



DELHI METRO RAIL CORPORATION LTD.
MASS RAPID TRANSPORT SYSTEM

GENERAL CONDITIONS OF CONTRACT
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DELHI METRO RAIL CORPORATION LTD.
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GENERAL CONDITIONS OF CONTRACT

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GENERAL CONDITIONS OF CONTRACT

1 DEFINITIONS AND INTERPRETATION

Definitions

- 1.1** 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.
- 1.1.1 Documents**
- 1.1.1.1** “**Appendix to Form of Tender**” means the completed pages in title Appendix, which are appended to and form part of the Tender.
- 1.1.1.2** “**Bill of Quantity**” means a document containing various items of payment and contains schedule of Payment also.
- 1.1.1.3** “**Construction and/or Manufacture Documents**” means all drawings, calculations, computer software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature, to be submitted by the Contractor.
- 1.1.1.4** “**Contract**” 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 Tender, 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 (if completed).
- 1.1.1.5** “**Contract Agreement**” 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.
- 1.1.1.6** “**Contractor’s Proposal**” means the proposal submitted by the Contractor with the Tender, as modified and accepted by the Employer and included in the Contract. Such documents may include the Contractor’s preliminary design.
- 1.1.1.7** “**Contractor’s Document**” means the calculations, computer programme and other softwares, drawings, manuals and other documents of a technical nature(if any) supplied by the Contractor under the Contract.
- 1.1.1.8** “**Design Data**” means all specifications, plans, drawings, details, graphs, sketches, models, levels, setting-out dimensions, calculations duly checked by the Contractor and other documents relating to the design of the Works prepared or to be prepared by or on behalf of the Contractor.
- 1.1.1.9** “**Drawings**” means the Employer’s Drawings and the Drawings submitted by the Contractor and any modification of such drawings as any, from time to time, be furnished or for which the Engineer has issued a Notice of No Objection.
- 1.1.1.10** “**Employer’s Requirements**” means the description of the scope, standard, design criteria, specifications, drawings, programme of work, indigenisation programme (where applicable) as included in the Contract, and any alterations and modifications thereto in accordance with the Contract.
- 1.1.1.11** “**Interim Payment Schedule**” means the schedule included for each Cost Centre in the Pricing Document and accepted by the Employer to be used for interim payments in relation to achievement of milestones under that Cost Centre, as the same may be revised from time to time in accordance with Clause 11.
- 1.1.1.12** “**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 **"Safety, Health and Environmental (SHE) Manual"** means the Employer's manual containing the requirements and conditions to be met during the execution of the Works by the Contractor.
- 1.1.1.16 **"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 and 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 DELHI METRO RAIL CORPORATION LIMITED (DMRC), 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.
- 1.1.3 Dates, Times and Periods**
- 1.1.3.1 **“Commencement Date”** means the date on which the Contractor shall commence the Works on the written instructions of the Employer contained in the Notice to Proceed.
- 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 Delhi 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.
- 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.

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 Delhi Mass Rapid Transport System (MRTS),

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.

Law and Language

- 1.3 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 and of communication shall be English.

Contract Agreement

- 1.4 The Employer and the Contractor shall execute a Contract Agreement, with such modifications as may be necessary to record the Contract. The costs of stamp duties and similar charges imposed by law shall be borne by the Contractor.

Priority of Documents

- 1.5 The documents forming the Contract are to be taken as mutually explanatory of one another . If there is an ambiguity or discrepancy in the documents , the

Engineer shall issue any necessary clarification or instruction to the Contractor, and the priority of the documents shall be as follows:

- (a) The Contract Agreement;
- (b) The Letter of Acceptance;
- (c) Pre and Post bid proceeds
- (d) Form of Tender
- (e) BOQ/Payment schedule
- (f) NIT
- (g) ITT
- (h) The Outline Design Specifications (Design Criteria) and Outline Construction Specifications; or any other specification
- (i) Drawings
- (j) The Employer's Requirements
- (k) The Special Conditions of Contract;
- (l) The General Conditions of Contract;
- (m) The Contractor's Proposal; and
- (n) Any other document forming part of the Contract.

Care and Supply of Construction and/or Manufacture Documents

- 1.6** The Construction and/or Manufacture Documents shall be in the custody and care of the Contractor during the Contract. Unless otherwise stated in the Employer's Requirements, the Contractor shall provide three copies for the use of the Engineer and assistants (as referred to in Sub-Clause 5.3).

The Contractor shall keep on Site one complete set of the documents forming the Contract, the Construction and/or Manufacture Documents, Variations, other communications given or issued from time to time and the documents/samples mentioned in Sub-Clause 5.3. The Employer, the Engineer and their assistants (as referred to in Sub-Clause 3.3) shall have the right to access these documents all reasonable times.

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

Communications

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

Employer's Use of Contractor's Documents

- 1.8** As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

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

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

any computers supplied by the Contractor.

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

Contractor's Use of Employer's Documents

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

Compliance with Statutes, Regulations and Laws

- 1.10** The Contractor shall familiarise themselves and conform in all aspects with:
(a) the provision of any enactment in India as applicable from time to time
(b) the regulations or bye-laws of any local body and utilities.
(c) The Contractor shall be bound to give all notices required by statute, regulations or by-laws, as aforesaid and to pay all fees and bills payable in respect thereof. The Contractor will arrange necessary clearances and approvals before the Work is taken up.
Ignorance of Rules, Regulations and Bylaws shall not constitute a basis for any claim at any stage of work.
The Contractor shall indemnify the Employer against all penalties and liabilities of every kind of breach of any such enactment, laws, regulations, bye-laws or rules.

Joint and Several Liability

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

2 The Employer

General Obligations

- 2.1** The Employer shall provide the Site/area of works and shall pay the Contractor in accordance with the Contract.

Access to and Possession of the Site

- 2.2** The Employer shall grant the Contractor right of access to, and / 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.

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

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

**Permits,
Licences or
Approvals**

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

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

**Assignment
by the
Employer**

2.4 Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party.

3 The Engineer

**Appointment
of Engineer**

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

**Duties and
Authorities of
the Engineer**

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

**Engineer's
Authority to
Delegate**

3.3 The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, Project Manager, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties.

However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Clause 3.5.

Assistants shall be suitably qualified persons, who are competent to carry out

these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 1.3.

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

(a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;

(b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction

Engineer's Instructions

3.4

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

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

No act or omission by the Engineer or 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.

Determination

3.5

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars within 28 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 17.

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	
	(i)	Within 30 days of receipt of the Letter of Acceptance, the successful Tenderer shall furnish Performance Security in the form of a bank guarantee from a scheduled Indian/Foreign bank in India acceptable to the Employer for an amount of ten per cent of the Contract value in types and proportions of currencies in which the Contract Price is payable. The approved form provided in the 'Instructions to Tenderers' documents or any other form approved by the Employer shall be used for Bank Guarantee. The Bank Guarantee shall be valid up to 3 months beyond the Defect Liability Period. In case the contract value exceeds beyond 25% of the original contract value, the contractor shall have to submit additional performance security.
	(ii)	Whenever the contract value exceeds beyond 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 reduced by an amount equal to 5% of the work already certified as completed by the Engineer-in-Charge on the date of variation subject to a maximum limit of 10% of the variation amount. If there is a negative variation in contract of more than 25% at any stage, the contractor has the choice to reduce the Performance Security according to the revised contract value.
	(iii)	No additional performance security will be required to be submitted if the variation 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.
Release	4.2.3	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. <ul style="list-style-type: none"> i. On completion of the entire work, one half of the Performance Security shall be refunded to the Contractor, on issue of Taking over Certificate by the Engineer, in accordance with Sub-Clause 9.1 and 9.2 of these conditions. This shall not relieve the Contractor from his obligations and liabilities, to make good that may be detected during the Defects Liability Period ii. The balance amount shall become due and shall be paid to the Contractor on signing of the Performance Certificate after the expiry of the final Defects Liability Period as per Clause 10.9 of these conditions.
Guarantees and Warranties	4.2.4	Within 30 days of the date of Letter of Acceptance of the Tender, the Contractor shall submit to the Employer: <ul style="list-style-type: none"> (a) An Undertaking in the approved format from a parent company, the identity of which shall have been submitted in writing to the Employer prior to acceptance of the Tender and against which the Employer shall have raised no objection. (b) A written Guarantee in the approved format from a parent company, the identity of which shall have been submitted in writing to the Employer prior to acceptance of the Tender and against which the Employer shall have raised no objection.

(c) A warrantee in the approved format from the Contractor.

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

Facilities for and co-ordination with Others. 4.4

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

- a The Contractor shall take all reasonable steps to ensure that the Works are co-ordinated and integrated with the design, manufacture, installation execution and testing of such other works and shall in particular (but without limitation):

- (i) comply with any direction which the Engineer may give for the integration of the design of the Works with the design of any other part of the Project;
 - (ii) consult, liaise and co-operate with those responsible for carrying out such other works, including where necessary, in the preparation of the respective designs, the preparation of co-ordinated programmes, method statements, co-ordination drawings and specifications together with arrangements of service priorities and zoning;
 - (iii) participate in Integrated Testing and Commissioning of the system with Designated Contractors and demonstrate to the satisfaction of the Engineer that the Works have been designed and constructed in a manner compatible with the works of Designated Contractors.
- b The Contractor shall undertake design co-ordination with other contractors who are carrying out works forming part of the Project as described in the Employer's Requirements. At the end of each such co-ordination period, the Contractor and the other contractor with whose works the interface period refers shall jointly state in writing that their design co-ordination activities are complete and that their respective designs are integrated and can be finalised without interference with each other's designs or the designs with which their designs have already been integrated. A copy of this joint written statement shall be provided to the Engineer within 7 days of the end of the said design co-ordination period. Unless and until copies of all relevant and necessary design co-ordination statements have been submitted to the Engineer, the Engineer shall be entitled to suspend any review or further review of the Contractor's or the other contractor's design submissions. Such suspension shall not be grounds for the Contractor to claim nor shall be entitled to receive an extension of time or additional payments.
- c The Contractor shall provide within the Site, staging, storage and unloading areas for the use of Designated Contractors, if any, who are undertaking trackwork, fare collection system, supply, testing and commissioning of Rolling Stock, escalators, lifts, signalling and telecommunications and traction power installation works, etc. Separate locations shall be provided for each such contractor. The exact size and location of these staging, storage and unloading areas, and the commencement date shall be co-ordinated and agreed during the design interface period with each Designated Contractor.
- d Any other contract which depends for its execution on the Contract or upon which the Contract is dependent for its own execution shall be identified by the Engineer as a "Designated Contract". The Contractor shall provide attendance on Designated Contractors in accordance with the Employer's Requirements and as instructed by the Engineer. The identity of the contractor for a Designated Contract may not be known before the execution of the Contract but this shall not be a ground for the Contractor to object to the subsequent appointment of a Designated Contractor.
- e The Contractor shall in accordance with the requirements of the Engineer co-ordinate his own Works with that of Designated Contractors through Co-ordinated Installation Programme (CIP) stated in the Employer's Requirements, or as the Engineer may require, and shall afford the Designated Contractors all reasonable opportunities for carrying out their works.

- f The Contractor shall afford all reasonable opportunities, for carrying out their work, to other contractors employed by the Employer and their workmen respectively and the workmen of the Employer who may be engaged on or near the Site of any work, ancillary to the Works, but, not included in the Contract and shall not cause them inconvenience.
- g If the Contractor shall suffer delay by reason of failure by any Designated Contractor to meet the specified installation interfacing and co-ordination, completion dates, which delay shall be caused otherwise than by fault of the Contractor, or, if compliance with sub-clause (f) herein shall involve the Contractor in delay beyond that which could be reasonably foreseen by an experienced contractor at the time of tender, then the Engineer shall take such delay into account in determining any extension of time to which the Contractor is entitled under the Contract.
- h It shall be the responsibility of the Contractor to ensure that the full extent of the Works under the Contract and the works to be carried out by Designated Contractors within the Works or, in, on, under, through and over the Site are co-ordinated and integrated in their design, manufacture, installation and construction. Such responsibility shall neither be mitigated nor in any other way affected by virtue of similar responsibilities being placed on other contractors.

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

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

**Sub-contract-
-ors**

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.

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 DMRC. 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 DMRC and also shall not make any claim against DMRC 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:

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

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

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

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 bench-marks, sight-rails, pegs and other things used in setting out the Works.

**Errors in
Setting out**

4.8.2

If at any time during the execution of the Work, an error 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 relevant data in Employer's possession on hydrological and sub-surface conditions. The accuracy or reliability of the data/studies/reports and of any other information supplied at any time by the Employer or Engineer is not warranted with respect to the viability of his design and execution of Works and the Contractor shall be responsible for interpreting all such data. The Contractor shall conduct further investigations considered necessary by him at his own cost and any error, discrepancies if found in Employer's data at any stage will not constitute ground for any claim for extra time and costs.
- 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 above data and other available information with respect to the viability of his design and execution of Works and to have satisfied himself before submitting the Tender, as to all the relevant matters including without limitation:
 - (a) the form and nature of the Site, including the sub-surface conditions;
 - (b) the hydrological and climatic conditions;
 - (c) the extent and nature of the work, Plant, and Materials necessary for the execution and completion of the Works and the remedying of any defects;
 - (d) the applicable laws, procedures and labour practices
 - (e) The Contractor's requirement for access, accommodation, facilities, personnel, power, transport and other services.
 - (f) the risk of injury or damage to property adjacent to the Site and to the occupiers of such property or any other risk.

**Sufficiency of
accepted
Contract
Amount**

4.10

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.

Rights of way and Facilities **4.12** The Employer will acquire and provide land for Permanent Works and right of way (within DMRC'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.

Progress Reports

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

If requested by the Engineer, the Contractor shall submit to the Engineer, at weekly intervals, a written report as to the progress of off-Site manufacture of Plant, Rolling Stock and Materials.

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

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

Contractor's Equipment

4.15

4.15.1 All Contractor's Equipment and Temporary Works provided by the Contractor shall, when brought on to the site, be deemed to be exclusively intended for execution of the Works and not be removed without the consent in writing of the Engineer. Such consent shall not be unreasonably withheld or delayed

4.15.2 Upon completion of the Works the Contractor shall remove from the Site all the said Constructional Plant and his unused materials

4.15.3 The Employer shall not, at any time, be liable for the loss or damage to any of the Constructional Plant, Temporary Works or materials save as mentioned in **Clauses 14.1**

4.15.4 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.

4.15.5 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

Safety of Works

4.16

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

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

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

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

Protection of the Environment	4.17	<p>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.</p> <p>The Contractor's Site Environmental Plan shall be developed from his Employer's Safety, Health and Environmental Manual (SHE Manual), as per the Employer's Requirements and 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 SHE Manual.</p>
Electricity Water and Gas	4.18	<p>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.</p>
Tools, Plants And Equipment Supplied By The Employer	4.19	<p>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.</p> <p>On completion of the Works, the Contractor shall hand over the unused balance of the tools, plants and equipments to the Employer in good order and repair, fair wear and tear expected, and shall be responsible for any failure to account for the same or any damage done thereto.</p>
Employer's Materials & Excavated Materials	4.20	<p>(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.</p> <p>(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.</p>
Sheds, Stores, Yards	4.21	<p>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</p>

have right of inspection including that of instructing the Contractor to remove a particular material from the stores and not to use the same on the Works.

