ----- (Rupees -----only) and any further sum or sums advanced as aforesaid and all cost charges. Damages and expenses payable under these presents provided always and it is hereby agreed and declared that not with power contained therein, if any, whenever the convenient for payment, and repayment herein before contained shall become enforceable and the money owned shall not be paid in accordance therewith, the UPMRC Ltd., may at any time thereafter adopt all or any of the following courses as he may deem best.

a. That if the contractor shall at any time not be able to complete any part of the Component / equipment as per provision in contract Agreement it shall be considered as the work being left incomplete by the contractor and action as per the conditions of the contract shall be taken.

b. Deduct all or any of the money owing out of the performance security or any sum due to the contractor under the said agreement.

That in the event of any conflict between the provisions of these presents and the said agreement the provisions of these presents shall prevail.

This widening shall be co-extensive to the agreement dated ..... between Uttar Pradesh Metro Rail Corporation Limited, Administrative Building, Vipin Khand, Gomti Nagar, Lucknow-226010 (UP) India (Client) and ..... (Contractor).

IN WITNESS where of the said contractor and by the order under the direction of UPMRC Ltd has here set their respective hands the day and years first above written.

Signed, Sealed & Delivered by the said Contractor:

IN THE PRESENCE OF:

WITNESS:

1. NAME:

Signature:

SIGNED BY (ADDRESS)

BY THE ORDER AND DIRECTION OF THE UPMRC LTD IN THE PRESENCE OF:

SIGNATURE:

WITNESS

(NAME AND ADDRESS)

#### SCHEDULE-6 GUARANTEE FOR SAFE CUSTODY

(Refer clause 4 of ASCC) (To be stamped in accordance with Stamp Act, of the country of issuing bank)

To:

Uttar Pradesh Metro Rail Corporation Limited,

LKE(02)-03 & 04: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-03 & 04".

Administrative Building, Vipin Khand, Gomti

Nagar, Lucknow(UP)- 226010,

India.

WHEREAS – the Consortium/ Joint venture consisting of:

1. (Name of Lead Member of the Group and address)
2. (Name of Member of the Group and address)
3. (Name of Member of the Group and address)

(hereinafter called "the Contractor"), with M/s----- as the lead member has undertaken, in pursuance of Contract No. [ ] dated .....for [Note 4] (hereinafter called "the Contract"),

AND WHEREAS according to the said Contract the Employer is obliged to pay to the Contractor the sum of [ ] ([ ]) ("the Payment on delivery") as set out in the priced Bill of Quantities.

(A) Pursuant to the said activities, [Note 4] are to be manufactured offshore or in India for subsequent delivery to the Contractor's premises Lucknow, Kanpur & Agra India and held in safe custody by the Contractor.

(B) Pursuant to the terms of the Contract, the Contractor, as a condition precedent to his entitlement to receive any payment for items including an element of [Note 4] Contract [ ] to the Contractor's premises in Lucknow, Kanpur & Agra is obliged to provide a Guarantee in the terms hereof for 95 percent of the Payment.

AND WHEREAS we (Insert name and address of scheduled commercial bank based in India) 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.

1. We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.
2. 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.
3. The Bank shall pay to the Employer the amount thus demanded without requiring further evidence or proof of:-
  - (a) the default of the Contractor; or
  - (b) the Employer's entitlement to terminate the Contract or the employment of the Contractor under the Contract; or

LKE(02)-03 & 04: "Design, Manufacturing, Supply, Installation, Testing and Commissioning of Heavy Duty Machine Room Less Elevators and Heavy Duty Escalators including Maintenance during 2 Year Defect Liability Period (DLP) and 01 (one ) year comprehensive Annual Maintenance beyond DLP Period for Lucknow, Kanpur & Agra Mass Rapid Transport System Project under the Contract LKE(02)-03 & 04".

(c) any termination of the Contract or the employment of the Contractor under the contract; or

(d) of the amount due and payable under this bank Guarantee.

4. The liability of the Bank under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by and the Bank hereby waives notice of:-

(a) any suspension of the Works, variation to or amendment of the Contract (including without limitation extension of time for performance or adjustment to the Tender Total or other payment under the Contract) or any concession or waiver by the Employer in respect of the Contractor's obligations under the Contract;

(b) the termination of the Contract or of the employment of the Contractor under the Contract solely as a result of default by the Contractor under the Contract;

(c) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor or negligence by the Employer in enforcing any such right of action or remedy;

(d) any other security or guarantee held or obtained by the Employer for any of the obligations of the Contractor under the Contract or any release or waiver thereof;

(e) any act or omission of the Contractor pursuant to any other arrangement with the Surety.

5. The liability of the Bank under this Guarantee shall cease on whichever of the following events first occurs:-

(a) payment by the Bank of the Guaranteed Sum in full to the Employer; or

(b) receipt of written notification from the Employer that the [Note 4] have been installed and tested to the satisfaction of the Employer.

6. Until the Employer has issued an instruction to the Bank to the effect that this Guarantee can be released, the Bank undertakes to extend the validity under the same conditions for successive periods of six (6) calendar months at a time and to forward the appropriate extension sheets to the Employer.

SIGNATURE AND SEAL OF THE GUARANTOR

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NAME OF THE BANK-----

ADDRESS-----

DATE-----

Notes: