



Driving Bangalore Ahead

## BANGALORE METRO RAIL PROJECT, PHASE-2

“Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.”

BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38

JUNE 2018

## Technical Proposal – Volume-1



**Bangalore Metro Rail Corporation Limited**

**Technical Proposal – Volume - 1**

TENDER NOTIFICATION NO: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03 / 2018/38 Dated 26-06-2018

**Name of the Work:** “Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.”

R6 - UG-RT03/TNL&STN / BMRC




**BANGALORE METRO RAIL CORPORATION LTD.**

(A Joint Venture of GOK &amp; GOI)

3<sup>rd</sup> Floor, BMTC Complex, K.H.Road

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**BANGALORE METRO RAIL PROJECT, Phase-2  
TENDER NOTIFICATION**

**Bangalore Metro Rail Corporation Ltd., (BMRCL)** a Joint Venture of Government of Karnataka and Government of India, invites sealed tenders (**Single stage – Two Envelope System**) from eligible, qualified, reputed and experienced Contractors (**JV permitted**) having previous experience in the works of similar nature, volume and complexity completed during the last TEN years as on date of submission of the tender for the work of “Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.”

**Key Details of the Tender:**
**Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT 03/2018/38 Dated 26-06-2018**

Sl. No	Tender Name/ Name of Work	Period of completion of work	Amount in INR			Sale of Tender Documents	Date & time for submission of Tenders
			Estimated Cost of work	Cost of Tender Document	Tender Security Amount		
1	“Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.”	42 Months	INR 1105.42 Crores	INR 56,000 (Rupees Fifty-Six thousand only)	INR 11.06 Crores	26.06.2018 to 07.08.2018	07-09-2018 (from 11.00 Hrs. to 15.00 Hrs (IST))

**Note:**

1. Tenderers can download Tender document against online payment for Rs.56,000/- (Rupees Fifty Six Thousand Only) inclusive of GST, from BMRCL website [www.bmrc.co.in](http://www.bmrc.co.in) from 26.06.2018 until midnight of 07.08.2018. The procedure for online download is available in our webpage: [www.bmrc.co.in](http://www.bmrc.co.in)
  2. The Tenderers can also obtain **login password** on all working days from 11.00 to 17.00 hours during sale period mentioned above from the Registered Office of BMRCL,BMTC Complex, Shanthinagar, Bangalore-560027 on submission of a requisition letter and a non-refundable fee in the form of Crossed Demand Draft for Rs.56,000/- (Rupees Fifty Six Thousand Only) issued by an Indian Scheduled Bank (excluding Co-operative Banks) or from a Scheduled Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule drawn in favour of '**Bangalore Metro Rail Corporation Limited**', payable at Bangalore.
  3. The intending Tenderers are required to submit all the credentials and information as required in the Tender documents with the requisite Tender Security Amount as mentioned above at the time of submission of the Tender in the prescribed format as mentioned in Instructions to tenderers (ITT).
- Further details will be available on web site: [www.bmrc.co.in](http://www.bmrc.co.in) from 26-06-2018.

**General Manager (Contracts)  
Bangalore Metro Rail Corporation Ltd.**

## BANGALORE METRO RAIL CORPORATION LIMITED

TO

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FROM

Managing Director,  
Bangalore Metro Rail Corporation Ltd,  
III Floor, BMTC Complex, K.H.Road,  
Shantinagar, Bangalore – 560 027.

**Sub: “Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.”**

Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT 03/2018/38 Dated 26-06-2018.

**NOTICE INVITING TENDER (NIT) - SECTION – A**

**Bangalore Metro Rail Corporation Ltd., (BMRCL)** a Joint Venture of Government of Karnataka and Government of India, invites sealed tenders (**Single stage – Two Envelope System**) from eligible, qualified, reputed and experienced Contractors (**JV permitted**) having previous experience in the works of similar nature, volume and complexity completed during the last **TEN** years as on date of submission of tender for the work of **“Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.”**

1. Key Details:

SI No	Description	
1	Estimated Cost of work	INR 1105.42 Crores
2	Tender Security Amount	INR 11.06 Crores
3	Completion period of Work	42 Months
4	Cost of tender document	INR 56,000 (Rupees Fifty six thousand only)
5	Sale of Tender documents	From 26/06/2018 to 07/08/2018
6	Pre-bid meeting	16/07/2018 at 11.00 hrs
7	Last date of Seeking Clarification	17/07/2018 at 17.30 hrs
8	Contact person and Place for – (a) Purchase of Tender documents (b) Pre bid Meeting (c) Seeking clarifications & Submission of tender	General Manager (Contracts), Office of the Bangalore Metro Rail Corporation Limited, Third Floor, BMTC Complex, KH Road, Shantinagar, Bangalore-560027, Karnataka, India Email: <a href="mailto:contracts@bmrc.co.in">contracts@bmrc.co.in</a>
9	Date & time of submission of tender	07/09/2018 from 11.00 hrs to 15.00 hrs
10	Date & Time of opening of tender	07/09/2018 at 15.30 hrs (IST)

2. **Source of Funds:** BMRCL is applying Loan from bilateral/multilateral funding agency/agencies (EIB and AIIB) hereinafter called “Funding Agency (ies)” towards the part cost of the Project, and intends to apply a portion of the proceeds of the loan to payments under this contract. Disbursement of the loan will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the applicable guidelines of Funding Agency. No party other than BMRCL shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan Agreement will cover only a part of the project cost. The remaining portion shall be financed through equity participation by the Government of India and Government of Karnataka and other appropriate means.

**3. The Tender documents consist of:**

<b>Technical Proposal (Volume -1)</b>	
Section -A	Tender Notification
„	Notice Inviting Tender (NIT)
Section -B	Instruction to Tenderers (ITT)
Section -C	Eligibility cum Qualification Criteria (EQC)
Section -D	Form of Tender (Including Appendices)(FTT)
Section -E	General Conditions of Contract (GCC)
Section -F	Special Conditions of Contract (SCC)
Section -G	Schedules to Special Conditions of Contract
<b>Technical Proposal (Volume -2)</b>	
Section -A	Employer's Requirement
Section -B	Outline Design Specifications
Section -C	Outline Construction Specifications
<b>Technical Proposal (Volume -3)</b>	
Section -A	Tender Drawings
<b>Technical Proposal (Volume -4)</b>	
Section -A	Safety, Health & Environment (SHE) Manual (Reference only)
Section -B	Geo Technical Data & Utility details (Reference only)
<b>Financial Proposal (Pricing Document)</b>	
Form of Price bid, Preamble, Appendix -35, Pricing Document - Summary, Outline Description of Works , Breakup of Payment Schedule & Bill of quantities of Schedule C.	

- 4. Tenderers can download Tender document against online payment of Rs.56,000/- (Rupees Fifty Six Thousand Only) inclusive of GST, from BMRCL website [www.bmrc.co.in](http://www.bmrc.co.in) from 26.06.2018 until midnight of 07.08.2018.The procedure for online download is available in our webpage: [www.bmrc.co.in](http://www.bmrc.co.in)**

**Procedure for tenderers opting for online purchase of tender documents:**

- i. Visit web site: [www.bmrc.co.in](http://www.bmrc.co.in)
  - ii. Register online. (one-time process)
  - iii. Make payment through Gate Way as available in the website.
  - iv. Down load, complete tender document.
  - v. Frequently check website and also registered mail for any Addendum/Corrigendum/Answered Pre bid queries.
5. The Tenderers can also obtain **login pass word** on all working days from 11.00 to 17.00 hours during sale period mentioned above from the Registered Office of BMRCL,BMTC Complex, Shanthinagar, Bangalore-560027 on submission of a requisition letter and a non-refundable fee in the form of Crossed Demand Draft for Rs.56,000/- (Rupees Fifty Six Thousand Only) issued by an Indian Scheduled Bank (excluding Co-operative Banks) or from a Scheduled Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule drawn in favour of '**Bangalore Metro Rail Corporation Limited**', payable at Bangalore.

**Procedure for tenderers opting for downloading of tender documents using Login pass word against DD.**

- i. Visit web site: [www.bmrc.co.in](http://www.bmrc.co.in)
  - ii. Enter login password obtained from BMRCL on submission of DD.
  - iii. Down load, complete tender document.
  - iv. Frequently check website and also registered mail for any Addendum/Corrigendum/Answered Pre bid queries.
6. **All Tenderers to note that only HARD COPY of Tender Proposals as per 9.2 and 9.4 of Instructions to Tenderer-ITT (TENDER DOCUMENT AS DOWNLOADED FROM OUR WEB SITE) duly signed and stamped along with the other qualifying documents should be submitted in person at the Place, date and time as mentioned in KEY DETAILS above. In case any tampering is found the tenderer will be disqualified.**
7. Late tenders (received after date and time of submission of bid) shall not be accepted under any circumstances.

8. **Tender Validity:** Tenders shall be valid for a period of **180 days** from the date of submission of Tenders.
9. **Tender Security.** Tender security shall be valid up to **240 days** from the date of submission of Tenders. Tenders shall be accompanied with a tender security of the requisite amount in the form of a Bank Guarantee **payable at Bangalore**. The pay orders/Bankers cheque and demand drafts drawn in favour of Bangalore Metro Rail Corporation Limited, Payable at Bangalore are also acceptable as described in clause C-12 and C-13 of the Instructions to Tenderer.
10. A firm after purchase of the tender documents in their name as mentioned (vide para 4 & 5 above) can submit the tender either as an individual firm or as a Joint venture. **Tenders are open to nationals of all countries**
11. BMRCL reserves the right to accept or reject any or all tenders without assigning any reasons. No tenderers shall have any cause of action or claim against BMRCL for rejection of their Tender.
12. Contract will be awarded to the Tenderer whose Tender has been determined to be substantially responsive and compliant to the requirements contained in the Tender Documents and who has offered the Lowest Evaluated Reasonable Tender Price.
13. Any suit or application, arising out of any dispute or differences on account of this tender shall be filed in a competent court at Bangalore, Karnataka only and no other court or any other district of the country shall have any jurisdiction in the matter.

**General Manager (Contracts)**  
(On behalf of Managing Director)  
**Bangalore Metro Rail Corporation Ltd**

R6 - UG-RT03/TNL&STN/BMRCL

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## INSTRUCTIONS TO TENDERERS (ITT)

### **A GENERAL**

#### **1.0 INTRODUCTION**

The Bangalore Metro Rail Corporation Limited is a joint venture enterprise of Government of India and Government of Karnataka entrusted with the responsibility of implementation of Bangalore Metro Rail project. The Phase-1 of the project consists of 42.3 km with 40 stations and is completely operational. The East West Corridor has 18.2 km and North South Corridor has 24.10 Km. The underground section, which is 8.80 km, has got seven stations including the interchange station of Majestic.

The Phase-2 of Bangalore Metro Rail Project consists of Four Extensions to the existing lines and Two New Lines with a total length of 72.095 km and 61 stations.

The Phase-1 (42.3 km) and Phase-2 (72.095 km), together will create a Metro Network of 114.395 km, with 101 Stations.

The Project is financed through equity participation by the Government of India (GOI) and Government of Karnataka and loan from bilateral/multilateral funding agency/agencies (EIB and AIIB) hereinafter called "Funding Agency(ies)" towards the part cost of the Project, and intends to apply a portion of the proceeds of the loan to payments under this contract. Disbursement of the loan will be subject, in all respects, to the terms and conditions of the Loan Agreement, including the disbursement procedures and the applicable guidelines of Funding Agency. No party other than BMRCL shall derive any rights from the Loan Agreement or have any claim to loan proceeds. The above Loan Agreement will cover only a part of the project cost. The remaining portion shall be financed through equity participation by the Government of India and Government of Karnataka and other appropriate means.

**1.1** This Tender is for Reach-6 Under Ground Tunnel & Stations i.e., proposed, "**Design & Construction of Underground structures (Tunnels & Stations) Shivajinagar Station (excluding) to Tannery Road Station (excluding) of Bangalore Metro Rail Project, Phase-2**"

**1.2** Interested tenderers may submit the tender as a sole tenderer or in joint venture. The number of Members in a Joint Venture shall be **restricted to maximum THREE**. However, they will not be permitted to tender as an individual firm and at the same time as part of any other group. All the members of the Joint Venture will be jointly and severally liable for the performance of whole Contract. Tenders are open to nationals of all countries.

**1.3** Tenderers having a conflict of interest will be rejected. Tenderers shall be considered to have a conflict of interest with one or more parties in this bidding process, if

- (a) a tenderer has been engaged by the Employer to provide consulting services for the preparation related to procurement for or implementation of the work;
- (b) a tenderer has any associates/affiliates (inclusive of parent firms) mentioned in sub paragraph (a) above; or
- (c) a tenderer lends, or temporarily seconds its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.

#### **2.0 INFORMATION & REQUIREMENTS**

**2.1** (a)The Tenderers shall prepare and submit Qualification requirements together with required documents prescribed.

(b) A tenderer shall submit only one bid, either individually or as a partner of a JV. A tenderer who submits or participates in more than one bid either individually or as a partner of a JV will cause all of the proposals in which the tenderer has participated to be disqualified. No tenderer can be a subcontractor while submitting a bid individually or as a partner of a JV in the same bidding process. A tenderer, if acting in the capacity of subcontractor in any bid, may participate in more than one bid, but only in that capacity.

- 2.2 **Litigation History**  
 Details pertaining to litigation history will be evaluated for last 10 years ending **as on date of submission of tenders**. The Employer may, at his discretion accept/reject the tender based on Litigation history.
- 2.3 In the case of tender submittal by a joint venture, the required joint venture data must be furnished in the format prescribed in the tender along with the relevant Qualification documents as mentioned therein. The following requirements shall also be complied with:
- (a) In case of a successful tender, the Contract Agreement shall be individually signed so as to be legally binding on all members/constituents as the case may be.
  - (b) One of the members shall be nominated as Lead member and this authorization shall be evidenced by submitting a power of attorney signed by all members or legally authorized signatories of all the members. Each JV member to give an authorization/undertaking letter indicating the nomination of lead partner of the JV for the purpose of this contract.
  - (c) Details of the proposed joint venture in the form of a Memorandum of Understanding (MoU) signed by all participants will be required (format placed at Appendix-31). MoU should indicate the percentage participation and Works that will be executed by each member such as TBM Operation & Tunnel boring, Station structural works, casting of lining segment, Construction of temporary earth retaining structures, Construction of Launching/retrieval shafts, finishing works of stations shall be mentioned. The Lead member of JV should have at least 50% participation in the JV and other members should have at least 25% participation individually and totaling up to 100%.
  - (d) The lead member as aforesaid shall be authorized to incur liabilities and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be carried out exclusively through the Lead member in JV Account to be opened by the JV.
  - (e) A copy of the MoU (as per Appendix -31) shall be submitted along with the tender for a JV. A copy of JV Agreement (as per Schedule-12) of Schedules to SCC will be entered (after award of contract) into by the joint venture members duly notarized and shall be submitted upon award of contract.
- 2.4 The Tenderers should submit a written power of attorney authorizing the signatory(ies) to commit the Tenderer or each member of the partnership, or joint venture. In case of Foreign Partners, Power of Attorney(s) and Board Resolutions conforming authority on the persons issuing the Power of Attorney for such actions, shall be submitted duly notarized by the notary public in the country of origin and stamped by the Indian Embassy/High Commission. However, the Power of Attorney provided by the tenderers from that countries that have signed The Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a confirming Apostille Certificate.
- 2.5 Each page of tender document as described in para 5.1 of ITT, including Addendum, Corrigendum, etc., if any, shall be signed by the authorized signatory and stamped.
- 2.6 Cancellation or creation of a document such as Power of Attorney, Partnership deed, Constitution of firm etc., which may have bearing on the tender/contract shall be communicated forthwith in writing by the Tenderer to the Engineer and the Employer.
- 2.7 **GROUND FOR EXCLUSION:**  
 Tenderers (either natural or legal persons including any of their subcontractors) shall not be awarded this contract if, on the date of submission of an application or of a bid or on the date of award of a contract, they have been the subject of a conviction by **final judgment** for one of the following reasons:
- (a) where the tenderer is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under national laws and regulations;
  - (b) tenderer have not fulfilled their obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where they are established or the Employer 's country.
  - (c) where the Employer can demonstrate by any appropriate means a violation by the tenderer of applicable obligations in the fields of environmental, social and labour law established by national law, collective agreements or by the international environmental,

- (d) social and labour law provisions;
  - (e) where the Employer has sufficiently plausible indications to conclude that the tenderer has entered into agreements with other tenderer(s) aimed at distorting competition;
  - (f) where the tenderer has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with the Employer or a prior concession contract which led to early termination of that prior contract, damages or other comparable sanctions;
  - (g) tenderer have been convicted within the past five years by a court decision, which has the force of residential jurisdiction in the country where the project is implemented, of fraud or corruption or any other Prohibited Conduct committed during the procurement or performance of a contract, unless they provide supporting information together with their Covenant of Integrity which shows that this conviction is not relevant in the context of this project;
  - (h) tenderer is listed for financial sanctions by the United Nations and /or European Union for the purposes of fight against terrorist financing or threat to international peace and security;
  - (i) tenderer including JV Partners should not be excluded by the EU Institutions or any major Multilateral Development Bank (including World Bank Group, African Development Bank, Asian Infrastructure Investment Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank or Inter-American Development Bank) from participation in a tendering procedure on the grounds of Prohibited Conduct as defined in the Covenant of Integrity.
  - (j) where the Employer can demonstrate by appropriate means that the tenderer is guilty of grave professional misconduct, which renders its integrity questionable;
  - (k) where a conflict of interest within the meaning of Clause-1.3 of ITT cannot be effectively remedied by other less intrusive measures;
  - (l) where a distortion of competition from the prior involvement of the tenderer in the preparation of the procurement procedure, as referred to in Clause-1.3 of ITT, cannot be remedied by other, less intrusive measures;
  - (m) where the tenderer has been guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria, has withheld such information or is not able to submit the supporting documents required pursuant to Clause-2.8 of ITT; or
- (n) where the tenderer has undertaken to unduly influence the decision-making process of the Employer, to obtain confidential information that may confer upon it undue advantages in the procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Notwithstanding point (a) of the first subparagraph, Employer might not exclude a tenderer which is in one of the situations referred to in that point, where the Employer has established that the tenderer in question will be able to perform the contract, taking into account the applicable national rules and measures on the continuation of business in the case of the situations referred to in point (a).

Any tenderer that is in one of the situations referred to in the above paragraph may provide evidence to the effect that measures taken by the tenderer are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. If such evidence is considered as sufficient, the tenderer concerned will not be excluded from the procurement procedure.

For this purpose, the tenderer shall prove that it has paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct, clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating authorities and taken concrete technical, organizational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

The measures taken by the tenderer will be evaluated taking into account the gravity and particular circumstances of the criminal offence or misconduct. Where the measures are considered to be insufficient, the tenderer shall receive a statement of the reasons for that decision.

Tenderers will also be required to confirm and declare that no agent, middleman or any

- intermediary has been, or will be, engaged to provide any services, or any other items of work related to the award and performance of this contract.
- 2.8 Tenderer and all of its associates (if any) and all the members of the “Group” in case of joint venture will be required to confirm and declare in the Tender submittal they have not engaged in any fraudulent and corrupt practice as defined in Sub-Clause 4.33 of the General Conditions of Contract and that no agent, middleman or any intermediary has been, or will be, engaged to provide any services, or any other items of work related to the award and performance of this contract.
- Tenderers and all of its associates (if any) and all the members of the “Group” in case of Joint Venture are required as a condition of admission to eligibility, to execute and attach a Covenant of Integrity in the form indicated in Appendix 34.
- 2.9 Tenderer and all of its associates (if any) and all the members of the “Group” in case of joint venture will be required to confirm and declare in the Tender submittal to that effect that in case they are successful Tenderer, they will be deploying at least the proposed resources, personnel throughout the construction period as provided in the Tender submittals by the lead member and JV member(s). Non-deployment/compliance to the Tender submissions may lead to remedial action in accordance with the contract and debar the tenderer from participating in BMRCL Tenders in future.
- 3.0 COST OF TENDERING** The Tenderer shall bear all costs associated with the preparation and submission of his tender.
- 4.0 SITE VISIT, GEO TECHNICAL DATA, STATUS OF LAND & UTILITIES AND CASTING YARD:**
- 4.1 SITE VISIT:**
- (i) Any site information given in this tender document is for guidance only. The Tenderer is advised to visit and examine the Site of Works and its surroundings at his/their responsibility, risk and cost and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a Contract.
- The tenderer and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the tenderer, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- (ii) The Tenderer shall be deemed to have inspected the Site and its surroundings beforehand and taken into account all relevant factors pertaining to the Site in the preparation and submission of his Tender.
- (iii) The Tenderer shall be deemed to have inspected the Site and its surroundings including sources of various construction materials, alternative sources etc. beforehand on his own responsibility and taken it into account including all other relevant factors pertaining to the Site with respect to approach roads, time restrictions for carrying out heavy construction activities and movement of construction vehicles, material trucks, one-way movement of traffic, stacking grounds, availability of land for temporary works and labour camps etc. in the preparation and submission of the Tender and entering into a contract. No claim will be entertained in respect of any of these matters nor will the lack of knowledge or ignorance of conditions be accepted as substantiating a claim.
- 4.2 GEO TECHNICAL DATA**
- 4.2.1 Geo-Technical Data in Tender Document are based on the surveys conducted by BMRCL and for reference only. The contents of Geo-Technical Data and drawings are for general information only and any interpretation of the results shall be construed as opinion only and not as representations or warranties as to the actual site or sub-soil conditions. For details refer to Section 2 of Outline Design Specification.
- 4.2.2 Tenderer is expected to satisfy himself with data furnished and if required, carry out investigations independently for submitting his Tender.

**4.3 STATUS OF LAND & UTILITIES:** The tenderer may please note the following:

- (i) The notification for land acquisition has been issued and is in process. The joint measurement work is under process and the final notification is awaited. The Tender for demolition of buildings is invited and awarded.
- (ii) In connection with shifting of water supply and underground drainage works, the estimate from BWSSB for shifting of water supply and UGD lines are being made and the amount will be deposited with BWSSB shortly.

Necessary permanent diversion of utility services shall be undertaken by Employer through separate contract. The contractor has to carry out the trial trenching work before commencement of work. All charted underground (including those revealed after trial trenching by the Contractor) and overhead utilities will be arranged to be shifted by BMRCL, within a reasonable time after completing trial trenching works by the contractor. Any damages arising out of delay in granting Right of way will be dealt with in accordance with GCC Clause 2.2 along with grant of suitable Extension of Time. However, during execution, if any, uncharted or left out utilities are met, the contractor shall temporarily support or temporarily divert or permanently divert. The temporary support work will not be paid and the diversion work only will be paid under Schedule D. The Contractor will liaise with the utility diversion contractor for carrying out the work expeditiously wherever required so that works at particular locations are not delayed. The traffic diversions will be carried out by the contractor in consultation with traffic police.

**4.4 CASTING YARD:** BMRCL has land parcel as follows:

Land near Peenya Depot (Location as shown in Drawing No: BMRCL/PH-II/R6-UG/GEN-CY-04). Extent of land about 23261 Sqm.

In case the tenderer desires to use BMRCL land (which will be handed over on **as is where is** basis), he may opt to do so for casting related works and any other works but not for setting up of labour camp. BMRCL land as mentioned above will be given **free of cost** for the duration of the original contract period and till such extended periods where extension of time is granted by BMRCL in accordance with clause 8.4.1 of GCC.

BMRCL will charge rent on land license fee basis per unit per annum at 5% of guidance value for the year 2016 as published by Government of Karnataka during the extended periods where extension of time is granted by BMRCL in accordance with clause 8.4.3 of GCC.

The levelling of the area, making access roads and other roads / pathways in the yard, getting power, water supply etc. has to be carried out/arranged by the contractor at his own cost. After completion of work, site clearance and restoring the area to original condition is the responsibility of the contractor and has to be done at his own cost. The contractor may visit this site before tendering.

If the contractor needs further area(s) for his activities, then he has to arrange for it at his own cost. **No additional land will be acquired by BMRCL for this purpose.**

**B. TENDER DOCUMENTS**

**5.0 CONTENTS OF TENDER DOCUMENTS**

The Tender Documents as listed below have been prepared for the purpose of inviting tenders for construction of all Permanent and Temporary Works in connection with **Tender No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018 of the Bangalore Metro Rail Project and as more particularly described in those documents.**

<b>Technical Proposal (Volume -1)</b>	
Section -A	Tender Notification
„	Notice Inviting Tender (NIT)
Section -B	Instruction to Tenderers (ITT)
Section -C	Eligibility cum Qualification Criteria (EQC)
Section -D	Form of Tender (Including Appendices )(FTT)

Section -E	General Conditions of Contract (GCC)
Section -F	Special Conditions of Contract (SCC)
Section -G	Schedules to Special Conditions of Contract
<b>Technical Proposal (Volume -2)</b>	
Section -A	Employer's requirements
Section -B	Outline Design Specifications
Section -C	Outline Construction Specifications
<b>Technical Proposal (Volume -3)</b>	
Section -A	Tender Drawings
<b>Technical Proposal (Volume - 4)</b>	
Section -A	Safety, Health & Environment (SHE) Manual (Reference only)
Section -B	Geo Technical Data, Utility details (Reference only)
<b>Financial Proposal (Pricing Document)</b>	
Form of Price bid, Preamble, Appendix -35, Pricing Document - Summary, Outline Description of Works , Breakup of Payment Schedule & Bill of quantities of Schedule C.	

- 5.2 The Tenderer is expected to examine carefully all the contents of the Tender Documents and take them fully into account before submitting his Tender. Failure to comply with the requirements as detailed in these documents shall be at the Tenderer's risk. Tenders, which are not responsive to the requirements of the tender documents, will be rejected.

## 6.0 CLARIFICATION ON TENDER DOCUMENTS

- 6.1 While all efforts have been made to avoid errors in the drafting of the tender documents, the Tenderer is advised to check the same carefully and seek clarifications within scheduled period (before pre-bid meeting) only. No claim on account of any errors detected in the tender documents shall be entertained.
- 6.2 A Tenderer requiring any clarification of the tender documents including any error or mismatch in the tender documents, may notify the General Manager (Contracts) in writing and send the same by speed post/email at the General Manager (Contracts) mailing address indicated in NIT. The General Manager/ Contracts will respond in writing to any request for clarification received in writing from Tenderers no later than last date fixed for submission for clarifications prior to dead line for submission of tenders. Copies of the General Manager (Contracts) response will be sent in writing by speed post/email to all prospective Tenderers who have purchased the tender documents. Only written communications/clarification will be considered. Tenderers should acknowledge receipt of such clarifications. The above referred replies will also be uploaded in the BMRCL website [www.bmrc.co.in](http://www.bmrc.co.in).
- 6.3 Tenderers should alert the Employer in writing with a copy to Funding Agency in case they consider that certain clauses or technical specifications of the tender documents might limit international competition or introduce an unfair advantage to some tenderers.
- 6.4 **Pre-Bid meeting** will be held on the date and time indicated in the NIT at BMRCL office in Bangalore. The tenderer /designated representative(s) may attend the pre-bid meeting. Clarification to tenderers queries will be transmitted IN WRITING promptly to all Tenderers who have purchased the Tender Document directly from the source. Any modification to the Tender Document that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITT 7.0. Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Tenderer.

## 7.0 AMENDMENT TO TENDER DOCUMENTS

During the tender period, the Employer may issue further instructions to Tenderers or any modifications to existing tender documents in the form of an addendum. Such an amendment in the form of an addendum will be sent in writing by speed post/email to all prospective Tenderers, who have purchased the tender document. The amendments will also be uploaded in BMRCL website.

Without prejudice to the order of preference as specified in Clause 1.5 of General Conditions of Contract, the provisions in such addenda shall take priority over the Tender Documents issued previously. Tenderers should acknowledge receipt of such addenda and list them in the tender submittal.

In order to afford Tenderers reasonable time for preparing their tenders after taking into account such amendments, the Employer may, at his discretion, extend the deadline for the submission of tenders in accordance with Sub-clause 18 of Instructions to Tenderers.

### C. PREPARATION OF TENDERS

- 8.0 LANGUAGE OF TENDER** All documents shall be in **English Language**. In case any accompanying printed literature is in other language, it shall be accompanied by English translation. The English version shall prevail in matters of interpretation.

### 9.0 COMPOSITION OF SUBMITTALS

- 9.1** The Tenderer, on the date and time given in the Notice of Invitation to Tenderer shall submit sealed Outer Tender envelope (Envelope No-4), containing Tender Security (Envelope No-1), Sealed Technical Proposal (Envelope No-2) and Sealed Financial Proposal (Envelope No-3) separately and each envelope clearly super scribed with Tender Notification No., Name of the Work, Date of Submission of Tender, Date and Time of Opening.

Envelope-1: Tender Security. (Details in NIT and ITT Clause 13)

Envelope-2: Technical Proposal. (Details in ITT Clause 9.2)

Envelope-3: Financial Proposal. (Details in ITT Clause 9.4)

Envelope-4: Outer Envelope.

These shall be addressed to the General Manager (Contracts), BMRCL and submitted at the address given in the Notice of Invitation to Tenderer. For submission of the Tender, Tenderer(s) shall assign person(s) in writing to submit the Tender Document with proper authentication.

### 9.2 TECHNICAL PROPOSAL

The tenderer shall submit in Envelope-2 ONE Hard Copy of Technical Proposal (Volume-1, Volume-2 and Volume-3 of Tender Document as Downloaded from our web site) as mentioned above, duly signed, stamped on all pages and using the appropriate Submission Forms furnished in Forms of Tender. These Forms must be completed without any alterations to their format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. All the documents of Technical Proposal shall be submitted untampered, signed and stamped on right hand bottom corner of each page as duly filled. BMRCL will not take cognizance of any additional information submitted if in the opinion of BMRCL, the additional information is not required or will affect the Tendering process materially.

- 9.2.1** The bidders should also submit the following:

- Annual Report and Financial Report.
- Memorandum and Article of Association of each firm.
- All Addendum & Corrigendum issued.
- All supporting documents as required for fulfilling the requirements of Eligibility & Qualifying.
- Details of providers of guarantees and warranties under sub-clause 4.2 of GCC.
- Any other documents which have been requested in the tender document as a part of the technical qualification.

**\*A Copy of the GPA duly notarized should be given. It should contain authority given by the Board of Directors that GPA is for the signatory of the tender with full powers. The said GPA should have come into force prior to the date of submission of Tender. In case of JV, Power of Attorney, MoU/JV Agreement and functional division of work between members are to be submitted.**

### 9.2.2 Technical Details

- 9.2.2.1** The details should cover the following:

- Understanding and comprehension of the work involved.
- Conceptual Design notes and calculations of permanent works & temporary works as covered in scope of work.
- The general approach and methodology proposed for carrying out the works covered in the Scope of Work.

- (iv) A detailed overall Work Programme in terms of weeks from Commencement Date of Works and a bar chart indicating the duration and timing of all major activities shall be prepared and submitted along with the tender. Bar chart shall be made showing the activity to be performed along with duration of each activity. Broadly all the major activities required for carrying on the work should be shown.  
The Works Programme given in the tender shall not in any event be construed as a submission of the Works Programme as required to be furnished according to the Employer's requirements.
- (v) **TUNNEL BORING MACHINES:** The TBM shall be robust with adequate safety margins for the anticipated duty, designed and manufactured to comply with all safety standards. The TBM proposed to be deployed (hired/owned) must be capable of efficient excavation and installation of support within the expected site and ground conditions. This includes soil, rock, soil/rock mixture and existing EBS (notably wells) all mainly below the groundwater table. (For further compliance of tender requirement of TBMs, refer Outline Construction Specification, Clause 8.2.)
- (vi) The Tenderers shall submit their corporate quality policy document duly signed by the authorized person. The Tenderers shall submit an Outline QUALITY PLAN, illustrating the intended means of compliance as per quality system elements as required by ISO 9001 – 1994 – “Model for Quality Assurance in Design, Development Procurement, Installation and Servicing”.
- (vii) The tenderer shall submit as part of his tender an Outline SAFETY, HEALTH AND ENVIRONMENTAL PLAN separately illustrating the intended means of compliance with the proposed method of achieving the Safety, Health and environmental objectives with regard to the requirement of the contract. The Outline Safety, Health and Environmental Plan shall be headed with a formal statement of policy in relation to Safety, Health and Environmental Management separately and signed by their authorized representative. The contractor should associate themselves with any Safety checks undertaken by the Employer or Authorized Representative nominated by it for Safety and take necessary steps for improvement/confirmation.

**Notes:**

**All the documents of Technical Proposal detailed above shall be submitted untampered, signed and stamped on right hand bottom corner of each page as duly filled. All the submittals are to be properly hard bound.**

- 9.2.2.2 All deviations from the tender documents, remarks, comments etc. shall be included in the Statement of Deviations (Appendix-28 to the Form of Tender). All implicit and explicit deviations, remarks and comments mentioned elsewhere in the tenderer's proposal shall be treated as NULL and VOID and considered withdrawn unconditionally. Any clause included in the Statement of Deviations (Appendix-28 to the Form of Tender) but not priced in Appendix-35 shall be treated as NULL and VOID and will be unconditionally withdrawn. The Employer reserves the right to accept or reject any deviation and other factors which do not result in benefits to the Employer.

- 9.3 **No information relating to financial terms of service should be included in the Technical proposal.**

#### 9.4 FINANCIAL PROPOSAL

- 9.4.1 The Tenderer shall submit as “**FINANCIAL PROPOSAL**” in separate sealed Envelope-3 comprising the following documents, duly completed;

- (i) Summary of Price bid.
- (ii) Form of Price bid.
- (iii) Preamble.
- (iv) Outline Description, Bill of quantities of Schedule C & Breakup of Payment.
- (v) Appendix - 35; Pricing of Unqualified withdrawal of Conditions Qualifications, Deviations etc. (See paragraphs 9.2.2.2 above and 14.0 below).

- 9.4.2 The financial proposal should be completed untampered, each page duly signed and stamped and submitted in a separate sealed envelope clearly mentioning the name “**FINANCIAL PROPOSAL**” on the envelope.

- 9.5 Documents to be submitted by the Tenderer under Qualification, Technical and Financial Proposals have been described under the respective Clauses 9.2 and 9.4. This list of documents to be submitted has been prepared for the convenience of the Tenderer and any omission on the part of the Employer shall not absolve the Tenderer of his responsibility of

going through the various clauses in the Tender Documents including the specifications and to submit all the details specifically called for (or implied) in those clauses.

#### **10.0 TENDER PRICE**

The Tender prices shall be governed by Tender documents as described under Clause 5.1 of ITT. The Tenderer shall quote percentage above /below/ at par value (on the estimated value) in figures and words for each schedule in the Price Document-Summary. Based on the quoted percentage, the Tenderers shall also fill in the amount in figures and words for each schedule as well as for the whole of the work as per format provided. Corrections if any shall be made by crossing out, initialing, dating and rewriting. If no percentage of rate as above, below or at Par is indicated for any particular schedule, the same will be considered as percentage at Par. The quoted price shall include all state & central taxes, duties, cess and royalties etc., **except GST**. BMRCL shall pay GST, as claimed in each of the Interim Payment Certificate (IPC)/Running Bill.

- 10.1 If the tender, which results in the lowest evaluated bid price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the bidder to produce detailed price analysis for any or all schedules, to demonstrate the internal consistency of those prices with the construction methods proposed. After evaluation of the price analysis, taking into consideration the estimated cost, the Employer may require that the amount of the performance security set forth in Clause 31 be increased for those schedule or schedules considered unbalanced and an additional performance security may be obtained at the expense of the successful bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the contract. If such an additional Performance Security is required by the Employer, the successful tenderer shall furnish the same. Failure to do so shall be a ground for the annulment of the award of Contract and forfeiture of the Tender Security.

- 11.0 CURRENCIES OF THE TENDER:** Tender prices shall be quoted in Indian Rupees only.

#### **12.0 TENDER VALIDITY**

- 12.1 The tender shall remain valid and open for acceptance for a period of **180 days** from the date of submission of tender as indicated in NIT. A tender valid for a shorter period shall be rejected by the employer as non-responsive.
- 12.2 In exceptional circumstances, prior to expiry of the original tender validity period, the Employer may request the Tenderers for a specified extension in the period of Validity in writing/email. A Tenderer may refuse the request without forfeiting his tender security. A Tenderer agreeing to the request, shall not be required or permitted to modify his tender but will be required to extend the validity of his tender security correspondingly.

#### **13.0 TENDER SECURITY**

- 13.1 The Tenderer shall furnish with his tender, a Tender Security in the form of a Bank Guarantee in favor of Bangalore Metro Rail Corporation Ltd, **payable at Bangalore** from an Indian Scheduled Bank (excluding Co-operative banks) or from a Schedule Foreign Bank as defined in Section 2 (e) of RBI Act 1934 read with Second Schedule. Schedule format is given in Appendix-32 of Form of Tender. **In case of joint venture, Tender security can be furnished by any one of the members of the joint venture** or each member of JV in proportion to their percentage of participation. The Tender Security shall be for the value indicated in NIT and remain valid for **240 days from the date of submission of tender**. The Bank Guarantees submitted towards Tender Security can be in multiple BGs also. All bank Guarantees should be **payable in Bangalore at the designated branch**. The pay orders/Bankers cheque and demand drafts drawn in favor of Bangalore Metro Rail Corporation Limited, Payable at Bangalore are also acceptable.

- 13.2 a. Any tender not accompanied by tender security will be summarily rejected by the employer. The Technical & Financial proposals of such rejected tenders will be returned unopened.  
 b. The tender will be summarily rejected by the employer and the technical proposal submitted will not be opened in case:  
 (i) The tender Security Bank Guarantee is from any source other than an Indian Scheduled Bank and Scheduled Foreign Bank as defined in Section 2 (e) of RBI Act 1934 read with Second Schedule.  
 (ii) The Tender Security Bank Guarantee is from a Co-operative bank.  
 (iii) The tender Security Amount is less than the required amount as mentioned in NIT.  
 (iv) The tender security validity is less than 240 days from date of submission of tender.  
 (v) The tender security is not payable in Bangalore at the designated branch.
- 13.3 The tender securities of unsuccessful Tenderers shall be discharged/returned by the Employer as promptly as possible.
- 13.4 The tender security of the successful Tenderer shall be returned upon the Tenderer executing the Contract Agreement after furnishing the required performance guarantee as per the Contract.
- 13.5 The tender security shall be forfeited:  
 (a) if a Tenderer withdraws his tender during the period of tender validity;  
 (b) if the tenderer does not accept the correction of his tendered price in terms of ITT Clause 26.0;  
 (c) If the Tenderer fails to unconditionally withdraw any deviations, Conditions, Qualifications etc. at the price indicated by him in Appendix - 35;  
 (d) if a tenderer misrepresents or omits the facts in order to influence the procurement process;  
 (e) in the case of a successful tenderer, if he fails to:  
 (i) Furnish the necessary performance guarantee for performance.  
 (ii) Enter into the Contract within the time limit specified.
- 13.6 No interest will be payable by the Employer on the tender security amount cited above.

#### **14.0 PRICING OF CONDITIONS, QUALIFICATIONS, DEVIATIONS ETC.,**

The Tenderer shall submit his tender without any conditions, deviations etc. to the tender documents. Minor deviations if any shall be indicated in the Statement of Deviation (Appendix- 28 to Form of Tender) and shall be priced in Appendix 35. Any comments indicated anywhere shall be considered as unconditionally withdrawn with no financial implications, unless the deviations, conditions, qualifications etc. are included in the Statement of deviation and priced in Appendix - 35.

#### **15.0 DELETED**

#### **16.0 FORMAT AND SIGNING OF TENDERS**

- 16.1 If the tender is submitted by proprietary firm, it shall be signed by the proprietor above his full name, full name of his firm with his current address.
- 16.2 If the tender is submitted by a firm in partnership, it shall be signed by a partner holding the power of Attorney for the firm. A certified copy of the Partnership deed and power of attorney shall accompany the tender. Alternatively, it shall be signed by all the partners.
- 16.3 If the tender is submitted by a limited company or a limited corporation, it shall be signed by a duly authorized person holding the power of attorney for the firm. A certified copy of the power of attorney shall accompany the tender.
- 16.4 If a tender is submitted by a joint venture, it shall submit complete information pertaining to each firm in the joint venture and state along with the tender as to which one of the firms shall have the responsibility for tendering and for completion and due performance of the Contract and also furnish evidence admissible in law in respect of the authority assigned to such member on behalf of the joint venture for tendering, completion and due performance of the

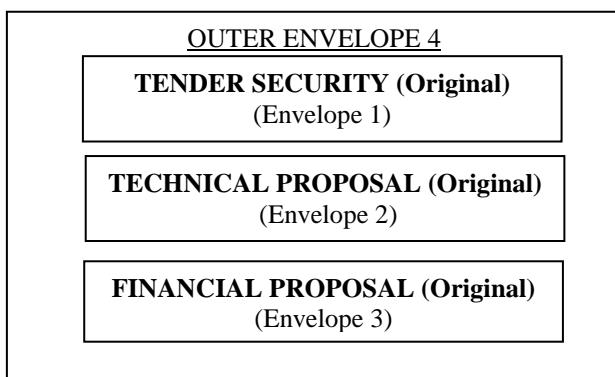
Contract.

- 16.5 Any amendments such as interlineations, erasures or overwriting shall be valid only if they are signed or initialed by the person signing the tender.
- 16.6 All witnesses and sureties shall be persons of status and probity and their full names, occupations and addresses shall be written below their signatures.

#### **D. SEALING AND SUBMISSION OF TENDERS**

#### **17.0 SEALING AND MARKING OF TENDERS**

The sealed Outer Tender Envelope (Envelope No-4), shall contain sealed envelope containing Tender Security (Envelope No-1), TECHNICAL PROPOSAL (Envelope No-2) and FINANCIAL PROPOSAL (Envelope No-3) separately as follows:



No responsibility will be accepted by the Employer for the misplacement or premature opening of a tender, not sealed or marked as per aforesaid instructions. No envelope should be submitted without marking as mentioned above.

#### **18.0 SUBMISSION OF TENDERS**

- 18.1 Tenders should be submitted at the following address before the closing time on the scheduled date as indicated in NIT:

**General Manager/Contracts**

BMRCL, Third Floor, BMTC Complex,  
KH Road, Shantinagar,  
Bangalore-560 027, Karnataka, India

The Employer may, at his discretion, extend this date for the submission of tender by amending the Tender Documents in which case all rights and obligations of the Employer and the Tenderer previously subject to the original date shall thereafter be subject to the new deadline as extended. (If such nominated date for submission of tender is subsequently declared as a Public Holiday by the Employer, the next official working day shall be deemed as the date for submission of tender).

- 18.2 **Tenders as sealed above shall be submitted in person to the designated office. Tenders submitted through post will be rejected.**

- 19.0 **LATE TENDERS:** Any tender received by BMRCL after the deadline prescribed for submission of tenders will be returned unopened to the Tenderer.

#### **20.0 MODIFICATION AND WITHDRAWAL OF TENDERS**

- 20.1 Except permitted by these instructions, the Tenderer shall not make any alteration, erasure or obliteration to the text of the documents prepared by the Employer and submitted by the Tenderer with or as a part of his tender.

- 20.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked and delivered in a separate envelope marked "MODIFICATION" or "WITHDRAWAL" as the case may be. Tenderers may modify contents of their Technical or Financial Proposals & place it in separate sealed envelopes. These should be marked as "TECHNICAL PROPOSAL-

MODIFICATION" or "FINANCIAL PROPOSAL-MODIFICATION". This should further be placed in an outer envelope sealed, marked 'MODIFICATION'. Tenderers may withdraw their tenders by giving notice in writing placed in an envelope, sealed, marked "WITHDRAWAL" and submitted.

- 20.3 No modifications shall be permitted after the deadline for submission of the Tenders. Withdrawal of the tender after deadline for submission of tenders but prior to the period of bid validity shall result in forfeiture of the Tender Security.

#### **E. TENDER OPENING AND EVALUATION**

##### **21.0 TENDER OPENING**

- 21.1 Envelopes marked "WITHDRAWAL" shall be opened and read out first. Outer envelope of Tenders for which an acceptable notice of withdrawal has been submitted pursuant to Clause 20 shall returned without opening.

Then, the Employer will open the outer envelope of all the tenders including "MODIFICATION" outer envelope (except withdrawn tender(s)) in the presence of Tenderers or their representatives who choose to attend on date, time and place as mentioned in NIT. (If such nominated date for opening of Tender is subsequently declared as a Public Holiday by the Employer, the next official working day shall be deemed as the date of opening of this Technical Proposal).

On opening of the outermost Tender envelope, it will be checked whether it contains Tender security amount (as per NIT) envelope, Technical Proposal & Financial Proposal Envelopes Separately or not (In case they are not separate/sealed properly, the bid of the said tenderer shall be summarily rejected). If it is in order, then the Tender security amount envelope will be opened first and checked for its adequacies and whether it is the acceptable form or not as per clause 13 of ITT.

- 21.2 Then the Employer will open the Technical Proposal to see if they are complete and whether the documents are in order.

- 21.3 The Tenderers name, the details of the tender security, tenderer's technical submittals and such other details will be recorded. Such details the Employer or his authorized representative, at his discretion, may consider appropriate will be announced at the time of tender opening.

- 21.4 The sealed Financial Proposals of all the Tenderers including modification to financial proposal if any, shall be placed in a large cover and securely sealed in the presence of the tenderer or their representatives, who are present and also get the same signed by all those tenderers or their representatives. The large cover shall be kept in the safe custody of the Employer and will be opened on a subsequent date after evaluation of Technical proposal. The Technical proposal will be evaluated in house for eligibility and qualification criteria. If the tenderer fails to meet the eligibility and qualification criteria, then further scrutiny of other technical parameters will not be done and Financial Proposals of those Tenderers shall not be opened.

- 21.5 Technical proposals meeting the Technical requirement and found substantially responsive only will be qualified for opening of their Financial Proposal.

- 21.6 The financial proposals of technically eligible & responsive tenderers will be opened 07 days after the results of technical evaluation is published on BMRCL web site.

- 21.7 The Financial Proposal will be opened in the presence of qualified Tenderers or their authorized representatives who choose to attend in BMRCL Office. The **percentage above /below/ at par value** as quoted in the financial proposals shall be read out by the Officials of the BMRCL and recorded.

##### **22.0 PROCESS TO BE CONFIDENTIAL**

- 22.1 Except the public opening of tender, information relating to the examination, clarification, evaluation and comparison of tenders and recommendations concerning the award of Contract shall not be disclosed to Tenderers or other persons not officially concerned with such process.

- 22.2 Any effort by a Tenderer to influence the Employer in the process of examination, clarification,

evaluation and comparison of tenders and in decisions concerning award of contract, may result in the rejection of the Tenderers tender.

### **23.0 CLARIFICATION OF TENDERS**

- 23.1 Technical evaluation of technical proposals submitted by Tenderers shall be undertaken based on details submitted in the technical proposal only. Employer may at his discretion ask any tenderer for clarification on his submittals. The tenderer in response to the clarification is not permitted to submit additional information not pertaining to the clarification sought. The request for clarification and the response shall be in writing and no response leading to material change in the submittals will be permitted.
- 23.2 To assist in the examination, evaluation and comparison of Financial Proposal, the Employer may ask Tenderers individually for clarification of their tenders, including breakdowns of prices. The request for clarification and the response shall be in writing or by Tele-fax but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm correction of arithmetical errors discovered by the Employer during the evaluation of tenders in accordance with Clause 25.0 herein.
- 23.3 **Delay/refusal to the request for clarification as referred in the above Para 23.1 and 23.2 may result in the rejection of the tender.**

### **24.0 DETERMINATION OF RESPONSIVENESS**

- 24.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is responsive to the requirements as stipulated in the tender documents.
- 24.2 For the purpose of this Clause, a responsive tender is one, which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation which include exceptions, exclusions & qualifications. A material deviation or reservation is one which affects in any substantial way the scope, quality, performance or administration of the works to be undertaken by the Tenderer under the Contract, or which limits in any substantial way, the Employer's rights or the Tenderers obligations under the Contract as provided for in the Tender documents and/or is of an essential condition, the rectification of which would affect unfairly the competitive position of other Tenderers presenting substantially responsive tenders at reasonable price. Minor deviation may be brought out in Appendix -28 to Form of Tender.
- 24.3 If a tender is not substantially responsive to the requirements as stipulated in tender documents, it will be rejected by the Employer, and will not subsequently be permitted to be made responsive by the Tenderer by correction or withdrawal of the non-conformity or infirmity. The financial proposal of such Tenderer shall be returned unopened.
- 24.4 The decision of the Employer as to which of the tenders are not substantially responsive shall be final. Any representation by unsuccessful bidders will be dealt under ITT Clause 29.2.

### **25.0 EVALUATION OF TENDER**

- 25.1 (a) The Employer will carry out technical evaluation of submitted Technical Proposal to determine that the Tenderer has a full comprehension of the work of the contract. Where a Tenderer's technical submittal is found to contain any material deviation or reservation with the requirement of work, it shall be rejected.  
 (b) The financial proposals of technically eligible & responsive tenderers will be opened 07 days after the results of technical evaluation is published on BMRCL web site. Financial Proposals of qualified Tenderers shall have no material deviation or reservation which includes exceptions, exclusions. A material deviation or reservation is one which affects in any substantial way the scope, quality, performance or administration of the works to be undertaken by the Tenderer under the Contract, or which limits in any substantial way, the Employer's rights or the Tenderers obligations under the Contract as provided for in the Tender documents and/or is of an essential condition, the rectification of which would affect unfairly the competitive position of other Tenderers presenting substantially responsive tenders at reasonable price. The reasonable price will be the price based on rate analysis, comparison with rates for other similar works and evaluation of conditions of contract etc., as determined by BMRCL.
- 25.2 The evaluation of Financial Proposal of Technically eligible bidders will take into account, in

addition to the tender amounts, the following factors:

- (a) Arithmetical errors corrected by the Employer.
  - (b) Pricing of Unqualified withdrawal of Conditions, Qualification, Deviation, etc.
  - (c) Such other factors of administrative nature as the Employer may consider having a potentially significant impact on contract execution, price and payments, including the effect of items or unit rates that are unbalanced or unrealistically priced.
- 25.3 Offers, deviations and other factors which are in excess of the requirements of the tender documents or otherwise will result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.
- 25.4 Price adjustment provisions applicable during the period of execution of the contract shall not be taken into account in tender evaluation.
- 25.5 Amount quoted by Tenderers must be found to be reasonable and acceptable.

## **26.0 CORRECTION OF ERRORS**

26.1 Tenders determined to be technically acceptable after technical evaluation will be checked by the Employer for any arithmetical errors, in computation and summation during financial evaluation. Errors will be corrected by the Employer as follows:

- (a) Where there is a discrepancy between quoted rate of percentage above/below/at par in figures and in words, the percentage above/below/at par in **words will govern**.
  - (b) Where there is a discrepancy between quoted rate of percentage above/below/at par and amounts derived, the quoted rate of **percentage above/below/at par will govern and the amount will be calculated accordingly**.
  - (c) If no percentage rate has been indicated for any particular schedule either in words or figures, the rate shall be considered **at par** and the amount shall be calculated accordingly.
- 26.2 If a Tenderer does not accept the correction of errors as outlined above, his tender will be rejected and the tender security forfeited.

## **F. AWARD OF CONTRACT**

### **27.0 AWARD CRITERIA**

Subject to Clause 25.0, the Employer will award, the Contract to the Tenderer, who meet Eligibility and Qualification criteria and whose tender is substantially responsive, complete and in accordance with the tender documents, and whose Evaluated Price is determined to be the lowest.

## **28.0 EMPLOYER'S RIGHT TO ACCEPT ANY TENDER AND TO REJECT ANY OR ALL TENDERS**

Notwithstanding Clause 27.0, the Employer reserves the right to accept or reject any tender, and to annul the tender process and reject all tenders, at any time prior to award of Contract without thereby incurring any liability to the affected Tenderer or Tenderers or any obligations to inform the affected Tenderer or Tenderers of the grounds for Employer's action.

## **29.0 NOTIFICATION OF AWARD**

29.1 Prior to the expiry of the period of tender validity prescribed by the Employer, the Employer will notify the successful Tenderer in writing/email, that his tender has been accepted. This letter (hereinafter and in the General Conditions of Contract called 'the Letter of Acceptance') shall name the sum which the Employer will pay to the Tenderer in consideration of the execution, completion, maintenance and guarantee of the works by the Tenderer as prescribed by the Contract (hereinafter and in the General conditions of Contract called 'the Contract Price'). The "Letter of acceptance" will be sent in duplicate to the successful Tenderer, who will return one copy to the Employer duly acknowledged and signed by the authorized signatory, within **one week** of receipt.

29.2 The unsuccessful Tenderers may request in writing to the Employer a debriefing seeking explanations on the grounds on which their tenders were not selected. The Employer shall respond, in writing, to any unsuccessful Tenderers who, after the notification of award, could request a debriefing.

29.3 The "Letter of Acceptance" will constitute a part of the contract.

29.4 Upon "Letter of acceptance" being signed and returned by the successful Tenderer as per Clause 29.1 above, the employer will promptly discharge/return the Tender Securities and unopened Financial Proposals of the unsuccessful Tenderers.

### **30.0 SIGNING OF CONTRACT AGREEMENT**

30.1 The Employer shall prepare the Contract Agreement in the form as prescribed in schedule 1 to the Special Conditions of Contract, with such notifications as may be necessary for duly incorporating all the terms of agreement between the two parties. **Within 45 days, but no sooner than 10 days from the date of issue of Letter of Acceptance the successful tenderer will be required to execute the Contract agreement.** One copy of the Agreement duly signed by the Employer and the Tenderer through their authorized signatories will be supplied by the Employer to the Tenderer.

30.2 The successful tenderer shall submit the following documents within **30 days** from the date of receipt of the Letter of Acceptance:

- (a) Performance Guarantee.
- (b) Power of Attorney(s) and Board Resolution (In case of Foreign Partners, to be duly notarized by notary public and stamped by the Indian Embassy/High Commission) in case of any change than submitted along with tender submittals. However, the Power of Attorney provided by the tenderers from that countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a confirming Apostille Certificate.
- (c) Detailed Joint Venture Agreement (duly signed and executed) as applicable.

### **31.0 PERFORMANCE GUARANTEE**

The successful Tenderer shall furnish to the Employer a performance guarantees in accordance with sub clause 4.2.1 of the General Conditions of Contract within **30 days** of receipt of Letter of Acceptance. The Form of Performance Guarantee provided in Schedule-2A /2B (as applicable) of Schedules to Special Conditions of Contract shall be used. **Each member of the JV shall submit the performance guarantee in their name separately, proportion to their participation.**

### **32.0 KEY DATES**

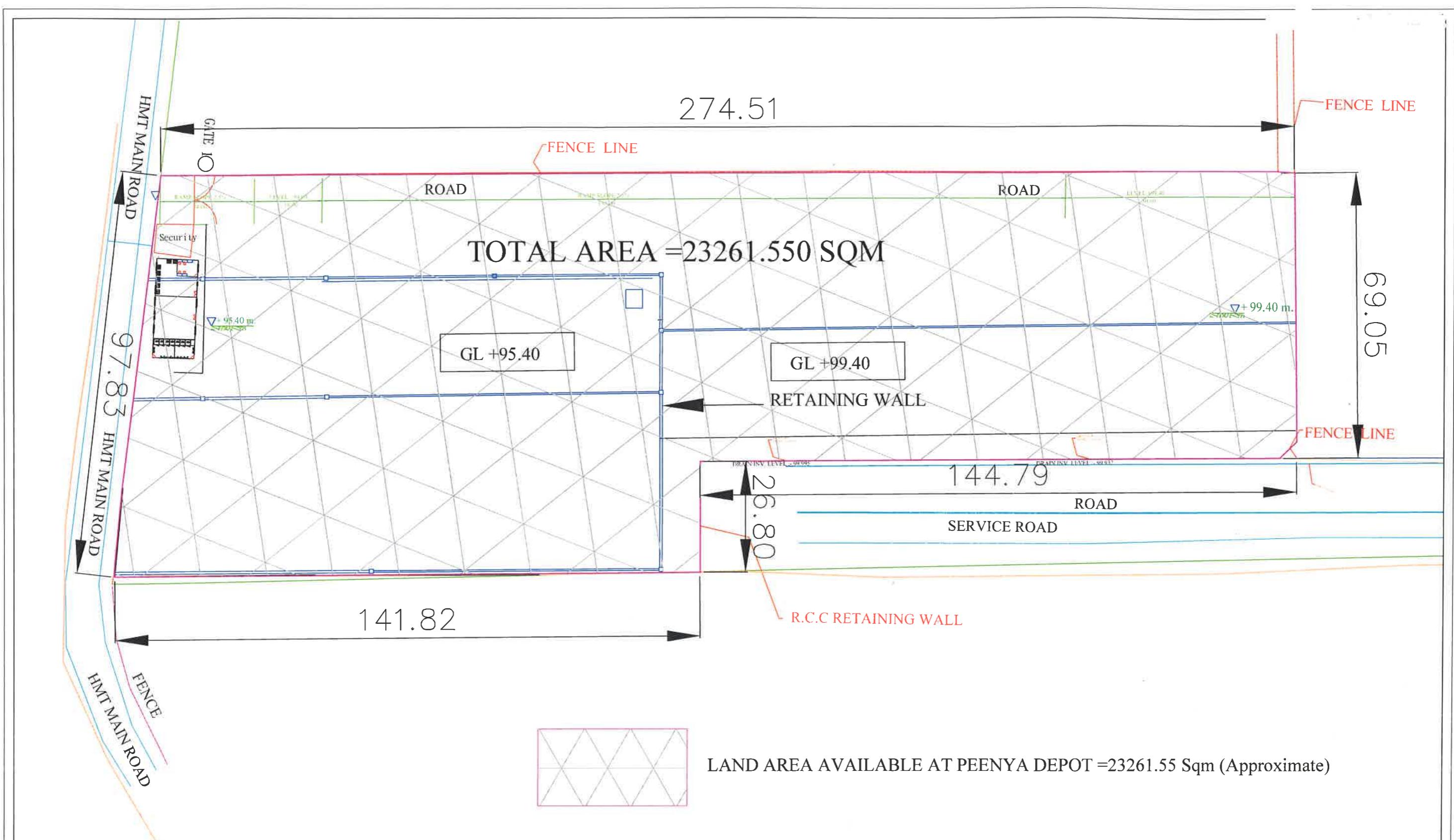
Completion time for the various activities as well as for the contract as a whole and the **Liquidated damages/Penalty** for not achieving the prescribed targeted time of completion are given in the - **Appendix-18.**

### **33.0 SETTLEMENT OF DISPUTES OF THE TENDER PROCESS**

Any suit or application, arising out of any dispute or differences on account of this tender shall be filed in a competent court at Bangalore, Karnataka only and no other court or any other district of the country shall have any jurisdiction in the matter.

### **34.0 CONTACT PERSON IN BMRCL OFFICE**

The contact person in BMRCL office, regarding this tender will be **General Manager (Contracts)** Telephone No. 080-22969300 and Fax No: 080-22969222, Email:- [contracts@bmrc.co.in](mailto:contracts@bmrc.co.in)



REV. No.	DESCRIPTION	SCALE: AS SHOWN
		<p>'P' (PRELIMINARY) ISSUES ARE NOT TO BE USED FOR CONSTRUCTION / FABRICATION BUT ARE ISSUED FOR LIMITED PURPOSES ONLY AS INDICATED IN THE SMALL BLOCK AT THE TOP REFER TO THE 'HOLD' IN THE TITLE BLOCK ONLY. CONSTRUCTION / FABRICATION WORK IS PERMITTED ON 'R' (RELEASED) ISSUES INFORMATION CONTAINED WITHIN 'HOLD' IS NOT REQUIRED FOR CONSTRUCTION / FABRICATION. FIELD MUST DET DESIGN OFFICE TO CLEAR 'HOLD'S' IN TIME BEFORE PROCEEDING WITH ANY CONSTRUCTION / FABRICATION WORK RELATED TO 'HOLD'S'.</p>



**BANGALORE METRO RAIL  
CORPORATION LTD**  
A. 3rd Floor, BMTC Complex,  
K H Road, Shanthinagar,  
Bangalore - 560027  
Tel:-080-22969300

STATUS: FOR TENDER PURPOSE ONLY	SCALE: NTS
DRAWING TITLE: AREA FOR CASTING YARD/ BATCHING PLANT	
DWG NO: BMRCL / PH-II / R6-UG / GEN-CY-04	ISSUE:
DRN: DESIGNED: CHKD: DY.CE: DATE:	

**TECHNICAL PROPOSAL (VOLUME-1)****Eligibility cum Qualification Criteria (EQC): Section-C**

**Name of the work:** “Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.”

Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38  
Dated 26-06-2018.

Sl. No.	Description	Page No
1.0	General Information and Qualification Requirement	2
2.0	Eligible Tenderers	2
3.0	Qualification Criteria	3-9

## 1.0 GENERAL INFORMATION

- 1.1 Tenders will be evaluated as per the Eligibility cum Qualification criteria & other requirements stipulated in the Tender document. The tender is liable to be rejected, if the credentials and information asked are not submitted in entirety as per the Tender document.
- 1.2 Information supplied by the tenderer must apply to the tenderer or constituent member (In case of Joint Venture) named in the application and not, unless specifically requested, to other associated companies or firms.
- 1.3 The tenderers should demonstrate their capabilities, by providing data based on their experience, past performance, their personnel, equipment and financial resources. Client certificates are mandatory for the work done.
- 1.4 Tenderers will not be required to submit on their own, additional information or material subsequent to the date of submission and such material if submitted will be disregarded.
- 1.5 It is essential that all pages of the submission should be sequentially numbered and used to cross-reference the supporting documents to the answers given. The Employer may ask for clarification on the tender submittals, at any stage of evaluation of tender. To identify the details submitted in various sections, separators must be used in between the two sections. Submitted documents will not be returned.
- 1.6 After the evaluation of technical proposals, the financial proposals shall be opened on a later date as notified for those specific tenderers who have submitted substantially responsive technical proposals and who have been determined to meet the Eligibility cum qualification requirements.
- 1.7 The offers of tenderers which have been rejected on the grounds of being substantially non-responsive to the requirements of the tender document and which have been determined as being not qualified as a result of evaluation of technical proposal, the price bid of such tenderers shall not be opened and returned unopened after the Letter of Acceptance has been signed by the successful tenderer.
- 1.8 After the opening of the Financial Proposals, the same will be evaluated and compared in order to arrive at the lowest offer among them. On the basis of this evaluation, the employer may award the work at his sole discretion to the tenderer who has submitted the offer determined to be the lowest evaluated tender.

## 2.0 ELIGIBLE TENDERERS

- 2.1 Tenders are open to nationals of all countries. Tenderer (each member in case of JV) should have the experience as a contractor in civil engineering construction works for last seven years. They are required to submit credentials in support of the same.
- 2.2 A firm after purchase of the tender documents in their name can submit the tender either as an individual firm or as a member of Joint venture. The number of Joint Venture Partners shall be restricted to maximum of **THREE**.
- 2.3 All the members of the Joint Venture will be jointly and severally liable for the performance of whole Contract.
- 2.4 For the design of stations & tunnel, Tenderer has to have **Detailed Design Consultant (DDC) either as a sub-contractor or possess in-house capability**.
- 2.5 If any firm is proposed as DDC in the capacity of a sub-contractor, the same DDC can be proposed in the capacity of a subcontractor by any other tenderer.
- 2.6 An undertaking (Designer's warranty) from the proposed DDC, indicating his willingness should be submitted.
- 2.7 Detailed Design Consultant of the successful Tenderer must establish its office at Bangalore.

### **3.0      QUALIFICATION CRITERIA**

- 3.1    i       The lead partner in case of JV shall have at least 50% participation in the JV. Other members should have a minimum participation of 25% individually and totalling up to 100%. Change in constitution or percentage participation shall not be permitted at any stage after their submission of application otherwise, the tenderer shall be treated as non-responsive. (Appendix-31-of FTT)
- ii       A tenderer shall submit only one bid, either individually or as a partner of a JV. A tenderer who submits or participates in, more than one bid will cause all of the proposals in which the tenderer has participated to be disqualified. No tenderer can be a subcontractor while submitting a bid individually or as a partner of a JV in the same bidding process. A firm or a Company, if acting in the capacity of subcontractor in any bid, may participate in more than one bid, but only in that capacity in the same bidding process. (Appendix-1, Appendix-3 and Appendix-5 of FTT as applicable)
- iii      Tenderers shall not have a conflict of interest. Tenderers shall be considered to have a conflict of interest with one or more parties in this bidding process, if  
 a)       a tenderer has been engaged by the Employer to provide consulting services for the preparation related to procurement for or implementation of the Bangalore Metro Rail Project Phase -2.  
 b)       a tenderer has any associates/affiliates (inclusive of parent firms) mentioned in sub paragraph (a) above; or  
 c)       a tenderer lends, or temporarily seconds its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.  
 (Appendix-2, Appendix-4 and Appendix-6 of FTT as applicable)
- iv       As on date of submission of Tender, the tenderer or any member in case of JV should not be excluded as per the GROUNDS FOR EXCLUSION mentioned in Clause of ITT 2.7. The tenderer should submit an undertaking to this effect.

Tenderers may also note that in case the tenderer (applies to each individual member in case of a Joint Venture) is excluded as per Ground for Exclusion mentioned in Clause 2.7 of ITT after the due date of submission of tender but before award of the contract by BMRCL, they shall inform the same to BMRCL in writing within 5 working days, failing which it will be considered that the tenderer has willfully concealed the information and the tenderer shall be solely responsible for all implications that may arise in accordance with the conditions of this tender.

Any such exclusion as per ITT Clause 2.7 will result in disqualification of the tenderer and the financial proposal of such Tenderer shall be returned unopened in case the technical evaluation is still in progress. In case the Financial Proposals have already been opened, and the work not yet awarded, the Financial Proposal will not be further considered for evaluation. In case work has been awarded, it will result in cancellation of contract.

(Appendix-2, Appendix-4 and Appendix-6 of FTT as applicable)

### **3.2 WORK EXPERIENCE & FINANCIAL STANDING:**

**3.2 A WORK EXPERIENCE** The tenderers must meet the qualifying requirement for WORKS EXPERIENCE in last TEN years as on date of submission of tenders as per 3.2 A (i) & (ii) below:

Sl. No	Qualifying Requirements for WORKS EXPERIENCE		Documents submission requirements
	Single Entity	Joint Venture	
3.2 A (i)	<p>Should have executed Works of *Similar nature for a total minimum length of <b>3.92 KM</b>, in any number of works.</p> <p>Out of these works, a <b>Non-Indian/Foreign firm</b> should have executed Works of *similar nature for a total minimum length of <b>1.96 KM</b> in any number of works outside his own country.</p>	<p>Works of <b>*Similar nature executed by any or all members of the JV should be for a total minimum length of 3.92 KM</b> in any number of works.</p> <p>Out of these works, in case of <b>Foreign member/members</b>, Works of *Similar nature executed by <b>any or all</b> Foreign members should be for a minimum total length of 1.96 KM in any number of works outside their own country.</p>	Appendix-8 and Appendix-9 of FTT.
3.2A (ii)	Detailed Design Consultant (DDC) should have successfully completed DDC work for at least TWO Underground Metro Stations and 1.0 KM length of single tube tunnels of any Metro Rail Project.		Appendix-9A of FTT.