Temporary Works	4.22	All temporary works necessary for the proper execution of the works shall be provided and maintained by the Contractor at his cost and subject to the consent of the Engineer shall be removed by Contractor at his own expense when they are no longer required and in such manner as the Engineer shall direct. In case the Contractor fails to remove the temporary works on completion the Engineer is authorized to get the same removed and recover the cost there of from the Contractor.
Unforeseeable Physical Conditions	4.23	<p>In this Clause "physical conditions" means natural physical conditions, which the Contractor encounters at Site while executing the Works excluding climatic conditions.</p> <p>If, during the execution of the Works, the Contractor shall encounter physical conditions, which, in his opinion, could not have been reasonably foreseen by an experienced Contractor, the Contractor shall forthwith give written notice thereof to the Engineer and if, in the opinion of the Engineer, such conditions could not have been reasonably foreseen by an experienced Contractor, then the Engineer shall certify and the Employer shall pay reasonable additional cost and/or time to which the Contractor shall have been put by reason of such conditions in the following cases:</p> <ul style="list-style-type: none">a. for complying with any instruction which the Engineer may issue to the Contractor in connection therewith, andb. 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.
Access for Engineer	4.24	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.
Access Road and Way Leaves	4.25	Providing access roads/ way leaves to the site will be Contractor's responsibility.
Contractor to keep Site Clear	4.26	<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 no longer required.</p> <p>On completion of the works, the Contractor shall clear away and remove from site all Constructional Plant, surplus material and Temporary Works. He should leave the whole of the site and Works in a clean, tidy and workman like condition to the satisfaction of the Engineer.</p> <p>On completion of Work the Contractor shall also clear away the labour camps, hutments and other related installations and restore the land to its original condition to the satisfaction of the Engineer within 45 days of the physical completion of Work. The cost on account of delay in return of land and reinstatement of original condition within the stipulated time as determined by Engineer will be recovered from the Contractor's dues.</p>

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 be wholly responsible for security of site and Works. Unless otherwise stated in Special Conditions of Contract <ul style="list-style-type: none"> a the Contractor shall be responsible for keeping unauthorised persons off the Site; and b Authorized persons shall be limited to the Employees of the Contractor, Subcontractor or persons authorized by the Engineer.
Contractor's Operations on Site	4.28	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.
Discoveries	4. 29	All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest, in addition to oil and other minerals discovered on the Site shall be the absolute property of the Government of India and the Contractor shall take all the necessary precautions to prevent its workmen or its sub-contractors' workmen or any other person from removing or damaging any such article or thing and shall immediately upon discovery thereof, acquaint the Engineer of such discovery and carry out the instructions of the Engineer.
Publicity	4. 30	The Contractor shall not publish or otherwise circulate alone or in conjunction with any other person, any articles, photographs or other materials relating to the Contract, the Site, the Works, the Project or any part thereof, nor impart to the Press, or any radio or television network any information relating thereto, nor allow any representative of the media access to the Site, Contractor's Works Areas, or off-Site place of manufacture, or storage except with the permission, in writing, of the Employer. The Contractor shall ensure that his sub-contractors of any tier shall be bound by a like obligation and shall, if so required by the Employer, enforce the same at his own expense. The provisions of this Sub-Clause shall not exempt the Contractor from complying with any statutory provision in regard to the taking and publication of photographs.
Disclosure Of Relationship	4.31	If the Contractor or any partner of the Contractor or Director of the Contractor's company is closely related to any of the Officers of the Employer or the Engineer, or alternatively, if any close relative of an officer of the Employer or the Engineer has financial interest / stake in the Contractor's firm, the same shall be disclosed by the Contractor at the time of filing his tender. Any failure to disclose the interest involved, shall entitle the Employer to rescind the Contract, without payment of any compensation to the Contractor. The Contractor shall note that he is prohibited from developing such interest during the Contract period.
Use Of Explosives	4.32	Explosives if required on the Work shall be used by Contractor only with prior Approval of the Engineer and in the manner and to the extent permitted by him. The Contractor shall be responsible for safe upkeep of such explosives in a special

magazine as per the law on explosives as well as for taking all the precautions in the usage of the explosives with proper license and at Contractor's cost, sole risk and responsibility. The Contractor shall hold the Employer harmless and indemnify for the above.

Corrupt or fraudulent practices

4.33

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 any thing of value to Employer, Engineer or any of their employees, influence in the procurement process or in Contract execution; and
 - (ii) "fraudulent practice" means a concealment or misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Employer, and includes collusive practice among 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.
 - (iii) Breach of any of the contract condition during execution.
- b. Will reject the Tender for the Work or rescind the Contract if the Employer determines that the Bidder/Contractor has engaged in corrupt or fraudulent practices.
- c. Will declare a Contractor ineligible, either indefinitely or for a stated period of time, to be awarded a Contract/s if he at any time determines that the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing the Contract.
- d. **Should any employee of the Contractor be determined to have engaged in corrupt, fraudulent, collusive or coercive practice during the execution of the Works, then that employee shall be removed**
- e. The successful Bidders/Contractors shall apprise the Employer through Chief Vigilance Officer, DMRC of any fraud/suspected fraud as soon as it comes to their notice.

Compensation to Contractor on rescission of Contract

4.33.2

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

5

Design

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 contractor.

General Obligations

5.1

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

The Contractor holds himself, and his designers as having the experience and

capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Engineer at all reasonable times during the Contract Period.

The designer shall be the same entity as proposed by the Contractor at the time of pre-qualification, unless otherwise approved by the Employer. The Contractor shall furnish Designer's Warranty in the format approved by the Employer.

**Contractor's
warranty of
design**

5.2

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

5.3

Construction and/or Manufacture Documents

5.3.1 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 5.6 (As Built Document), and Sub Clause 5.7 (Operations and Maintenance Manuals). The Contractor shall prepare all Manufacture Documents in sufficient detail and shall also prepare any other document necessary to instruct the Contractor's personnel. The Engineer shall have the right to inspect the preparation of all these documents wherever they are being prepared.

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

The Engineer may during the review period, give notice to the Contractor that a Manufacture Document fails (to the extent stated) to comply with the Employer's Requirements, it shall be rectified, resubmitted and reviewed (and if specified, approved) in accordance with this 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 the Construction and/or Manufacture Document; and
 - (iii) The Engineer shall be deemed to have provided with no objection the Construction and/or Manufacture Document upon the expiry of the review periods for all the Construction and/or Manufacture Documents which are relevant to the design and execution of such parts, unless the Engineer has previously notified otherwise in accordance with 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.

Delayed Drawings or Instructions

5.3.2 The Contractor shall give notice to the Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Clause 17.1 to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Clause 8.4, and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

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

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

Technical Standards and Regulations

5.4 The design, the Construction and/or Manufacture Documents, the execution and the completed Works (including remedying of defects therein) shall comply with the specifications, technical standards, building construction, safety and environmental regulations and other standards specified in the Employer's Requirements applicable to the Works or defined by the applicable laws and regulations

Samples

5.5 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 5.3:

- a manufacturer's standard samples of Materials,
 - b samples (if any) specified in the Employer's Requirements.
- Each sample shall be labelled as to origin and intended use in the Works.

As-Built Drawings and

5.6 This clause is applicable for 'Build' part of contract also. The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the

Documents

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.

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

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

Operation and Maintenance Manuals

5.7

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, 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.

Intellectual Property Rights and Royalties

5.8

The Contractor shall indemnify the Employer and the Engineer from and against all claims and proceedings on account of infringement (or alleged infringement) of any patent rights, registered designs, copyright, design, trademark, trade name, know-how or other intellectual property rights in respect of the Works, 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-licence) 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.

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 established for the trade or the industry where the work is carried out.

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 and proof thereof is furnished to the satisfaction of the Labour Authorities, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to the said Labour Authorities and any sums so paid shall be recoverable by the Employer from the Contractor.

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.
 - (b) The Contractor shall have a Labour Welfare Organisation which shall be responsible for labour welfare and compliance with prevalent labour laws, statutes and guidelines. In this context the Contractor is also required to familiarize himself with DMRC's Labour Welfare Fund Rules as specified in Special Conditions of Contract or elsewhere in the contract and comply with the same.
 - (c) The Contractor shall prepare and submit compliance reports of adherence to labour laws as and when desired by the Engineer.
 - (d) 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.
 - (e) The violation of Labour Laws viz. Contract Labour (Regulation & Abolition) Act, 1970 & Central Rules, 1971 made there under 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 :-

a)	Delay in payment of dues to any workmen	:	` 100/- per day per workman.
b)	Non-compliance(s) of any other provision of labour laws, pointed out by Employer/Engineer or their representative	:	` 5000/- for each non-compliance Informed in writing, under the contract.

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.

(f) The contractor shall ensure the registration of all his eligible workers (inclusive of sub-contractors and petty contractors) with BOCW Board.

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| 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. |
| 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 cost. |
| 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 Health, Safety and Environment Manual (SHE Manual).
The Contractor's Site Safety Plan shall be developed from his Outline Safety Plan as per Employer's Requirements and SHE Manual of the Employer.
The Contractor shall appoint a member of his staff at the Site to be responsible for maintaining the safety, and protection against accidents, of personnel on the Site. This person shall be qualified for his work and shall have the authority to issue instructions and take protective measures to prevent accidents. |
| Contractor's Superintend- | 6.8 | The Contractor shall provide all necessary superintendence during the design and execution of the Works, and as long thereafter as the Engineer may |

ence		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.
Provision Of Efficient And Competent Staff	6.9	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: <ul style="list-style-type: none"> a. persists in any misconduct, b. is incompetent or negligent in the performance of his duties, c. fails to conform with any provisions of the Contract, or persists in any conduct which is prejudicial to safety, health, or the protection of the environment.
Preservation of Peace and orderly conduct	6.10	
	6.10.1	The Contractor shall be responsible for preservation of peace and orderly conduct at the site and its neighbourhood by Contractor's employees, Representatives, petty contractors, Sub Contractors etc. In case, deployment of a Special Police Force, becomes necessary at or near Site, during the tenure of Works, the expenses for the same shall be borne by the Contractor.
	6.10.2	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.
Labour to be Contractor's Employee	6.11	If, the Contractor directly or through petty contractors or Sub-Contractors supplies any labour to be used wholly or partly under the direct orders and control of the Engineer or the Employer, whether in connection with any work being executed by the Contractor or otherwise for the purposes of the Employer, such labour shall, for the purpose of this clause, be deemed to be persons employed by the Contractor
Report Of Accidents To Labour	6.12	The Contractor shall be responsible for safety of all employees, employed by him on Works, directly or through petty contractors or Sub-Contractors, and shall report accidents to any of them, however, and wherever occurring on Works, to the Engineer 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 expeditious in accordance with the Workmen's Compensation Act.
Claim` on account of violation of Labour laws	6.13	The Contractor shall be solely accountable for violation of any labour law by it, its petty contractors or Sub Contractors and will pay any such claim/damage to the authorities forthwith on demand. If any moneys shall, as a result of any instructions, directions or decisions from the Authorities or claim or application made under any of the labour laws or regulations, be directed to be paid by the Employer, such moneys shall be deemed to be moneys payable to the Employer by the Contractor and he will pay the same to the Employer forthwith on demand, without demur and without asking for any reasons/explanations from the Employer. On failure of the Contractor to repay

the Employer any moneys paid or to be paid by it as aforesaid within seven days after the same shall have been demanded, the Employer shall be entitled to recover the amount from any moneys due or accruing to the Contractor under this or any other Contract with the Employer.

	7	QUALITY CONTROL
Manner of Execution	7.1	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, workmanlike and careful manner, with properly equipped facilities and non-hazardous Materials, and in accordance with modern recognized good practice.
	7.2	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 conform to any International Standard approved by the Engineer. Save as otherwise expressly provided in the contract, samples shall be supplied by the Contractor at his own cost.
Delivery to Site	7.3	The Contractor shall be responsible for procurement, transport, receiving, unloading and safe keeping of all Plant, Rolling Stock, construction, Materials, Contractor's Equipment and other things required for the completion of the Works.
Inspection	7.4	The Employer and the Engineer shall at all reasonable times <ol style="list-style-type: none">have full access to all parts of the Site and to all places from which natural materials are being obtained, andduring 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	7.5	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

7.6

(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 and by giving notice to the Contractor with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item after rectification complies with the Contract.

(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.

c) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

(iv) 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..

Liability after Inspection and Testing

7.7

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.

Ownership of Plant and Materials

7.8

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.

Cost of Employer's Attendance Including Travel

7.9

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.
Covering up of Works	7.10	
Examination of work before covering up	7.10.1	No work or part of work shall be covered up or put out of view, without the prior approval of the Engineer or the Engineer's Representative.
Cost of uncovering the work already covered up	7.10.2	The Contractor shall uncover any part or parts of the Works, or make openings in or through the same, as the Engineer may from time to time direct, and shall reinstate and make good such part or parts, to the satisfaction of the Engineer. If any such part or parts have been covered up, or put out of view after compliance with the requirement of Sub-clause 7.11.4 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.
Tests after Completion	7.11	
Contractor's Obligations	7.11.1	<p>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 5.6 and 5.7. The Contractor shall give, to the Engineer, 21 days' notice of the date after which the Contractor will be ready to carry out the Tests on Completion. Unless otherwise agreed, such Tests shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.</p> <p>Unless otherwise stated in Special Conditions of Contract, the Tests on Completion shall be carried out in the following sequence</p> <ul style="list-style-type: none"> (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 <p>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 subparagraphs (a), (b) or (c), the Contractor shall provide the Engineer and the Employer with a certified report of the results of all such Tests</p>

Delayed Tests **7.11.2** 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.

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.

Retesting

7.11.3 If the Works, or a part thereof, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.6 "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.

Failure to Pass Tests on Completion

7.11.4 If the Works, or a part thereof, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 7.11.3, the Engineer shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 7.11.3;
- (b) reject the Works, or a part thereof, or a Section (as the case may be), in which event the Employer shall have the same remedies against the Contractor as are provided under Clause 10.4; or
- (c) issue a Taking Over Certificate, if the Employer so requires. The Contract Price shall then be reduced by such amount as determined by the Engineer 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.

Interference with Tests on Completion

7.11.5 If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Clause 17.1 to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Clause 8.4, and
- (b) payment of any such Cost plus profit, which shall be included in the Contract Price.

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

Integrated testing and system commissioning	7.12	
Integrated Testing	7.12.1	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	7.12.2	The results of the Integrated Testing and Commissioning shall be compiled and evaluated by the Engineer and the Contractor.
Retesting	7.12.3	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 monies due, or to become due, to the Contractor.
Failure to Pass Test	7.12.4	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	7.12.5	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 (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 run from the date the Contractor is to commence the Works under this Clause. The Contractor shall not commence the construction, manufacture or installation of the Works or of any part of the Works unless and until the Engineer has endorsed the relevant Working Drawings in accordance with the Employer's Requirements.
Time for Completion	8.2	Time is the essence of Contract and will remain so at all times during the pendency of the Contract including the extended period of Contract. The Contractor shall ensure defect free completion and have passed the tests on the completion, including integrated testing where ever 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.

Delay

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

Failure or delay by the Employer or the Engineer, to hand over to the Contractor the Site necessary for execution of Works, or any part of the Works, or to give necessary notice to commence the Works, or to provide necessary Drawings or instructions or clarifications or to supply any material, plant or machinery, which under the Contract, is the responsibility of the Employer, shall in no way affect or vitiate the Contract or alter the character thereof; or entitle the Contractor to damages or compensation thereof but in any such case, the Engineer shall extend the time period for the completion of the Contract, as in his opinion is / are reasonable. However, If the Engineer's instruction on commencement of Works is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract

Extension of Time for Completion

8.4

Extension of Time

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

- a. "Force Majeure" referred to in **Clause 16**
- b. The Contractor's work held up for not being given possession of or access to the Site in accordance with the Contract
- c. Instruction of the Engineer to suspend the Works and the Contractor not being in default as to reasons of suspension.
- d. Acts or omissions of other Designated Contractors in executing work not forming part of this Contract and on whose performance, the performance of the Contractor necessarily depends.
- e. Any act of prevention or Breach of Contract by the Employer and not mentioned in this Clause
- f. Any order of Court restraining the performance of the Contract in full or in any part thereof
- g. Any other event or occurrence which, according to the Employer is not due to the Contractor's failure or fault, and is beyond his control without Employer being responsible for the same.
- h. An Employer's Variation

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

- a. the failure of sub-contractor, to commence or to carry out work in due time,
- b. non-availability, or shortage of Contractor's equipment, labour, utility services, Plant and Materials,
- c. inclement weather conditions, and
- d. the Contractor not fulfilling his obligations under 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 advance 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 the 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 a portion of the Works, for which an earlier completion period is stipulated, is due to the Contractor's failure or fault, and the Engineer is of the view that the remaining Works or the portions of Works can be completed by the Contractor in a reasonable and acceptable short time, then, the Engineer may allow the Contractor extension or further extension of time at its discretion with or without liquidated damages, for completion, as he may decide.