**Notes:**

1. Works of **\*Similar nature** for this contract shall be the completed Works of **construction of tunnel by TBM shield (EPB/ Slurry) method (single tube) of 5-meter minimum finished diameter**. Length of the tunnel for evaluating works of \*similar nature shall exclude cut & cover portion, ramp, stations etc.
2. Tenderer should submit details of works of \*similar nature executed by them in **Appendices 8, 9 &10** to establish his Work experience. Documentary proof such as completion certificates from client clearly indicating the nature/scope of work, actual completion cost, length of tunnel excluding cut & cover portion, ramp, stations etc.
3. Substantially completed work as on date of submission of tenders will also be considered for works at para 3.2 A (i) & (ii). Substantially completed works shall be 80% or more of the value of works completed under the contract. They are to be supported by client's certificate and Agreement/Work order.
4. Client certificates are mandatory for the work done. The **offers submitted without this documentary proof shall not be evaluated**.
5. In case the work is executed for private client, copy of work order, bill of quantities, bill wise details of payment received & certified by CA, Proof of TDS & WCT for all payments received and copy of final/last bill paid by client shall also be submitted. In case the required documents are not submitted, that work will not be considered as a qualifying work and the tenderer may be disqualified.

6. In case the works of \*similar nature is executed by a joint venture, the Length of the tunnel (excluding cut & cover portion, ramp, stations etc.), shall be considered as per percentage participation by the member(s) in that joint venture/consortium. JV member(s) should demonstrate by submitting relevant document issued by the employer.
7. In case works of \*similar nature is executed as sub-contractor, client's signed copy of agreement with main contractor, approval of client for being engaged as sub-contractor and completion certificate from main contractor are to be submitted. Certified copies are to be attested by the Notary Public.
8. If there is any discrepancy between the information provided by the tenderer and supporting client certificate, then the content in the client certificate will govern.

### **3.2. B FINANCIAL STANDING**

The Financial qualification criteria requirements are given below in the following table:

Criteria	Compliance Requirements		Documents submission
	Single Entity	Joint Venture	
<b>3.2 B (i) Liquidity</b>	Should have Banking Reference and certificate from its Banker to demonstrate that it has access to, or has available liquid assets, lines of credit and other financial means sufficient to meet the required cash flow, after meeting its commitments for other contracts and other liabilities for a sum of Indian Rupees <b>221.08 Crores</b> .	Each member of the JV should have Banking Reference and certificate from its Banker to demonstrate that it has access to, or has available liquid assets, lines of credit and other financial means sufficient to meet the required cash flow, after meeting its commitments for other contracts and other liabilities in proportion to percentage participation in this tender, the combined Total of which should be Rupees <b>221.08 Crores</b> .	Appendix-33 of FTT.
<b>3.2.B (ii) Profitability</b>	Earnings before interest and tax should be positive in at least <b>Two years</b> out of the last five years.	Earnings before interest and tax should be positive in at least <b>Two years</b> out of the last five years for each member of the JV.	Appendix-12 & Appendix-15 of FTT
<b>3.2. B (iii) Net Worth</b>	Net Worth of tenderer should be positive in the last <b>Two</b> financial years.	Each member of the JV should have positive Net Worth in the last <b>Two</b> financial years.	Appendix-12 & Appendix-14 of FTT.
<b>3.2.B (iv) Annual Turnover</b>	Tenderer in his name should have in the last five years (2013-14 to 2017-18) period(s) achieved in at least two financial years a minimum annual turnover from civil construction work of <b>Rs. 473.75 Crores</b> , aggregating to <b>Rs. 947.50 Crores</b> in those two financial years.	Each member of JV in his name should have in the last five years (2013-14 to 2017-18) period(s) achieved in at least two financial years a minimum annual turnover from civil engineering construction works in proportion to their percentage participation in this tender, the aggregate of which should be at least <b>Rs. 947.50 crores</b> .	Appendix-10 Appendix-12 & Appendix-14 of FTT.

**Note:**

Financial data for last five financial years has to be submitted by the tenderer in Appendices-10, 12, 13, 14 &15 of FTT along with audited balance sheets. The financial data in the prescribed format at **Appendix-12** shall be **certified by Chartered Accountant** with his stamp and signature in original. In case audited balance sheet of the last financial year is not made available by the bidder, he has to submit an affidavit certifying that 'The Balance Sheet has actually not been audited so far'. In such a case the financial data of previous '4' audited financial years will be taken into consideration for evaluation. If audited balance sheet of any year other than the last year is not submitted, the tender will be considered as non-responsive.

**3.2 C BID CAPACITY:**

**Bid Capacity:** The tenderers will be qualified only if their available bid capacity is more than the approximate cost of work as per NIT. Available bid capacity will be calculated based on the following formula.

$$\text{Available bid capacity} = (1.5 \times A \times N) - B$$

Where,

A = Maximum of the value of construction works executed in any one year during the last five financial years (updated to 31.03.2018 price level assuming 5% inflation for Indian Rupees every year and 2% for Foreign currency portion per year). N = number of years prescribed for completion of the works for which tenders are invited.

B = Value of existing commitments (as on date of submission of tenders) for ongoing construction works during the period of **42 Months**.

Note: In case the tenderer (sole or member of JV) has also participated in Tender (No: BMRCL/Phase-2/Reach-6/UG/TNL & STN/(R6-CC-02)-RT02/2018/37) as a sole or member of JV, and that work is awarded, then the contract value of that work (Full Value of contract in case of sole or the Value in proportion to their percentage participation in case of JV member) will be added to arrive at the final Value for existing commitments.

Sl. No.	Compliance Requirements		Documents submission requirements
	Single Entity	Joint Venture	
3.2C	Available bid capacity should be <b>≥ Rs.1105.42 Crores</b>	Each member of the JV should have available bid capacity in proportionate to percentage participation in this tender. The aggregate of which should be <b>≥ Rs.1105.42crores</b>	Appendices – 10,11and 12

### **3.3 KEY PERSONNEL:**

The Tenderers must deploy the Key Personnel for the work as indicated in Appendix -23 of FTT. The number of Key Personnel should not be less than as specified. The Joint Venture as a whole (for all members put together) will be considered and should cover disciplines mentioned in Appendix -23 of FTT. In this connection the tenderer must also give an undertaking (Pro-forma letter of Declaration and Undertaking) to provide all the Key Personnel consistent with the requirement stipulated in the tender document if he is awarded the contract.

In respect of the Key personnel, the Tenderer is required to submit CVs along with their tenders as described below:

(i) **Project Manager:** One Project Manager, BE/B.Tech. in Civil / Mechanical / Mining Engineering with at least 20 years of total experience and 3 years as Project Manager or equivalent in Similar Nature of works in construction of Underground Tunnels and Metro Stations as per requirement vide Appendix 23 of Form of Tender. Project Manager proposed should be the employee of the member – executing the Tunneling work as indicated in MoU (in case of JV). Project Manager proposed should be the employee of the said member for at least 06 months.

(ii) **Deputy Project Managers:** Two Deputy Project Managers, (one for Underground Tunnels and one for Metro Stations), BE/B Tech in Civil / Mechanical / Mining Engineering with at least 12 years of total experience and 3 years as Deputy Project Manager or equivalent in Similar Nature of works in construction of Underground Tunnels and Metro Stations. The CV shall be submitted as per Form Appendix 24.

(iii) **Bored Tunnel/TBM Engineer:** One Bored Tunnel/TBM Engineer, BE/B Tech in Civil /Mechanical/Mining Engineering with at least 10 years of total experience and 2 years in Similar Nature of works in construction of Underground Tunnels. The CV shall be submitted as per Form Appendix 24.

(iv) **Geotechnical Engineer:** One Geotechnical Engineer, M-Tech in Geo-Tech Engineering with at least 10 years of total experience in geotechnical Investigation and interpretation of Tunnel construction. The CV shall be submitted as per Appendix 24.

#### **Notes:**

1. Tenderer may propose any number of names of Personnel for each Key Position mentioned in para 3.3 above. Any of the proposed personnel as approved by the Engineer for each key position have to be mandatorily deployed in case of award of work.
2. The proposed Key personnel are not to be changed till the completion of the work. Under emergent circumstances, in case they are required to be changed, the new incumbent should have similar or better experience and qualification than as required above. These changes are permitted only with the approval of the Employer.
3. A penalty of Rs. 2.0 Lakhs per key person per month will be levied in case any of the key personnel as proposed are not deployed. A penalty of Rs. 2.0 Lakhs per key person per change will be levied in case of change in Key personnel after approval of BMRCL during the course of the work.
4. In case the CVs as submitted in Appendix-24 of FTT are not commensurate with the requirement as per the Employer as mentioned in eligibility cum qualification criteria the tender is subject to rejection.
5. All Key Personnel must be permanently stationed at Bangalore till the completion of the work.

### **3.4 PLANT & MACHINERY:**

Plant & machineries as indicated in Appendix-16 are only indicative and should be considered in the tender submittal along with any other additional plant & machineries. The Plant & Machinery considered in the Works Programme as required vide Clause 9.2.2.1 of ITT, submitted along with the tender, shall not in any event be construed as a submission of final requirement of Plant & Machinery required for the work.

Successful tenderer has to submit Works Programme as per clause A.6 of Employers Requirement. The works programme so submitted and approved by BMRCL should indicate the plant & machinery

required to achieve the Key Dates. The successful Tenderer should deploy Plant & Machinery in accordance with the approved Works Programme and at appropriate stages of works. In case of delays, the contractor is required to augment and mobilize additional plant & machinery to achieve completion in stipulated time.

**The Tenderers are to note that deployment of a minimum of TWO TBMs is mandatory.**

### **3.5 ETHICS & PERFORMANCE:**

(a) Tenderer must observe the highest standard of ethics while submitting the tender application. BMRCL will disqualify the tenderer if he has made misleading or false representation in the forms, statements and attachments submitted; or indulge in fraudulent and corrupt practice.

"corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and "fraudulent practice" means a misrepresentation of facts in order to influence an evaluation process or the execution of a contract, and includes collusive practices among tenderers (prior to or after tender submission) designed to establish tender prices at artificial, non-competitive levels and to deprive the client's benefits free and open competitions.

(b) Further, BMRCL will declare a firm ineligible, either indefinitely or for a stated period of time, for any BMRCL contract, if it at any time it determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a borrowed financed contract in general.

(c) Tenderers are required as a condition of admission to eligibility, to execute and attach a Covenant of Integrity in the form indicated in Appendix 34 which inter-alia includes the following:

(i) Tenderers are required to declare that during the five years immediately preceding the date of this Covenant, that none of personnel or joint venture partners connected with the tenderer has engaged or will engage, in any Prohibited Conduct (**as defined in Appendix-34 Covenant of Integrity**) in connection with the tendering process or in the execution or supply of any works, goods or services for the **subject tender** and agree to so inform you if any instance of any such Prohibited Conduct shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

(ii) Tenderers including JV Partners should not be excluded by the EU Institutions or any major Multilateral Development Bank (including World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank or Inter-American Development Bank) from participation in a tendering procedure on the grounds of Prohibited Conduct. For this purpose, Prohibited Conduct includes Corrupt practice, Fraudulent Practice, Coercive Practice, Collusive Practice and Obstructive Practice.

### **3.6 LITIGATION HISTORY**

The Tenderer should provide accurate information on any litigation or arbitration resulting from contracts completed or under its execution over the last ten years ending as on date of submission of tender.

If the litigation started by the Tenderer without recourse to measures of Dispute Resolution and Arbitration as provided in the Contract or the litigation in respect of challenge of award of Arbitration by the Tenderer, will be treated as Litigation case indulged by the Tenderer for this Para of Litigation History.

### **3.7 APPROACH & METHODOLOGY (Ref: 9.2.2.1 (i) & (ii) of ITT)**

Tenderers must furnish the complete details as required in the below Para. For this purpose, use separate sheets/statement and submit along with Technical Proposal. The Tenderers will be assessed additionally with reference to the following:

- Methodology of Executing Bored Tunnels of diameter not less than 5 meters by use of TBM proposed to be deployed without affecting adjacent existing buildings/Structures and with proper care and safety during mass excavation of earth, Transport, disposal and stacking of excavated materials as per requirement.
- Methodology of Executing Metro Stations with cut and cover method without affecting adjacent Rail/Road traffic and with proper care and safety during mass excavation of earth, Transport, disposal and stacking of excavated materials as per requirement.
- Conceptual Design notes and calculations of permanent works & temporary works as covered in scope of work.

**Note: The offer of the Tenderer, who does not furnish the required details as per the Technical Proposal and as above is liable for rejection.**

**TECHNICAL PROPOSAL (VOLUME-1)  
FORM OF TENDER-SECTION-D (APPENDICES)**

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<b>Sl. No.</b>	<b>Requirement</b> (To be submitted by each tenderer and in case of JV to be submitted by all members)	<b>Submission Requirement</b>	<b>Page No</b>
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R6 - UG-RT03/TNL&STN/BMRCL

**APPENDIX-1****PRO-FORMA LETTER OF APPLICATION****(Applicable to Tenderer submitting their bid as Sole Tenderer)***(To be submitted along with the bid in the Firms' Letter Head)*

Ref:

Dated...

The Managing Director,  
 Bangalore Metro Rail Corporation Ltd.  
 Third floor, BMTC Complex  
 KH Road, Shanthinagar, Bangalore-560027.

Dear Sir,

**Application for Technical Evaluation** for “Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.”

Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03 /2018/38 Dated 26-06-2018.

We, M/s ----- hereby apply for Technical evaluation as a Sole Tenderer for the above said work. In support of the application, we submit herewith untampered documents required in Original. We are aware that we will be considered only if we are found to fulfil the eligibility criteria as given in Tender document.

We do hereby solemnly affirm and state the following:

1. We understand that in the event of any information furnished by us being found later on to be incorrect or any material information having been suppressed, the following action can be taken in addition to the provisions of Para 4.33 of GCC:
  - I. Our name will be removed from the panel of qualified agencies.
  - II. Any tender submitted by us on the basis of qualification may not be considered.
  - III. If any tender from us is accepted and a contract awarded to us on the basis of our qualification, the tender acceptance may be withdrawn and the contract awarded to us cancelled without any financial claim / Arbitration request from our side.
2. We declare that the submission of this Tender confirms that no agent, middleman or any intermediary has been, or will be engaged to provide any services, or any other item of work related to the award and performance of this Contract. We further confirm and declare that no agency commission or any payment which may be construed as an agency commission has been, or will be, paid and that the tender price does not include any such amount. We acknowledge the right of the Employer, if he finds to the contrary, to declare our Tender to be non-compliant and if the Contract has been awarded to declare the Contract null and void.
3. Our Tender shall be valid for a period of 180 days from the date of Tender submission, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. We are not participating, as a Tenderer or as a subcontractor, in more than one bid in this Tender process in accordance with 3.1(ii) of EQC.
5. We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive.
6. A Power of Attorney to sign and submit this letter is attached.

Yours faithfully,  
 (Signature) .....

Name of signatory: .....

Capacity of signatory: .....Name and address of Tenderer

**APPENDIX-2**

**PRO-FORMA LETTER OF DECLARATION AND UNDERTAKING**  
**(Applicable to Tenderer submitting their bid as Sole Tenderer)**  
*(To be submitted along with the bid in the Firms' Letter Head)*

Ref:

Dated.....

The Managing Director,  
 Bangalore Metro Rail Corporation Ltd.  
 Third floor, BMTC Complex  
 KH Road, Shanthinagar, Bangalore-560027.

Dear Sir,

**Declaration and Undertaking** for "Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2."

Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03 /2018/38 Dated 26-06-2018.

We M/s ----- for the purpose of the Tender for the above said work, do hereby solemnly affirm and state the following as Declaration and Undertaking:

1. Having inspected the site, examined the tender document including Employer's requirements, General Conditions of Contract ,Special Conditions of Contract, Technical Specifications ,Tender Drawings , Pricing Document, Reference manuals - Safety, Health & Environment (SHE) & Geo Technical Data, Eligibility Cum Qualification Criteria, Instructions to Tenderer and Addenda/Corrigendum etc., thereto (if any) for the Design & constructions of above mentioned works, and prepared the tender entirely in accordance with all the requirements of the tender document and agree entirely with them.
2. We here by confirm that we have visited the sites of work and have become conversant with the local conditions of working.
3. For the purpose of your evaluation, study, review and decision making we are ready to let you inspect our business premises / site, etc.
4. We authorize BMRCL or any of their authorized representative to approach, enquire, verify and check the matter furnished in our submission with the concerned client / owner of the Project / Contract and the concerned Banker of reference provided by us.
5. We undertake to hold in confidence all documents and information whether Technical or Commercial supplied to us at any time by or on behalf of BMRCL in connection with this tender without your written authority or as otherwise required by law not to publish or otherwise disclose the same.
6. If our Tender is accepted, we commit to deploy Key personnel and Other personnel consistent with the requirements stipulated in Appendix-23 & Appendix -25 of FTT.
7. If our Tender is accepted, we commit to deploy a minimum of TWO TBMs.
8. If our Tender is accepted, we commit to submit Works programme as per A 6 of Employers requirement. Upon approval of the works programme by BMRCL, we commit to deploy Plant & Machinery in adequate numbers.
9. If our tender is accepted, we commit to submit work method statements for all major activities and get these approved from the Engineer prior to commencing work on such activities. We also understand that the work shall be executed as per the approved method statements and KEY DATES without any deviations and delay in completion.
10. If our tender is accepted, we agree to establish our project office in Bangalore.
11. If our Tender is accepted, we commit to obtain a performance security in accordance with the Tender Documents.
12. We declare that we do not have conflict of interest with respect to any material cross shareholding or Joint Venture or contract with or investment with any tenderer or member of any other JV who submitted its Application for the said Project.