Liquidated Damages for Delay

8.5 Time is the essence of the contract and therefore if the work is delayed on account of the contractor, liquidated damage shall be recovered as provided for in the contract. Such liquidated damage shall generally be 0.5% of the contract value per one week delay with an upper limit of generally 10% of the contract value.

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

The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any **sum** due, or to become due, to the Contractor. In the event of an extension of time being granted under Sub-Clause 8.3, the amount due under this Sub-Clause shall be recalculated accordingly, and any over-payment refunded. The payment or deduction of such damages shall not relieve the Contractor from his obligations to complete the Works, or from any other of his duties, obligations or responsibilities under the Contract.

The 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.

Rate of Progress	8.6	<p>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.</p> <p>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.</p> <p>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.</p>
Suspension of Work	8.7	<p>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.</p>
Consequences of Suspension	8.8	<p>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</p> <ol style="list-style-type: none"> 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, <p>If suspension is ordered by the Engineer for reasons other than those mentioned in sub-clause 8.8 then the Contractor shall be entitled for extension of time and the compensation for this extension period shall be paid for idle labour as per the daily rate of wages as per Minimum Wages Act and 70% of the rate for hire charges for idle plant & machinery (excluding cost of fuel and lubricant). The contractor shall have to submit documentary proof for idleness of these resources. In addition to this 15% extra on this amount shall be paid to cover overhead cost.</p>
Resumption of Work	8.9	<p>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</p>

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 where ever 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 where ever 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 alongwith 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; or
- (b) reject the application, giving his reasons and specifying the work required to be done by the Contractor to enable the Taking Over Certificate to be issued. The Contractor shall then complete such work before issuing a further notice under this Sub-Clause.

Taking over of Parts of the Works

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

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.

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, but the Contractor shall have no responsibility for such work: the costs incurred by the Employer in remedying the defect or damage shall be recoverable from the Contractor by the Employer;
- (b) require the Engineer to determine and certify a reasonable reduction in the Contract Price; or
- (c) if the defect or damage is such that the Employer has been deprived of substantially the whole of the benefit of the Works or parts of the Works, terminate the Contract in respect of such parts of the Works as cannot be put to the intended use, the Employer shall then be entitled to recover all sums paid for such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant, Rolling Stock and Materials to the Contractor, and Sub-Clause 13 shall not apply.

Removal of Defective Work

10.5 If the defect or damage is such that it cannot be remedied expeditiously on the Site and if the Employer gives consent, the Contractor may, remove from the Site for the purposes of repair any part of the Works, which is defective or damaged. This consent may require the Contractor to increase the amount of Performance Security by the full replacement cost of these items or to provide

other appropriate security acceptable to the Employer.

Further Tests	10.6	If the remedying of any defect or damage is such that it may affect the performance of the Works, the Engineer may require that Tests on Completion, including Integrated Testing, be repeated to the extent necessary. The requirement shall be made by notice within 28 days after the defect or damage is remedied. Such Tests shall be carried out in accordance with Clause 7.11
Right of Access	10.7	Until the Performance Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the working and performance of the Works, except as may be inconsistent with any reasonable security restrictions by the organisation responsible for operating the Works.
Contractor to Search	10.8	The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is one for which the Contractor is liable, the Cost of such search shall be added to the Contract Price.
Performance Certificate	10.9	The Contract shall not be considered to be completed until the Performance Certificate has been signed by the Engineer 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.
Unfulfilled Obligations	10.10	After the Performance Certificate has been issued, the Contractor and the Employer shall remain liable for the fulfillment of any obligation, which remains unperformed at that time. For the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force.
Emergency defect rectification	10.11	If any defect or damage is one requiring immediate attention from safety, environmental or operational viewpoint, the Engineer has the authority to proceed with rectification in any manner suitable and deduct such sums from the Contract Price.
	11	Contract Price and Payment
The Contract Price	11.1	
Inclusions / Exclusions	11.1.1	<p>i) Unless otherwise stated in the Special Conditions of Contract the Contract Price, subject any to any adjustment thereto in accordance with the Contract shall be all inclusive (including all taxes, duties, royalties etc.) except :Value Added Tax (VAT) paid under Delhi VAT act 2005 where work is done in Delhi and also Value added tax(VAT) paid under other State Govt VAT act if work is done in that state.</p> <p>ii) 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.</p> <p>iii) 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.</p>
Maintaining	11.1.2	<p>i) In the event of exemption of custom duties, excise duties, CST/VAT or</p>

Records and Availing Exemptions		<p>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 DMRC 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 DMRC.</p> <p>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.</p>						
Adjust in Contract Price	11.1.3	Adjustment in contract price on account of inflation shall be done only if a "Price Variation Formula" is given in the special conditions of contract otherwise it will be a fixed price contract.						
Advances	11.2							
Mobilisation Advance	11.2.1	<p>Mobilisation Advance shall be generally 5% of original contract value payable in two equal installments or as mentioned in the Special Conditions of Contract. The first installment shall be paid after mobilisation has started and next installment shall be paid after satisfactory utilization of earlier installment.</p> <p>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 equal to the advance taken by the contractor. The Contractor, once the 50% mobilization advance has been recovered, shall have a one-time option to reduce the Bank Guarantee for the mobilization advance by the amount recovered.</p>						
Advance against Plant and Machinery	11.2.2	<p>Plant and machinery advance shall generally be 5% of original contract value or as specified in Special Conditions of Contract.</p> <p>This advance is payable against plant, equipment and machinery, provided the same have 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 the this contract and not for those which are already in the books of the contractor. The plant and machinery shall be valued by the Engineer as follows:</p> <table border="0" style="margin-left: 40px;"> <tr> <td>a. New Items</td> <td>: 80% of purchase price</td> </tr> <tr> <td>b. Used items in working order</td> <td>: 80% of the depreciated value as assessed by the Engineer</td> </tr> <tr> <td>c. Items valued at less than Rs.25,000 per unit</td> <td>: Not to be considered</td> </tr> </table> <p>The total advance for Plant & Machinery shall be limited to 5%. This shall also be an interest free advance.</p>	a. New Items	: 80% of purchase price	b. Used items in working order	: 80% of the depreciated value as assessed by the Engineer	c. Items valued at less than Rs.25,000 per unit	: Not to be considered
a. New Items	: 80% of purchase price							
b. Used items in working order	: 80% of the depreciated value as assessed by the Engineer							
c. Items valued at less than Rs.25,000 per unit	: Not to be considered							
Written Request for Advances	11.2.3	Advances as admissible, shall be payable only on Contractor's written request to the Employer.						
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 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 an account bill.

- b. No advance shall be given after 40% of the original contract amount has been paid.
- c. 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.
- d. 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/ fore closer of the contract and if the contractor fails to do so due to any reason whatsoever, then interest at an interest rate equal to State Bank of India prime lending rate plus 2% per annum or 10% per annum whichever is higher shall be charged on the unrecovered amount of such advances from 16th day onwards till the same is returned by the contractor

Interest in Case of Delay in Repayment of Advances

- 11.2.5 Should there be delay in the progress and completion of work, as a result of which it is not possible to recover the advance and interest thereon, before the date of completion stipulated in the Contract, then the interest to be charged from the Contractor on the remaining portion of the advance beyond the original completion date specified in the Contract, shall be the State Bank of India prime lending Rate plus 2% per annum or 10% per annum whichever is higher.

Advances to be Used only for This Work.

- 11.2.6 The advances shall be used by the Contractor strictly for the purpose of the Contract, and for the purpose for which they are paid. Under no circumstances, shall the advances be diverted for other purposes. Any such diversion shall be construed as a breach of the Contract and the Contractor shall be asked to return the advance at once and pay interest at 15% per annum till the advance is recovered back from him. The Contractor shall return the advance and pay the interest in one go without demur.

Employer retains the right for any other remedy prescribed for breach of Contract in this regard.

The Contractor, if required by the Engineer shall provide the details of utilisation of Mobilization advance.

11.3 Provisional Payment Against Material at Site

- 11.3.1 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 control value. The valuation of the average consumption of such main construction materials shall be approved by the Engineer, whose decision shall be final. Materials which are of perishable nature should be adequately insured.

11.3.2 Written Request for Advances/Provisional Payment against material at site

Advances and provisional payments as admissible, shall be payable only on Contractor's written request to the Employer/Engineer.

11.3.3 Recovery of Advances/Provisional Payment

(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 of original Date of Completion. As far as possible the recovery of advances shall be limited to 30% of On- account bill.

(b) No advance shall be given after 40% of the original contract amount has been paid. However, provisional payment against material at site will continue to be paid as stipulated in Clause 11.3 till end of the contract period.

(c) In case of provisional payment against Materials, the amount consumed every month shall be recovered from the next month's on account bill and completing the recovery in 3 monthly instalments.

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:

- (a) the date on which the Milestone was achieved; or
- (b) 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 certified achieved by the Engineer under each Cost Centre;
- (b) any amounts to be added and deducted for the advance payments and recovery thereof;
- (c) any other additions or deductions is due and approved by the Engineer in accordance with the Contract; and
- (d) 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.

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. 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.

11.6

Payment- Interim and Final

11.6.1 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 14 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) the Employer shall pay the amount certified in the Final Payment Certificate within 56 days from the date of issue of the Certificate..

Payments of local currency shall be made into bank account, nominated by the Contractor. Payments of foreign currencies shall be made through Letter of Credit route.

Delayed Payment

11.6.2 If the Contractor does not receive payment in accordance with Sub-Clause 11.6.1, the Contractor shall be entitled to receive interest on the amount unpaid during the period of delay. This period shall be deemed to commence after 56 days from the date of issue of the Certificate.

Unless otherwise stated in the Special Conditions of Contract, the interest shall be calculated at an interest rate equal to State Bank of India prime lending rate.

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

Statement at Completion

- 11.7** Not later than 60 days after the issue of the Taking Over Certificate for the whole of Works, the Contractor shall submit, to the Engineer, 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.:
- (a) the final value of all work done in accordance with the Contract, up to the date stated in such Taking Over Certificate,
 - (b) any further sums which the Contractor considers to be due, and
 - (c) an estimate of amounts which the Contractor considers will become due to him under the Contract.

The estimated amounts shall be shown separately in such statement at completion. The Engineer shall certify payment under Sub-Clause 11.5.

Application for Final Payment Certificate

- 11.8** Not later than 56 days after the issue of the Performance Certificate, the Contractor shall submit to the Engineer three copies of a draft final statement with supporting documents showing in detail, in a form approved by the Engineer:
- (a) the value of all work done in accordance with the Contract, and
 - (b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

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

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

Discharge

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

Issue of Final Payment Certificate

- 11.10** The Engineer shall issue to the Employer, with a copy to the Contractor, the Final Payment Certificate within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 11.8 and 11.9, stating:
- (a) the amount which is finally due, and
 - (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance, if any, due from the Employer to the Contractor or from the Contractor to the Employer, as the case 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.

Cessation of Employer's Liability	11.11	<p>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.</p> <p>However, this Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer</p>
Calculation of Payments in Foreign Currency	11.12	<p>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.</p>
Round off	11.13	<p>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.</p>
Payment By Cheque and E-Payment	11.14	<p>All payments to the Contractor will be made by cheque or "E-Payment" as desired by the Employer.</p>
Tax Deduction at Source	11.15	<p>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.</p>
Production of Vouchers	11.16	<ol style="list-style-type: none">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	Unless the Contractor pays and clears immediately on demand any claim of the Employer, the Employer shall at all times be entitled to deduct the amount of the said claim from the moneys, securities and / or deposits which may have become or will become payable to the Contractor under these presents, or under any other Contract or transaction whatsoever between the Employer and the Contractor even if the matter stands referred to Arbitration. The Contractor shall have no claim for any interest or damage whatsoever in respect of any amounts withheld or treated as withheld under the lien referred to above and duly notified as such to the Contractor.
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 interse.
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.
Variations	12	
Right to Vary	12.1	All Variations shall be recorded in a written instruction from the Engineer either as a Contractor's Variation or as an Employer's Variation, and shall not be implemented by the Contractor without such an instruction in writing from the Engineer. No Variation shall in any way vitiate or invalidate the Contract. The Contractor shall not make any alteration and/or modification of the Works, unless and until the Engineer instructs or gives consent to a Variation. If the Construction and/or Manufacture Documents or Works are not in accordance with the Contract, the rectification shall not constitute a Variation.
Contractor's Variations	12.2	
Variation Proposals	12.2.1	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, 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.

Contents of Variation	12.2.2	<p>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:</p> <ul style="list-style-type: none">a. a general description of the original Contract requirements for the Works and the proposed changesb. a detail of all the proposed modifications to the drawings and specificationsc. a detail of all Work and goods affected by the value engineering proposald. a detailed estimate of the construction cost based on the original Contract requirements and based on the proposed changese. any resultant time extensions or reductions for the Contractf. 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	<p>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.</p> <p>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.</p>
Amendments- Employer Issuance	12.2.4	<p>If the variation proposal is acceptable to the Employer/Engineer in whole or in parts, it will accept by execution of an amendment. Such amendment shall identify all the changes in the specifications, Contract Period etc. and shall specify net savings on construction costs which shall be adjusted in the contract value by the Employer.</p>
Contractor's Acceptance and Payment	12.2.5	<p>The Contractor shall either accept or reject any proposed amendment 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 amendments shall be deemed to be accepted by the Contractor and shall become a variation to the Contract. The Contractor's acceptance shall be unconditional and the contract value / price shall be adjusted by the amount of saving due to the variation.</p>
Employer's Variations	12.3	<p>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</p>

- 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.

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 i) The quantities of items shown in the Bill of Quantities are approximate, and liable to vary during the actual execution of the work. Some items/group of items may have to be altered, added or omitted. 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, alterations or omissions in the Bill of Quantities, individual items or group of items, specified in the Bill of Quantities.

ii) Such variations shall be paid as follows:

a) At the accepted rates of the Contract for Positive variation in quantities to the extent of 25%, , except in the case of foundation works. Unless otherwise specifically provided for in the Bill of Quantities or elsewhere in the Contract, the variation of 25% shall be applicable to a group of items mentioned therein and not to individual items. In case of variation in quantities on minus side, contract rates will be payable for executed quantities.

b) In case of foundation work, no variation limit applies and Contractor shall carry out the Work, at rates stipulated in the Contract irrespective of any variation.

c) 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 where any variation can take place.

d) For items against which the quantity given in the Bills of Quantities is "if or as required", there shall be no increase/decrease of rates whatever be the quantity finally executed.

e) Variation in the quantity of items individually costing upto 1% of the total contract value, shall be payable at the rates stated in the Contract. notwithstanding the magnitude of variation upto 2% of the original Contract Value for each item.

f) In case the variation in individual items or the group of items as stipulated above, is more than 25% (positive or negative) , the rate for the varied quantity beyond 25% shall be negotiated between the Engineer and the Contractor and mutually agreed rates arrived at before actual execution of the extra quantity.

g) 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. In case this is not possible, the rate may be decided on the following basis:

- i) Cost of Materials at current market price, as actually utilised in the final finished Permanent Works, including a reasonable percentage for wastage and transportation.
- ii) 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.
- iii) 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.
- iv) 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.
- v) An amount of 20% of items (i), (ii), (iii) and (iv) above to allow for Contractor's overheads, profits and corporate taxes. This percentage shall also apply to estimated cost of Materials supplied free to the Contractor.
- vi) 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 their execution arises.

h) In the event of disagreement in respect of items (f) and (g) above, the Engineer shall fix such rates of price as are, in his opinion appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on account payments to the Contractor. Alternatively, in the event of disagreement, the Contractor shall have no claim to execute extra quantities/new items and the Engineer shall be free to get such additional quantities beyond 25% new items executed through any other agency. However, if the Engineer or the Employer so directs the Contractor shall be bound to carry out any such additional quantities beyond the limits stated above original quantities and or new items and the disagreement or the difference regarding rates to be paid for the same shall be settled in the manner laid down under the conditions for the settlement of dispute.