13. We declare that we are not listed for Financial sanctions by the United Nations and /or the European Union for the purposes of fight against Terrorist financing or threat to International peace and security.
14. We declare that we have fulfilled the obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where established and also in the Employer's country.
15. We declare that we have not violated environmental, social and labour law established by national law, collective agreements or by the international environmental, social and labour law provisions as per contract conditions.
16. We declare that we have not been terminated for the reason of non-performance under a prior public contract, which led to early termination of that prior contract, damages or other comparable sanctions.
17. We have submitted the Covenant of Integrity singed and abide by the same.
18. We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive.
19. We understand that this Tender shall be governed by and construed in all respects according to the laws for the time being force in India. The courts at Bangalore will have exclusive jurisdiction in the matter.
20. In case our tender is accepted; we will enter in to agreement as per clause: 30.0 of ITT by signing all the contract documents mentioned in Schedule -1 of Schedules to SCC.
21. We confirm and declare that by virtue of our signature below, to the best of knowledge and belief that the information provided by us as required in this Tender Document, all supporting and explanatory information is truthful and exact.

Yours faithfully,

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....Name and address of Tenderer

R6 - UG-RT03/TNL&STN

**APPENDIX-3****PRO-FORMA LETTER OF APPLICATION**

(Applicable to Tenderer submitting their bid as a JOINT VENTURE)

(To be submitted BY **LEAD PARTNER** along with the bid in their Letter Head)

Ref:

Dated.....

The Managing Director,  
 Bangalore Metro Rail Corporation Ltd.  
 Third floor, BMTC Complex  
 KH Road, Shantinagar, Bangalore-560027.

Dear Sir,

**Application for Technical Evaluation** for "Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2."

Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03 /2018/38 Dated 26-06-2018.

We, M/s ----- (*Name of the Lead Partner*) hereby apply for Technical evaluation as M/s ----- (*Name of the Joint Venture*) Tenderer for the above said work. In support of the application we submit herewith untampered documents required in Original.

We wish to confirm that our company/firm (delete as appropriate) has formed/intends to form (delete as appropriate) a Joint Venture name as mentioned above with ..... (Member to insert names of other member(s) of the Joint Venture) in which we M/s ----- act as the Leader of the Joint Venture for purposes associated with the aforesaid Tender.

We for the purpose of the Tender for the above said work do hereby solemnly affirm and state jointly and severally on behalf of the Tenderer including its constituents the following:

1. We understand that in the event of any information furnished by us being found later on to be incorrect or any material information having been suppressed, the following action can be taken in addition to the provisions of Para 3.5 of Qualification Criteria:
  - i Our name will be removed from the panel of qualified agencies.
  - ii Any tender submitted by us on the basis of qualification may not be considered.
  - iii If any tender from us is accepted and a contract awarded to us on the basis of our qualification, the tender acceptance may be withdrawn and the contract awarded to us cancelled without any financial claim / Arbitration request from our side.
2. We hereby jointly and severally declare that the submission of this Tender confirms that no agent, middleman or any intermediary has been, or will be engaged to provide any services, or any other item of work related to the award and performance of this Contract. We further confirm and declare that no agency commission or any payment which may be construed as an agency commission has been, or will be, paid and that the tender price does not include any such amount. We acknowledge the right of the Employer, if he finds to the contrary, to declare our Tender to be non-compliant and if the Contract has been awarded to declare the Contract null and void.
3. Our Tender shall be valid for a period of **180 days** from the date of Tender submission, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. We are not participating, as a Tenderer or as a subcontractor, in more than one bid in this Tender process in accordance with 3.1(ii) of EQC.

5. We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive.
6. A Power of Attorney to sign and submit this letter is attached.

Yours faithfully,

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....Name and address of Tenderer

R6 - UG-RT03/TNL& STN / BMRCL

**APPENDIX-4****PRO-FORMA LETTER OF DECLARATION AND UNDERTAKING**

(Applicable to Tenderer submitting their bid as a JOINT VENTURE)

(To be submitted BY **LEAD PARTNER** along with the bid in their Letter Head)

Ref:

Dated.....

The Managing Director,  
 Bangalore Metro Rail Corporation Ltd.  
 Third floor, BMTC Complex  
 KH Road, Shantinagar, Bangalore-560027.

Dear Sir,

**Declaration and Undertaking** for "Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2."

Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018.

We M/s ----- as a Lead Partner of ----- (*Name of the Joint Venture*) for the purpose of the Tender and for the above said work, do hereby solemnly affirm and state jointly and severally on behalf of the Tenderer..... (*Name of the Joint Venture*) including its constituents the following:

1. In this Joint Venture we act as lead member and, for the purposes of applying for qualification, represent the Joint Venture. In the event of the tender submitted by our application being accepted by BMRCL we agree to be jointly and severally responsible and liable to Bangalore Metro Rail Corporation Ltd. (BMRCL), its successors and assigns for all obligations, duties and responsibilities arising from or imposed by the contract to be entered into between BMRCL and our Joint Venture.
2. Having inspected the site, examined the tender document including Employer's requirements, General Conditions of Contract ,Special Conditions of Contract, Technical Specifications ,Tender Drawings , Pricing Document, Reference manuals - Safety, Health & Environment (SHE) & Geo Technical Data, Eligibility Cum Qualification Criteria, Instructions to Tenderer and Addenda/Corrigendum etc., thereto (if any) for the Design & constructions of above mentioned works, and prepared the tender entirely in accordance with all the requirements of the tender document and agree entirely with them.
3. We here by confirm that we have visited the sites of work and have become conversant with the local conditions of working.
4. For the purpose of your evaluation, study, review and decision making we are ready to let you inspect our business premises / site, etc.
5. We authorize BMRCL or any of their authorized representative to approach, enquire, verify and check the matter furnished in our submission with the concerned client / owner of the Project / Contract and the concerned Banker of reference provided by us.
6. We undertake to hold in confidence all documents and information whether Technical or Commercial supplied to us at any time by or on behalf of BMRCL in connection with this tender without your written authority or as otherwise required by law not to publish or otherwise disclose the same.
7. If our Tender is accepted, we commit to deploy Key personnel and Other personnel consistent with the requirements stipulated in Appendix-23 & Appendix -25 of FTT.
8. If our Tender is accepted, we commit to deploy a minimum of TWO TBMs.
9. If our Tender is accepted, we commit to submit Works programme as per A 6 of Employers requirement. Upon approval of the works programme by BMRCL, we commit to deploy Plant & Machinery in adequate numbers.
10. If our tender is accepted, we commit to submit work method statements for all major activities and get these approved from the Engineer prior to commencing work on such activities. We also understand that the work shall be executed as per the approved method statements and KEY DATES without any deviations and delay in completion.
11. If our tender is accepted, we agree to establish our project office in Bangalore.
12. If our Tender is accepted, we commit to obtain a performance security in accordance with the Tender

- Documents.
13. We declare that we do not have conflict of interest with respect to any material cross shareholding or Joint Venture or contract with or investment with any tenderer or member of any other JV who submitted its Application for the said Project.
  14. We declare that we are not listed for Financial sanctions by the United Nations and /or the European Union for the purposes of fight against Terrorist financing or threat to International peace and security.
  15. We declare that we have fulfilled the obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where established and also in the Employer's country.
  16. We declare that we have not violated environmental, social and labour law established by national law, collective agreements or by the international environmental, social and labour law provisions as per contract conditions.
  17. We declare that we have not been terminated for the reason of non-performance under a prior public contract, which led to early termination of that prior contract, damages or other comparable sanctions.
  18. We have submitted the Covenant of Integrity singed and abide by the same.
  19. We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive.
  20. We understand that this Tender shall be governed by and construed in all respects according to the laws for the time being force in India. The courts at Bangalore will have exclusive jurisdiction in the matter.
  21. In case our tender is accepted; we will enter in to agreement as per clause: 30.0 of ITT by signing all the contract documents mentioned in Schedule -1 of Schedules to SCC.
  22. We confirm and declare that by virtue of our signature below, to the best of knowledge and belief that the information provided by us as required in this Tender Document, all supporting and explanatory information is truthful and exact.

Yours faithfully,

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....

Name and address of Tenderer

R6 - UG-RT03-TNL&STN

**APPENDIX-5****PRO-FORMA LETTER OF APPLICATION**

(Applicable to Tenderer submitting their bid as a JOINT VENTURE)

{To be submitted by **Member other than the Leader** along with the bid in their Letter Head}

Ref:

Dated.....

The Managing Director,  
 Bangalore Metro Rail Corporation Ltd.  
 Third floor, BMTC Complex  
 KH Road, Shantinagar, Bangalore-560027.

Dear Sir,

**Application for Technical Evaluation** "Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2."

Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03 /2018/38 Dated 26-06-2018.

We, M/s ----- (*Name of the member other than Leader*) hereby apply for Technical evaluation as M/s ----- (*Name of the Joint Venture*) JOINT VENTURE Tenderer for the above said work. In support of the application we submit herewith untampered documents required in Original.

We wish to confirm that our company/firm (delete as appropriate) has formed/intends to form (delete as appropriate) a Joint Venture name as mentioned above with ..... (insert name of Leader of the Joint Venture) to act as the Leader of the Joint Venture for purposes associated with the aforesaid Tender.

The Joint Venture is led by ..... (Member to insert name of lead member) whom we hereby authorise to act on our behalf for the purposes of applying for qualification.

We for the purpose of the Tender for the above said work do hereby solemnly affirm and state jointly and severally on behalf of the Tenderer including its constituents the following:

1. We understand that in the event of any information furnished by us being found later on to be incorrect or any material information having been suppressed, the following action can be taken in addition to the provisions of Para 3.5 of Qualification Criteria:
  - i Our name will be removed from the panel of qualified agencies.
  - ii Any tender submitted by us on the basis of qualification may not be considered.
  - iii If any tender from us is accepted and a contract awarded to us on the basis of our qualification, the tender acceptance may be withdrawn and the contract awarded to us cancelled without any financial claim / Arbitration request from our side.
2. We hereby jointly and severally declare that the submission of this Tender confirms that no agent, middleman or any intermediary has been, or will be engaged to provide any services, or any other item of work related to the award and performance of this Contract. We further confirm and declare that no agency commission or any payment which may be construed as an agency commission has been, or will be, paid and that the tender price does not include any such amount. We acknowledge the right of the Employer, if he finds to the contrary, to declare our Tender to be non-compliant and if the Contract has been awarded to declare the Contract null and void.
3. Our Tender shall be valid for a period of **180 days** from the date of Tender submission, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

4. We are not participating, as a Tenderer or as a subcontractor, in more than one bid in this Tender process in accordance with 3.1(ii) of EQC.
5. We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive.
6. A Power of Attorney to sign and submit this letter is attached.

Yours faithfully,

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....Name and address of Tenderer

R6 - UG-RT03/TNL& STN / BMRCL

**APPENDIX-6****PRO-FORMA LETTER OF DECLARATION AND UNDERTAKING**

(Applicable to Tenderer submitting their bid as a Joint Venture)

{To be submitted by **Member Other than the Leader** along with the bid in their Letter Head}

Ref:

Dated.....

The Managing Director,  
 Bangalore Metro Rail Corporation Ltd.  
 Third floor, BMTC Complex  
 KH Road, Shantinagar, Bangalore-560027.

Dear Sir,

**Declaration and Undertaking** for "Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2."

Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018.

We M/s ----- as a Partner other than Lead Partner of ----- (*Name of the Joint Venture*) for the purpose of the Tender for the above said work do hereby solemnly affirm and state jointly and severally on behalf of the Tenderer..... (*Name of the Joint Venture*) including its constituents the following:

1. In this Joint Venture we act as Partner and, for the purposes of applying for qualification, represent the Joint Venture. In the event of the tender submitted by our Joint Venture/ being accepted by BMRCL we agree to be jointly and severally responsible and liable to Bangalore Metro Rail Corporation Ltd. (BMRCL), its successors and assigns for all obligations, duties and responsibilities arising from or imposed by the contract to be entered into between BMRCL and our Joint Venture.
2. Having inspected the site, examined the tender document including Employer's requirements, General Conditions of Contract ,Special Conditions of Contract, Technical Specifications ,Tender Drawings , Pricing Document, Reference manuals - Safety, Health & Environment (SHE) & Geo Technical Data, Eligibility Cum Qualification Criteria, Instructions to Tenderer and Addenda/Corrigendum etc., thereto (if any) for the Design & constructions of above mentioned works, and prepared the tender entirely in accordance with all the requirements of the tender document and agree entirely with them.
3. We here by confirm that we have visited the sites of work and have become conversant with the local conditions of working.
4. For the purpose of your evaluation, study, review and decision making we are ready to let you inspect our business premises / site, etc.
5. We authorize BMRCL or any of their authorized representative to approach, enquire, verify and check the matter furnished in our submission with the concerned client / owner of the Project / Contract and the concerned Banker of reference provided by us.
6. We undertake to hold in confidence all documents and information whether Technical or Commercial supplied to us at any time by or on behalf of BMRCL in connection with this tender without your written authority or as otherwise required by law not to publish or otherwise disclose the same.
7. If our Tender is accepted, we commit to deploy Key personnel and Other personnel consistent with the requirements stipulated in Appendix-23 & Appendix -25 of FTT.
8. If our Tender is accepted, we commit to deploy a minimum of TWO TBMs.
9. If our Tender is accepted, we commit to submit Works programme as per A 6 of Employers requirement. Upon approval of the works programme by BMRCL, we commit to deploy Plant & Machinery in adequate numbers.
10. If our tender is accepted, we commit to submit work method statements for all major activities and get these approved from the Engineer prior to commencing work on such activities. We also understand that the work shall be executed as per the approved method statements and KEY DATES without any deviations and delay in completion.
11. If our tender is accepted, we agree to establish our project office in Bangalore.

12. If our Tender is accepted, we commit to obtain a performance security in accordance with the Tender Documents.
13. We declare that we do not have conflict of interest with respect to any material cross shareholding or Joint Venture or contract with or investment with any tenderer or member of any other JV who submitted its Application for the said Project.
14. We declare that we are not listed for Financial sanctions by the United Nations and /or the European Union for the purposes of fight against Terrorist financing or threat to International peace and security.
15. We declare that we have fulfilled the obligations regarding the payment of social security contributions or taxes in accordance with the legal provisions of the country where established and also in the Employer's country.
16. We declare that we have not violated environmental, social and labour law established by national law, collective agreements or by the international environmental, social and labour law provisions as per contract conditions.
17. We declare that we have not been terminated for the reason of non-performance under a prior public contract, which led to early termination of that prior contract, damages or other comparable sanctions.
18. We have submitted the Covenant of Integrity singed and abide by the same.
19. We understand that you are not bound to accept the lowest evaluated Tender or any other Tender that you may receive.
20. We understand that this Tender shall be governed by and construed in all respects according to the laws for the time being force in India. The courts at Bangalore will have exclusive jurisdiction in the matter.
21. In case our tender is accepted; we will enter in to agreement as per clause: 30.0 of ITT by signing all the contract documents mentioned in Schedule -1 of Schedules to SCC.
22. We confirm and declare that by virtue of our signature below, to the best of knowledge and belief that the information provided by us as required in this Tender Document, all supporting and explanatory information is truthful and exact.