**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.

13.0 Termination of the Contract

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

Termination Of Contract Due To Contractor's Default 13.2

Conditions Leading To termination Of Contract 13.2.1 The Employer shall be entitled to terminate the Contract if the Contractor or any one of its constituents,

- a) fails to comply with a notice under 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 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
- h) fails to take steps to employ competent and/or additional staff and labour, or
- i) fails to afford the Engineer or his representative proper facilities for inspecting the Works or any part thereof, or
- j) 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 (j), the Employer may by notice of 7 days terminate the Contract immediately.

13.2.3 For the purpose of sub para (c) above, this clause, reasonable excuse shall be 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 The Employer's decision to terminate the Contract shall not prejudice any other rights of the Employer under the Contract.

	13.2.5	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 or a partnership firm, then every member/partner of such JV 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/partnership firm.
	13.2.6	The Engineer shall not make a claim under the Performance Security except for amounts to which the DMRC is entitled under the contract (Not withstanding and/or without prejudice to any other provisions in the contract agreement) in the event of: <ul style="list-style-type: none"> 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. ii) Failure by the contractor to pay DMRC 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. iii) The contractor being determined or rescinded under provision of the GCC the Performance Security shall be forfeited in full and shall be absolutely at the disposal of the DMRC.
Valuation at the date of Termination	13.2.7	The Engineer shall, as soon as possible after termination under Sub-Clause 13.2.1, determine and advise the Contractor of the value of the Construction and/or Manufacture Documents, Plant, Rolling Stock, Materials, Contractor's Equipment and works and all sums then due to the Contractor as at the date of termination.
Payment after Termination	13.2.8	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. <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 13.2.7. If there are no such extra costs, the Employer shall pay any balance to the Contractor.</p>
Non-exercise of power not to constitute waiver	13.2.9	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.
Default of Employer	13.3	
Notice by Contractor	13.3.1	In the event of the Employer: <ul style="list-style-type: none"> a. failing to pay the Contractor, without reasonable cause, the amount due under any certificate of the Engineer within 56 days after the expiry of the time stated in Sub-Clause 11.5 within which payment has to be

made, subject to any deduction that the Employer is entitled to make under the Contract, or

- b. becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation,

then, the Contractor may give notice requiring the Employer to remedy the default within 28 days after receipt of the notice. If the Employer fails to remedy the default or fails to propose steps reasonably acceptable to the Contractor to do so and in that case, the Contractor may terminate the Contract after issue of 14 days notice to the Employer with a copy to the Engineer. In this case, the Contractor shall be compensated as per Sub clause 13.3.4

Contractor's Entitlement to Suspend the Work

13.3.2 The Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 56 days after the expiry of the time stated in 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 work.

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

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

Cessation of Work by Contractor

13.3.3 After termination under **Sub-Clause 13.3.1**, the Contractor shall:

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

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

Payment on Termination and/or Optional Termination due to Force Majeure

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

- a. The value of approved materials actually brought to the site and reasonably required to execute the works during next three months, as per approved programme, and
- b. Value of work completed up to date by the contractor at rates specified in the Contract, after taking into account any deductions, retentions, setoff,
- c. other Costs or liabilities which in the circumstances were reasonably

and necessarily incurred by the Contractor in the expectation of completing the Works;

- d. the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- e. the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

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

13.3.5

In case termination/foreclosure of the Contract under whatsoever circumstances, any remaining tools, plants, equipments 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 decision and full credit at rates initially charged to the contractor shall be allowed for such materials. Similarly the Employer shall be entitled to recover the cost of the unreturned material, plant equipment and tools from the contractor where such material have been supplied free of cost and plant, equipment and tools 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 Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover.

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.
- (g) **Terrorism;**
- (h) **Munitions of war, explosive materials;**
- (i) **design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible, and**
- (j) **any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventative precautions**

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:

- (a) extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4, and
- (b) amount of such cost, which shall be included in the Contract Price.

Contractor's Risks

14.5

The Contractor's risks are all risks other than the Employer's risks given in sub-clause 14.3.

Limitation of Liability

14.6

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:

- (a) **under Sub-Clauses 4.18, 4.19 and 14.1**
- (b) under any other provisions of the Contract which expressly impose a greater liability,
- (c) in cases of fraud, wilful misconduct or illegal or unlawful acts, or
- (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.

15 Insurance

Professional Indemnity Insurance

- 15.1** The Contractor shall effect and maintain professional indemnity insurance, preferably in the name of DMRC, 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 redeem the insurance before the expiry of the Yearly Insurance in such a way that the entire validity period is covered.

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.

Insurance for Works and Contractor's Equipment

- 15.2** 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. The Contractor shall extend such insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking Over Certificate, and for loss or damage occasioned by the Contractor or Sub-contractors in the course of any other operations (including Clauses 7.10, 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

- 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)

and Damage to Property

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 person (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.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, 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 Insurance Company operating in India, and
- (b) copies of the policies for the insurances described in Sub-Clause 15.2, 15.3 and 15.4.

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

The contractor shall effect all insurances for which he is responsible with insurers and in terms approved by the employer. Each policy insuring against loss or damage shall provide for payments 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.

16 Force Majeure

Definition of Force Majeure

16.1 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:

- (a) act of God;
- (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo;
- (c) rebellion, revolution, insurrection, or military or usurped power, or civil war;
- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such an assembly;
- (e) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Sub-contractors currently or formerly engaged on the Works.
- (f) **terrorism,**
- (g) **strike or lockout by persons other than the Contractor's Personnel**
- (h) **munitions of war, explosive materials**

If a party considers that it may be affected by Force Majeure, the party shall promptly notify the other party and Engineer of such Force Majeure within 21 days of such occurrence. If neither party issues any notice regarding the event within 21 days of its occurrence, the said event shall be deemed not to have occurred and the Contract shall continue to have effect as such.

Effect of Force Majeure Event

16.2 Neither the Employer nor the Contractor shall be considered in default or in contractual breach to the extent that performance of obligations is prevented by a Force Majeure event which arises after the date of Notice to Proceed Upon the occurrence of such Force Majeure, the affected party shall endeavour to continue to perform its obligations as far as reasonably practicable.

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

Contractor's Responsibility

16.3 If affected by such Force Majeure, the Contractor shall promptly notify the Engineer of any proposals for overcoming the consequences of the Force Majeure, including any reasonable alternative means for performance, but

shall not carry out these proposals without the consent of the Engineer.

Employer's Responsibility **16.4** If affected by such Force Majeure, the Employer shall promptly notify the Engineer and the Contractor of any proposals for overcoming the consequences of the Force Majeure.

Payment to Contractor **16.5** If the Works shall suffer loss or damage due to such Force Majeure, the Contractor shall be entitled to have included, in an Interim Payment Certificate, the Cost of work executed in accordance with the Contract.

Resumption of Work **16.6** The obligations under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.