Yours faithfully,

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....Name and address of Tenderer

R6 - UG-RT03/ITNL&SCC

**APPENDIX-7****TENDERER'S INFORMATION**

(To be submitted by sole tenderer and in case of JV to be submitted by both member)

1	<b>Contract for which qualification is sought:</b> <b>Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&amp;STN/(R6-CC-02)-RT03 /2018/38 Dated 26-06-2018.</b>																													
2	For Tenderers who are individual companies or firms, state the following: Tenderer's Legal name: Tenderer's Legal address: Date of Incorporation: Tenderer's authorized representative: (Name, address, telephone numbers, Fax numbers, e-mail address)																													
3	JV Tenderers are to State the following: Name of the Joint Venture: ----- <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">Sl. No</th> <th style="text-align: center; padding: 5px;">Name of members (Lead member first)</th> <th style="text-align: center; padding: 5px;">Date of Incorporation</th> <th style="text-align: center; padding: 5px;">Legal address and principle place of Business</th> <th style="text-align: center; padding: 5px;">Percentage participation</th> <th style="text-align: center; padding: 5px;">Place and country of incorporation or Domicile</th> </tr> </thead> <tbody> <tr> <td style="text-align: center; padding: 5px;">1</td><td style="padding: 5px;"></td><td style="padding: 5px;"></td><td style="padding: 5px;"></td><td style="padding: 5px;"></td><td style="padding: 5px;"></td></tr> <tr> <td style="text-align: center; padding: 5px;">2</td><td style="padding: 5px;"></td><td style="padding: 5px;"></td><td style="padding: 5px;"></td><td style="padding: 5px;"></td><td style="padding: 5px;"></td></tr> <tr> <td style="text-align: center; padding: 5px;">3</td><td style="padding: 5px;"></td><td style="padding: 5px;"></td><td style="padding: 5px;"></td><td style="padding: 5px;"></td><td style="padding: 5px;"></td></tr> </tbody> </table> Tenderer's authorized representative: (Name, address, telephone numbers, Fax numbers, e-mail address)						Sl. No	Name of members (Lead member first)	Date of Incorporation	Legal address and principle place of Business	Percentage participation	Place and country of incorporation or Domicile	1						2						3					
Sl. No	Name of members (Lead member first)	Date of Incorporation	Legal address and principle place of Business	Percentage participation	Place and country of incorporation or Domicile																									
1																														
2																														
3																														
4	Tenderer's Bank Details: <ul style="list-style-type: none"> <li>(a) Name of the Bank and branch</li> <li>(b) Account Number</li> <li>(c) IFSC code</li> <li>(d) Bank's Contact Number and Fax Number</li> <li>(e) PAN:</li> <li>(f) GST Registration No:</li> </ul>																													

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....Name and address of Tenderer

**APPENDIX-8**

(To be submitted by sole tenderer and in case of JV, member(s) who meets the criteria specified in Clause 3.2 A (i) of EQC)

**Work of similar nature in last 10 years as on date of submission of tender- as per EQC para 3.2.A (i)**

Project Title:	Location:
Scope: (Give salient features of the work)	Client's Address:
Client's Representative:	Tel.:
Was the work carried out as a) Prime Contractor OR (b) Member of a JV/consortium OR (c) Sub-Contractor	
If, Member of a JV/consortium, indicate percentage participation. If Sub-Contractor, provide details.	
Date of commencement of work:	Date of completion of work:
Was the date of completion given in the original contract extended? If so, how much and why?	
1. Contract Value (at the time of award) ..... 2. Value of completed/Substantially completed portion of the contract as on date of submission of tender..... 3. Completed Length of constructed tunnel by TBM shield (EPB/ Slurry) method (single tube) of 5-meter minimum finished diameter.....	
Project description: (Clearly indicate the part of the work assigned to the Tenderers (s))	

**Note:**

- (1) In case the qualifying work is executed by a joint venture, the Length of the tunnel (excluding cut & cover portion, ramp, stations etc.), shall be considered as per percentage participation by the member(s) in that joint venture/consortium. Sole or JV members to demonstrate by submitting relevant document issued by the employer as applicable.
- (2) Separate form to be used for each work. In case of JV, each member shall submit work experience certificate separately for each work. In case of Non-Indian/Foreign Member of JV, work done certificate shall be submitted separately for each work having done outside his country.
- (3) Substantially completed work shall be 80% or more of the value of the works completed under the contract.

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....Name and address of Tenderer

**APPENDIX-9**

(To be submitted by sole tenderer and in case of JV, member(s) who meets the criteria specified in Clause 3.2A (i) of EQC)

**Summary of Information provided in Appendix -8**

SI No	Name of the Work and client	Work executed as a Prime Contractor/Member of a JV/ Sub Contractor	Percentage of Participation In Case of JV for that particular work	Length of tunnel	Dia of tunnel	Method of execution of Tunnel by TBM or other method	Date of commencement of work	Original Date of completion of work	Final date of completion of work	Contract Value (at the time of award)	Value of completed portion of the contract as on date of submission of tender

- Note:** 1. In case the qualifying work is executed by a joint venture, the Length of the tunnel (excluding cut & cover portion, ramp, stations etc.), shall be considered as per percentage participation by the member(s) in that joint venture/consortium. Sole or JV members to demonstrate by submitting relevant document issued by the employer as applicable.  
 2. Client Certificate is mandatory. If there is any discrepancy between the information provided above and supporting client certificate, then the content in the client certificate will govern.

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....

Name and address of Tenderer

**APPENDIX-9A****QUALIFICATION DETAILS OF DDC**

**Experience record of Detailed Design Consultant in the last Ten years as on date of submission of tender  
 (To be submitted by Sole tenderer and in case of JV, the Lead member of JV). The details as below will be evaluated as per EQC Clause 3.2 A(ii)**

Name of the DDC.....

Sl. No.	Design consultant as a Prime Consultant/ Member of JV/ Sub-Consultant	Percentage of participation in case of JV for that particular work	Type of Contract : Detail proof including checking/ Design & Construct / Design & Supervise	Name and details of design work with location	Name & address of client.	Number of Stations Designed	Length of single tube Tunnel designed.	Commencement Date of Work	Stipulated Date of Completion	Actual Date of Completion	Certificates Placed at Page No.

**Notes:**

1. All the details should be supported by attested copies of certificates from clients for each entry otherwise it will not be considered.
2. Additional pages may be attached if required.
3. If there is any discrepancy between the information provided above and supporting client certificate, then the content in the client certificate will govern.

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....

Name and address of Tenderer

APPENDIX-9B

## LITIGATION HISTORY

**(To be submitted by sole tenderer and in case of JV to be submitted by both members)**

**(This has reference to Para 3.6 of Eligibility cum Qualification Criteria document.)**

**Note:**

Tenderers including each of the partners of a Joint Venture, should provide information on any history of litigation or Arbitration resulting from contracts executed in the last 10 years as on date of submission of this tender. A separate sheet should be used for each partner of a Joint Venture.

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....

**Name and address of Tenderer**

**APPENDIX-10**

(To be submitted by sole tenderer and in case of JV to be submitted by both members)

	Sl. No	Annual Turnover from civil construction contracts only		Multiplying factor		Updated Annual turnover in Crores as on 31.03.2018		
		INR	FC	INR	FC	INR	FC	Total Equivalent INR *
1	2013-2014			1.22	1.08			
2	2014-2015			1.16	1.06			
3	2015-2016			1.10	1.04			
4	2016-2017			1.05	1.02			
5	2017-2018			1.00	1.00			

INR – Indian Rupee

FC - Foreign Currency

\* Total Equivalent INR should be calculated using the Bill selling exchange rate of State Bank of India as on 31.03.2018.

(Signature) .....

Name of signatory: .....

Capacity of signatory: .....

Name and address of Tenderer

**APPENDIX-11**

(To be submitted by sole tenderer and in case of JV to be submitted by each member)

**WORKS IN HAND**

Name and description of contract (Clearly indicate the part of the work)	Work being / to be executed as a prime Contractor/member of a JV or Sub-contractor	Name of client with telephone number	Contract Value in Rupees Equivalent as on date of submission of tender (Give only the value of work assigned to the Tenderer (s)) (Assume inflation as per multiplying Factors as given in Appendix 10)	Value of balance work yet to be done in Rupee equivalent as on date of submission of tender (Assume inflation as per multiplying factors as given in Appendix 10)	Value of work to be done in 2018-19	Value of work to be done in 2019-20	Value of work to be done in 2020-21	Value of work to be done in 2021-22	Value of work to be done in 2022-23 and beyond

**Note**

Tenderer (each member in case of the Joint Venture) should provide information on their current commitments or all contracts that have been awarded or for which a letter of intent or acceptance has been received or for contracts approaching completion but for which a completion certificate is yet to be issued.

(Signature) .....

Name of signatory: .....

Capacity of signatory: ..... Name and address of Tenderer

**APPENDIX-12****To be certified by Chartered Accountant**

(To be submitted by sole tenderer and in case of JV to be submitted by each member)

No.	Financial Information in Rupee equivalent with exchange rate at the end of the concerned year.	Actual for previous five financial years (April to March)				
		2013-14	2014-15	2015-16	2016-17	2017-18
1	Total Assets					
2	Current Assets					
3	Total Liabilities					
4	Current Liabilities					
5	Annual Turnover from construction contracts only					
6	Profit before Interest and Tax					
7	Net worth= Total assets – Total liabilities.					

**Note:**

1. The above information should be extracted from the certified Annual Financial Statement/Balance sheet/Profit & Loss Accounts which should also be enclosed for each member in case of JV
2. Financial data submitted by the tenderer in the above format earlier than year 2013-14 will not be considered for evaluation.
3. In case audited balance sheet of the last financial year is not made available by the tenderer, he has to submit an affidavit certifying that 'The Balance Sheet has actually not been audited so far'. In such a case the financial data of previous four audited financial years will be taken into consideration for evaluation.
4. In case the company's financial year is from Jan 13 to Dec 13, then it will be considered under Financial year 2013-14. Similar procedure will be applicable for other financial years also.
5. The financial information of the Tenderer must be certified by a Chartered Accountant.
6. Equivalent INR should be calculated using the Bill selling exchange rate of State Bank of India at the end of the concerned financial year.

**APPENDIX-13**

(To be submitted by Lead member of JV only)

	Percentage participation in this tender	Annual Turnover (From construction contracts only)				
		2013-14	2014-15	2015-16	2016-17	2017-18
<b>Member-(1) – Lead Member</b>						
<b>Member-(2) - Other than Lead Member</b>						
<b>Member-(3) - Other than Lead Member</b>						
<b>TOTAL for the Joint Venture as a whole</b>						

**Note:** Annual Turnover from construction contracts only as certified by CA mentioned in Appendix -12 to be mentioned.

Signature of the Tenderer: .....

Name &amp; Designation of Authorized signature: .....

Place , Date and seal/stamp of the Tenderer: .....

**APPENDIX-14**

(To be submitted by Lead member of JV only)  
**Name:** .....(JV)

	<b>Financial Accounting Year</b>	<b>Total Assets</b>	<b>Total Liabilities</b>	<b>Net worth (In INR)</b>
<b>Member (1) - Lead Member</b>	2016-17			
	2017-18			
<b>Member (2) - other than Lead member</b>	2016-17			
	2017-18			
<b>Member (3) - other than Lead member</b>	2016-17			
	2017-18			

**Note:**

1. Net worth should be positive for last 02 years as certified by CA mentioned in Appendix-12.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place , Date and seal/stamp of the Tenderer: .....

**APPENDIX-15**

(To be submitted by Lead member of JV only)

	Profitability					<b>Years in which Profitability is +ve (Positive)</b>
	2013-14	2014-15	2015-16	2016-17	2017-18	
<b>Member-(1) – Lead Member</b>						
<b>Member-(2) – other than Lead Member</b>						
<b>Member-(3) – other than Lead Member</b>						

**Note:** Profitability-earnings before Interest and Tax should also be positive at least in any two financial years out of the last five years for each members of the Joint Venture as certified by CA mentioned in Appendix-12.

Signature of the Tenderer: .....

Name &amp; Designation of Authorized signature: .....

Place , Date and seal/stamp of the Tenderer: .....

**APPENDIX-16****PLANT & MACHINERY**

(To be submitted by Sole Tenderer &amp; Lead Member of JV)

Contractor has to deploy Plant and Machinery as follows:

1. Minimum TWO TBMs along with Backup cars & accessories to support TBMs.
2. At least one set of Concrete pump & Boom Placer per station.
3. Minimum plant and machineries for the casting yard activities.
4. Sufficient Shuttering and Staging materials for the work.

**Note:**

1. The above plant & machineries are only indicative and should be considered in the tender submittal along with any other additional plant & machineries.
2. The Plant & Machinery considered in the Tender submittal, shall not in any event be construed as a submission of final requirement of Plant & Machinery required for the work.
3. The successful Tenderer should deploy Plant & Machinery in accordance with the approved Works Programme and at appropriate stages of works.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place , Date and seal/stamp of the Tenderer: .....

**APPENDIX -17****CONTRACT DATA**

1.	Amount of Performance Guarantee (GCC Clause 4.2)	Within 30 days of receipt of the Letter of Acceptance, the successful Tenderer shall furnish Performance Security at 5% (Five percent) of the Contract Price as mentioned in LoA (For the purpose of calculating the amount of performance security, only the contract price as mentioned in LoA will be considered), in the form of a bank guarantee from an Indian Schedule bank (excluding Cooperative Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule as mentioned in LOA is payable.
2.	Date of commencement of the Works (GCC Clause 8.1)	Date of signing the 'Contract Agreement'.
3.	Time for Completion (GCC Clause 8.2)	The whole of the works shall be completed and delivered within time stated in key dates as per Appendix 18. The completion period for the work will be reckoned from the date of signing the 'Contract Agreement'. The date of completion for the contract as a whole is <b>42 months.(1260 days)</b>
4.	Penalties for not achieving Key Dates (Refer to Appendix 18)	The Maximum limit of penalties that shall be levied (aggregate of all Tunnel/stations) for not achieving key dates is 5% of the contract price. Penalties for not achieving key dates are in addition to LD as mentioned in para 5 below.
5.	Liquidated Damages (LD) (GCC Clause 8.5)	(i) One half of one percent (0.5%) of the Contract Price for each week or part of a week of delay in achieving KD 8. (ii) The upper limit for Liquidated Damages is 10% of Contract Price as indicated.
6.	Defects Liability Period (GCC Clause 10)	12 months from the date mentioned in the Taking Over Certificate for whole of the Works.
7.	Period in which all insurances have to be submitted (GCC Clause 15)	Within 12 weeks from the date of commencement of works.

Signature of the Tenderer: .....

Name &amp; Designation of Authorized signature: .....

Place , date and seal/stamp of the tenderer: .....

**APPENDIX 18****1.0 KEY DATES**

The Contractor will be required to achieve the following Key Dates (KD) for works to be calculated from the date of signing the 'Contract Agreement'. 'D' is the Date of Signing the contract Agreement.

**1.1 Submission of Design and Drawings:**

Activity ID	Stage	Duration in Days from 'D'
KD-1	Start submission of Tunnel and station layout drawings and Detailed designs	D+60
KD-2	Start Submission of Working Drawings(GFC)	D+80

**1.2 Tunnelling (TBM):**

Activity ID	Stage	Duration in Days from 'D'
KD-1 (T)	Start Initial Drive of TBM1 (Building first permanent ring)	D+330
KD-2(T)	Start Initial Drive of TBM2 (Building first permanent ring)	D+360
KD-3(T)	Finish Last Drive of TBM 1(Break Through)	D+1175
KD-4(T)	Finish Last Drive of TBM 2(Break Through)	D+1205
KD-5(T)	Completion of cross passages, cleaning, submission of as constructed alignment survey details, first stage concrete and providing track access in entire length.	D+1260

**1.3 Cantonment Station:**

Activity ID	Stage	Duration in Days from 'D'
KD-1 (CM)	Completion of casting of base slab and head wall works in Launching or Retrieval areas for Launching or Retrieving TBMs.	D+270
KD-2 (CM)	Completion of casting base slab	D+890
KD-3 (CM)	Completion of casting Roof slab.	D+1070
KD-4 (CM)	Completion of providing first stage concrete for track in station and providing track access.	D+1100

KD-5 (CM)	Completion of major equipment rooms (ASS, TSS, ESC & TVS) and handing over to designated contractors by providing block work, plastering, painting flooring and fixing doors in the rooms and allow access to system contractors	D+1130
KD-6 (CM)	Completion of all system/operating rooms and providing access to all Designated Contractors.	D+ 1200
KD-7 (CM)	Completion of all works in station and restoration works	D+1260

#### 1.4 Pottery Town Station:

Activity ID	Stage	Duration in Days from 'D'
KD-1 (PT)	Completion of casting of base slab and head wall works in Launching or Retrieval areas for Launching or Retrieving TBMs.	D+400
KD-2 (PT)	Completion of casting base slab	D+780
KD-3 (PT)	Completion of casting Roof slab.	D+1000
KD-4 (PT)	Completion of providing first stage concrete for track in station and providing track access.	D+1080
KD-5 (PT)	Completion of major equipment rooms (ASS, TSS, ESC & TVS) and handing over to designated contractors by providing block work, plastering, painting flooring and	D+1210
KD-6 (PT)	Completion of all system/operating rooms and providing access to all Designated Contractors	D+1240
KD-7 (PT)	Completion of all works in station and restoration works	D+1260

#### 1.5 Creation of Retrieval shaft at Chainage 16822

Activity ID	Stage	Duration in Days from 'D'
KD-1(RS)	Creation of Retrieval shaft and handing over to BMRCL	D+330

#### 1.6 Completion of entire work

Activity ID	Stage	Duration in Days from 'D'
KD-8	Completion of entire work (Excluding Fixing of Walkway and Closing of cut-outs)	D+1260

## 2.0 Penalty for Delay in Achieving Key dates:

Category of work				Penalty for Delay in Achieving activities as per Key date in each category of work.
Tunneling by TBM	Cantonment Station	Pottery Town Station	Retrieval shaft	
KD-1 (T)	KD-1 (CM)	KD-1 (PT)	KD-1(RS)	Rs.25,000/- (Rupees Twenty Five Thousands) per key date per day of delay in each category of work.
KD-2(T)	KD-2 (CM)	KD- 2 (PT)	-	Rs.25,000/- (Rupees Twenty Five Thousands) per key date per day of delay in each category of work.
KD-3(T)	KD-3 (CM)	KD-3 (PT)	-	Rs.25,000/- (Rupees Twenty Five Thousands) per key date per day of delay in each category of work.
KD-4(T)	KD-4 (CM)	KD-4(PT)	-	Rs.25,000/- (Rupees Twenty Five Thousands) per key date per day of delay in each category of work.
KD-5(T)	KD-5 (CM)	KD-5 (PT)	-	Rs.25,000/- (Rupees Twenty Five Thousands) per key date per day of delay in each category of work.
-	KD-6 (CM)	KD-6 (PT)	-	Rs.25,000/- (Rupees Twenty Five Thousands) per key date per day of delay in each category of work.
-	KD-7(CM)	KD-7 (PT)	-	Rs.25,000/- (Rupees Twenty Five Thousands) per key date per day of delay in each category of work.