In case of doubt or dispute, whether a particular occurrence should be considered an "event" as defined under this clause, the Engineer shall first try to resolve the issue and give his decision. If Engineer's decision is not acceptable to any party, the aggrieved party may refer the matter for resolution under Clause 17. However the execution of the work shall continue and shall not be stopped or slowed down on that account.

Works that have already been measured shall be paid for by the Employer even if the same is subsequently destroyed or damaged as a result of the event. The cost of rebuilding or replacing any work that has been measured shall be borne by the Employer.

Optional Termination, Payment and Release **16.7** If the execution of substantial portion of works or all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Clause 16.1, or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given and the Contractor shall proceed in accordance with Sub-Clause 13.3.3.

In case the contract stands terminated as above, the contractor shall be paid as per Clause 13.3.4.

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.

Consequences of Force Majeure **16.9** If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under Clause 16.1 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Clause 17.1 [Contractor's Claims] to:
(a) an extension of time for any such delay, if completion is or will be delayed, under Clause 8.4 [Extension of Time for Completion], and
(b) if the event or circumstance is of the kind described in Clause 16.1 [Definition of Force Majeure] and, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Clause 15.2 [Insurance for Works and Contractor's Equipment].
After receiving this notice, the Engineer shall proceed to agree or determine these matter

17 CLAIMS, DISPUTES, CONCILIATION AND ARBITRATION

Procedure for Claims

17.1 If the Contractor intends to claim any additional payment under any clause of these Conditions or otherwise, the Contractor shall give notice to the Engineer as soon as possible and in any event within 28 days of the start of the event giving rise to the claim.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at any other location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer shall, on receipt of such notice, inspect such records and may instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all such records, and shall (if instructed) submit copies to the Engineer.

Within 28 days of such notice, or such other time as may be agreed by the Engineer, the Contractor shall send to the Engineer an account, giving detailed particulars of the amount and basis of the claim. Where the event giving rise to the claim has a continuing effect, such amount shall be considered as interim. The Contractor shall then, at such intervals as the Engineer may reasonably require, send further interim accounts giving the accumulated amount of the claim and any further particulars. Where interim accounts are sent to the Engineer, the Contractor shall send a final account within 28 days of the end of the effects resulting from the event.

If the Contractor fails to comply with this Sub-Clause, he shall not be entitled to claim any additional payment.

Payment for Claims

17.2 The Contractor shall be entitled to have included in any Interim Payment Certificate such amount for any claim as the Engineer considers due, after taking approval from the Employer. If the particulars supplied are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment for such part of the claim as has been substantiated.

No legal action Till Dispute Settlement Procedure is Exhausted

17.3 Any and all Disputes shall be settled in accordance with the provisions of Clause 17. No action at law concerning or arising out of any Dispute shall be commenced unless and until all applicable Dispute resolution procedures set out in Clause 17 shall have been finally exhausted in relation to that Dispute or any Dispute out of which that Dispute shall have arisen with which it may be or may have been connected.

Notice of Dispute

17.4 For the purpose of Sub-Clause 17.5, a Dispute shall be deemed to arise when one party serves on the other party a notice in writing (hereinafter called a "Notice of Dispute") stating the nature of the Dispute provided that no such notice shall be served later than 28 days after the date of issue of Performance Certificate by the Engineer.

Two Stages for Dispute Resolution

17.5 Disputes shall be settled through two stages:

- a. Conciliation procedures as established by "The Arbitration and Conciliation Act-1996" (as amended from time to time) and in accordance with this Clause. In the event this procedure fails to resolve the Dispute then;
- b. Arbitration procedures undertaken as provided by "The Arbitration and Conciliation Act -1996" (as amended from time to time) and in

accordance with this Clause.

Conciliation **17.6** Within 60 days of receipt of Notice of Dispute, either party shall refer the matter in dispute to conciliation.

Conciliation proceedings shall be initiated within 30 days of one party inviting the other in writing to Conciliation. Conciliation shall commence when the other party accepts in writing this invitation. If the invitation is not accepted then Conciliation shall not take place. If the party initiating conciliation does not receive a reply within 30 days from the date on which he sends the invitation he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.

The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner

Conciliation Procedure **17.7** Disputes shall be referred to conciliator for decision The Parties shall appoint a Conciliator by the date stated in the Contract Data.

The Conciliator shall comprise, as stated in the Contract Data, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the Conciliator shall comprise three persons.

If the Parties have not jointly appointed the Conciliator 21 days before the date stated in the Contract Data and the Conciliator is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members has been agreed by the Parties and is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the Conciliator.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the Conciliator (including each member) shall expire when the discharge referred to in Clause 11.9 [Discharge] shall have become effective.

If any of the following conditions apply, namely:

- (a) the Parties fail to agree upon the appointment of the sole member of the Conciliator by the date stated in the first paragraph of this Clause,
- (b) either Party fails to nominate a member (for approval by the other Party), or fails to approve a member nominated by the other Party, of

a Conciliator of three persons by such date,

(c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the Conciliator by such date, or

(d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing entity or official named in the Contract Data shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the Conciliator. This appointment shall be final and conclusive.

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

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

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

When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

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

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

Termination of Conciliation Proceedings

17.8

The conciliation proceedings shall be terminated:

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

terminated, on the date of declaration.

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

Arbitration	17.9	<p>If the efforts to resolve all or any of the disputes through conciliation fails, then such disputes or differences, whatsoever arising between the parties, arising out of touching or relating to construction/ manufacture, measuring operation or effect of the Contract or the breach thereof shall be referred to Arbitration in accordance with the following provisions:</p> <p>(a) Matters to be arbitrated upon shall be referred to a sole Arbitrator if the total value of the claim is upto Rs.5 million and to a panel of three Arbitrators if total value of claims is more than Rs.5 million. The Employer shall provide a panel of three arbitrators which may also include DMRC officers for the claims upto Rs.5 million and a panel of five Arbitrators which may also include DMRC officers for claims of more than Rs.5 million. The Contractor shall have to choose the sole Arbitrator from the panel of three and/or one Arbitrator from the panel of five in case three Arbitrators are to be appointed. The Employer shall also choose one Arbitrator from this panel of five and the two so chosen will choose the third arbitrator from the panel only <u>who shall act as the Presiding Arbitrator</u>. The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/ demand of appointment of Arbitrator from either party. Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance</p> <p>with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in Delhi only. The language of proceedings, that of documents and communication shall be English.</p> <p>(b) The Employer at the time of offering the panel of Arbitrator(s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrator nominated in the panel along with their professional experience, phone nos. and addresses to the contractor.</p> <p>(c) The award of the sole Arbitrator or the award by majority of three Arbitrators as the case may be shall be binding on all parties.</p>
Interest on Arbitration Award	17.10	Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period, till the date on which the award is made.
Cost of Arbitration	17.11	The cost of arbitration shall be borne by the respective parties. The cost shall, inter alia, include the fees of the arbitrator (s) as agreed by both the parties or provided under the International Arbitration Rules.
Jurisdiction of Courts	17.12	Where recourse to a Court is to be made in respect of any matter, the court at Delhi/ New Delhi shall have the exclusive jurisdiction to try all disputes between the parties.
Suspension of Work on	17.13	The reference to Conciliation / Arbitration shall proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided

A1

Account of Arbitration

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

18 Service of Notices

Notice to Contractor

to 18.1

- a. All notices to the Contractor, shall be served by post or telex or telefax or by hand to the Contractor or his authorized representatives. In case of notices delivered by post, they will be deemed to have been delivered after 7 days of dispatch.
- b. The Contractor shall, on award of the Contract, furnish to the Engineer, the name, designation, address and telephone, telex and telefax numbers and e-mail address of his representative referred to in **Clause 4.3.**

Notice to Employer and Engineer

to 18.2

All notices to the Employer or Engineer shall be served by post or telex or telefax, or by delivering by hand to the address nominated for the purpose.

Change of Address

of 18.3

Parties to the Contract may change the nominated address by Employer with a notice to all concerned.