### Note:

1. The Engineer will decide about completion of work regarding all Key Dates.
2. a) **Tunnelling work by TBM:** Any imposition of penalty on account of delay in accomplishing key dates KD1 to KD3 will be waived and penalty amount if deducted will be refunded (without interest), provided the contractor is able to accomplish succeeding key dates KD4 & KD5 within the stipulated date.  
b) **Station works:** Any imposition of penalty on account of delay in accomplishing key dates KD1 to KD5 will be waived and penalty amount if deducted will be refunded (without interest), provided the contractor is able to accomplish succeeding key dates KD6 & KD7 within the stipulated date.
3. These penalties shall not relieve the Contractor from his obligation to complete the works or from any other obligations and liabilities under this Contract.

4. "Key Dates are provisional. These will be discussed and finalized after submission of Works Programme by the successful tenderer. However, the final Key dates for each category of work shall remain unaltered". Any deviation from the jointly approved programme will invite penalties.
5. Successful tenderer is required to submit the program for approval with detailing the deployment of resources in order to achieve the Key Dates within the stipulated time for completion. Until the program is approved, the Key dates mentioned above holds good and the contractor is required to achieve the Key dates accordingly. The Penalty and Incentives are applicable accordingly. Once the program is approved, the penalty for not achieving the key dates or incentives for early completion will be recalculated.

## 2.0 LIQUIDATED DAMAGES FOR DELAY IN ACHIEVING KEY DATE (KD8)

KD No.	Item	Liquidated Damages (L.D)
KD8	Completion of entire work (Excluding Fixing of Walkway and Closing of cut-outs)	One half of one percent (0.5%) of the Contract Price for each week or part of a week of delay in achieving KD8 for the entire work. Upper limit for L.D. as per clause GCC 8.5

## 3.0 INCENTIVE FOR EARLY ACHIEVEMENT OF KEY DATES

Category of work				Incentive for early completion of activity as per Key date for each category of work
Tunneling by TBM	Cantonment Station	Pottery Town Station	Retrieval shaft	
KD-3T To KD-5T	KD-5 (CM) To KD-7(CM)	KD-5 (PT) To KD-7 (PT)	KD-1(RS)	Rs. 25,000/- (Rupees Twenty Five Thousands) for each Key Date in each category of work per day of early completion
<b>For earlier completion of the work as a whole within the stipulated original date of completion-KD8 (Excluding Fixing of Walkway and Closing of cut-outs)</b>				<b>Rs.36.85 Lakhs per day of early completion</b> shall be paid to the contractor, subject to a maximum of <b>Rs. 33.16 crores</b> .

**Note:** 1. The Aggregate of total incentive for early completion of activities as per the approved Key Dates in all the category of works including KD-8 will be limited to 5% of the contract price.  
 2. Incentive is not applicable in case of grant of any Extension of Time.  
 3. The engineer's decision is final and binding so far as incentive payment to the contractor is concerned. Even if incentive payment is made, earlier penalties levied for delay caused to various Key Dates will not be refunded.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place , date and

seal/stamp of the tenderer: .....

**APPENDIX-19****OUTLINE QUALITY PLAN**

The Tenderer shall establish and maintain a Quality Assurance for design and construction/Installation procedures and the interfaces between them. This Quality Assurance system shall be applied without prejudice to, or without in any way limiting, any Quality Assurance Systems that the Tenderer already maintains. The Tenderer shall submit with the Tender their corporate quality policy document duly signed by the corporate head or authorised person.

The Tenderer shall submit as part of his Tender an Outline Quality Plan which shall contain sufficient information to demonstrate clearly the Tenderer's proposals for achieving effective and efficient Quality Assurance System. The Outline Quality Plan should include an outline of the procedures and regulations to be developed and the mechanism by which they will be implemented for ensuring Quality as required by the Employer's Requirements.

The Tenderer may be requested to amplify, explain or develop its Outline Quality Plan prior to the date of acceptance of the Tender and to provide more detail with a view to reaching provisional acceptance of such a plan.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place , date and seal/stamp of the tenderer: .....

**APPENDIX-20****OUTLINE SAFETY PLAN**

The Tenderer shall submit as part of his Tender an Outline Safety Plan which shall contain sufficient information to demonstrate clearly the Tenderer's proposals for achieving effective and efficient safety procedures. The Outline Safety Plan should include an outline of the safety procedures and regulations to be developed and the mechanism by which they will be implemented for ensuring safety as required by Employer's Requirement and Clause 4.16 of GCC and Clause-3 of SCC.

The Outline Safety Plan shall be headed with a formal statement of policy in relation to safety and shall be sufficiently informative to define the Tenderer's safety plans and set out in summary an adequate basis for the development of the Site Safety Plan to be submitted in accordance with Clause 4.16 of the GCC.

The Tenderer may be requested to amplify, explain or develop his Outline Safety Plan prior to the date of acceptance of the Tender and to provide more details with a view to reaching provisional acceptance of such a plan.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place , date and seal/stamp of the tenderer: .....

**APPENDIX-21****OUTLINE ENVIRONMENTAL PLAN**

The Tenderer shall submit as part of his Tender an Outline Environmental Plan illustrating the intended means of compliance with the requirements of the Employer's Requirements and setting out in summary form an adequate basis for the development of the more detailed document to be submitted under Sub-Clause 4.17 of the GCC. The Outline Environmental Plan shall contain sufficient information to demonstrate clearly the proposed method of achieving the Tenderer's environmental objectives with regard to the requirement of the Contract.

The Outline Environmental Plan shall be headed with a formal statement of policy in relation to environmental protection and shall be sufficiently informative to define the Tenderer's environmental plans and set out in summary an adequate basis for the submission of a detailed and comprehensive site environmental quality management plan to be submitted in accordance with Sub-Clause 4.17 of the GCC. The Outline Plan shall include the methods and procedures for the Environmental Impact Assessment to be performed under the Contract.

The Tenderer may be requested to amplify, explain or develop its Outline Environmental Plan prior to the date of acceptance of the Tender and to provide more detail with a view to reaching provisional acceptance of such a plan.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place , date and seal/stamp of the tenderer: .....

**APPENDIX-22****TENDERER'S TECHNICAL PROPOSALS**

The Tenderer shall prepare and submit with the Tender his Technical Proposals based on Paragraph 9.2.2.1 of the Instructions to Tenderers.

The Proposals should cover in detail the following:

A. Understanding and comprehension of the work involved.

B. The general approach and methodology proposed for carrying out the Works.

C. Tender Work Schedules.

Tenderer shall submit the details of Plant and Machinery, deployment of Manpower in accordance the requirement for completing the work within the stipulated period.

D. Conceptual Design notes and calculations of permanent works & temporary works as covered in scope of work.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place , date and seal/stamp of the tenderer: .....

**APPENDIX-23****MINIMUM QUALIFICATION AND EXPERIENCE REQUIRED FOR KEY PERSONNEL TO BE DEPLOYED FOR THE WORK**

SI No	Personnel	Qualifications	Particular Experience (Minimum requirement)	Minimum Number of Personnel Required	Name of the key personnel proposed	Group to which belongs in case of JV	Qualification	Total no of years of experience	Years of experience in Similar Nature of works
1	Project Manager cum Team Leader.	BE/B Tech in Civil / Mechanical / Mining with at least 20 years' experience	3 years as Project Manager in Similar Nature of works in the field underground Tunnels and Metro Stations	1					
2	Deputy Project Manager	BE/B Tech in Civil / Mechanical / Mining Engineering with at least 12 years' experience	3 years as Deputy Project Manager in Similar Nature of works in the field Underground Tunnels and Metro Stations.	1					
3	Deputy Project Manager	BE/B Tech in Civil / Mechanical / Mining Engineering	3 years as Deputy Project Manager in Similar Nature of works in the	1					

		with at least 12 years' experience	field Underground Tunnels and Metro Stations and Road work.					
4	Bored Tunnel/TBM Engineers	BE/B Tech in Civil /Mechanical/Mining Engineering with at least 10 years'	2 years' experience in Similar Nature of works in Underground Tunnels	1				
5	Geotechnical Engineer	M-Tech in Geo-Tech Engineering	10 years' experience in geotechnical Investigation and interpretation of Tunnel construction	1				

**Note:**

1. The CVs as submitted in Appendix-24 are to be commensurate with the requirement as per the Employer as mentioned in eligibility cum qualification criteria.
2. Tenderer may propose any number of names of Personnel for each Key Position. Any of the proposed personnel as approved by the Engineer for each key position have to be mandatorily deployed in case of award of work.
3. The proposed Key personnel are not to be changed till the completion of the work. Under emergent circumstances, in case they are required to be changed, the new incumbent should have similar or better experience and qualification than as required above. These changes are permitted only with the approval of the Employer.
4. A penalty of Rs. 2.0 Lakhs per key person per month will be levied in case any of the key personnel as proposed are not deployed. A penalty of Rs. 2.0 Lakhs per key person per change will be levied in case of change in Key personnel after approval of BMRCL during the course of the work.

- 
5. In case of JV, Project Manager proposed should be the employee of the member executing the Tunneling work as indicated in MoU. Project Manager proposed should be the employee of the said member for at least 06 months. Other members of the JV are to deploy Key Personnel in accordance with the work they propose to execute as per the MoU.
  6. All Key Personnel must be permanently stationed at Bangalore till the completion of the work.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place, Date and seal/stamp of the Tenderer: .....

**APPENDIX-24****FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED KEY PROFESSIONAL STAFF**

Proposed Position:

Name of Firm:

Name of Staff:

Profession:

Date of Birth:

Years with Firm/Entity: Nationality:

Membership in Professional Societies:

Detailed Tasks Assigned:

Key Qualifications:

[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. ]

Education:

[Summarize college/university and other specialized education of staff member and degrees obtained.]

## Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments. Also give types of activities performed and client references, where appropriate.]

Period	Name of Employing Organization	Name of the Project	Title / Position	Activity performed	Location of the Assignment

## Languages:

[For each language indicate proficiency: excellent, good, fair, or poor; in speaking, reading, and writing]

## Certification:

I, the undersigned, certify that to the best of my knowledge and belief, these data correctly describe me, my qualifications, and my experience.

## Date:

[Signature of staff member and authorized representative of the Firm] Day/Month/Year

Full name of staff member: \_\_\_\_\_

Full name of the authorized representative: \_\_\_\_\_

**APPENDIX-25****TO BE DEPLOYED BY SUCCESSFUL BIDDER**

S. No	Personnel	Qualifications	Particular Experience (Minimum requirement)	Total Minimum No
1	Engineers	Graduation in Civil Engineering	Total minimum experience 10 years	15
2	Engineers	Graduation in Civil Engineering	Total minimum experience 04 years	40

- Note:** - 1. The above other key personnel should be deployed within three months from the date of signing of Contract Agreement.
2. A Penalty of Rs. 90000/- per month per Person for Non-Mobilization of other personnel will be levied. The penalties for Non-Mobilization are over & above all other Contractual provisions.
3. The figures indicated for personnel are minimum requirement. The contractor will have to induce additional personnel to complete the work in the stipulated time frame as per requirement. Any change in other personnel should be duly approved by the Employer.
4. Minimum level of shift in-charge should be engineer with 7 years of field experience in concerned area of activity.
5. Diploma with 5 years' experience in relevant field will be considered equivalent to degree.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place, Date and seal/stamp of the Tenderer: .....

**APPENDIX-25A****TO BE DEPLOYED BY DDC OF SUCCESSFUL BIDDER**

<b>Sl No</b>	<b>Personnel</b>	<b>Qualifications</b>	<b>Particular Experience (Minimum requirement)</b>	<b>Minimum No Required</b>
1	Chief Structural Engineer	ME/MTech in Structural Engineering	Minimum 20 years relevant Experience. And total minimum experience 5 years as Design Engineer of Underground Tunnels and Metro Stations.	1
2	Sr. Structural Engineer	ME/MTech in Structural Engineering	Minimum 10 years relevant Experience. And total minimum experience 3 years as Design Manager.	3
3	Senior Architect	B.Arch. in Architecture	Minimum 7 years relevant Experience. And total minimum experience 2 years in the Architecture design of Underground Tunnels and Metro Stations	1
4	Others (give details)			

- Note:** - 1. The above personnel should be deployed immediately from the date of signing of Contract Agreement.  
 2. The figures indicated for personnel are minimum requirement.  
 3. All above Personnel must be permanently stationed at Bangalore till the completion of the work.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place, Date and seal/stamp of the Tenderer: .....

**APPENDIX-26**

**DELETED**

**APPENDIX-27****TENDER INDEX**

The Tenderer shall include with his Tender an index which cross refers all of the Employer's tender requirements elaborated in these documents to all the individual sections within;

- Tender Envelope 1: Tender Security,
- Tender Envelope 2: Technical Proposal and
- Tender Envelope 3: Financial Proposal which the Tenderer intends to be the responses to each and every one of those requirements.

**The Tender Proposals submitted must be clearly presented, all pages numbered and laid out in a logical sequence with main and subheadings to facilitate evaluation.**

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place , date and seal/stamp of the tenderer: .....

**APPENDIX-28**

## **STATEMENT OF DEVIATIONS**

**(A) STATEMENT OF DEVIATIONS FROM THE INSTRUCTIONS TO TENDERER / GENERAL CONDITIONS OF CONTRACT/SPECIAL CONDITIONS OF CONTRACT**

Clause Number	Details of Deviations	Remarks explaining reasons for deviations and why it may be considered by the employer	Price for Unqualified Withdrawal given in Appendix-35 submitted in financial bid

**Note:**

1. We hereby confirm that the pricing for unconditional withdrawal of the above deviations has been given in the financial bid.
  2. We hereby confirm that all implicit and explicit deviations, comments and remarks mentioned elsewhere in our proposal shall be treated as NULL and VOID and stand withdrawn.
  3. We hereby confirm that but for the deviations noted in this Appendix-28, our proposal is fully and truly compliant.
  4. We hereby confirm that all implicit and explicit deviations, comments and remarks mentioned in this Appendix-28 but are not priced in **Appendix-35** for its unqualified withdrawal, shall be treated as NULL and VOID and stand withdrawn.
  5. \* Price not to be filled here in the Technical Proposal and indicate only Yes or No.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place , date and seal/stamp of the tenderer: .....

**(B) STATEMENT OF DEVIATIONS FROM THE EMPLOYER'S REQUIREMENT**

**Note:**

1. We hereby confirm that the pricing for unconditional withdrawal of the above deviations has been given in the financial bid.
  2. We hereby confirm that all implicit and explicit deviations, comments and remarks mentioned elsewhere in our proposal shall be treated as NULL and VOID and stand withdrawn.
  3. We hereby confirm that but for the deviations noted in this Appendix-28, our proposal is fully and truly compliant.
  4. We hereby confirm that all implicit and explicit deviations, comments and remarks mentioned in this Appendix-28 but are not priced in **Appendix-35** for its unqualified withdrawal, shall be treated as NULL and VOID and stand withdrawn.
  5. \* Price not to be filled here in the Technical Proposal and indicate only Yes or No.

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place, date and seal/stamp of the tenderer: .....

**(C) UNDERTAKING FOR PRICING FOR DEVIATIONS WITHDRAWAL**

(To be submitted on Tenderer's Letterhead)

Dated.....

**To:**

The Managing Director  
 Bangalore Metro Rail Corporation Limited  
 III Floor, BMTC Complex,  
 K.H.Road, Shantinagar,  
 Bangalore-560 027,  
 Karnataka,  
 India

**Letter of Undertaking**

**"Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2."**

Tender Notification No: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38  
 Dated 26-06-2018.

We, (name of individual tenderer/Joint Venture) hereby undertake that;

1. We hereby confirm that the pricing for unconditional withdrawal of the deviations has been given in the financial bid.
2. We hereby confirm that all implicit and explicit deviations, comments and remarks mentioned elsewhere in our proposal shall be treated as NULL and VOID and stand withdrawn.
3. We hereby confirm that but for the deviations noted in Appendix-28 to Form of Tender, our proposal is fully and truly compliant.
4. We hereby confirm that all implicit and explicit deviations, comments and remarks mentioned in Appendix-28 to Form of Tender but are not priced in **Appendix-35** for its unqualified withdrawal, shall be treated as NULL and VOID and stand withdrawn.

Signed.....

For on behalf of

(Name of tenderer/Joint venture)

**APPENDIX-29****FORMAT FOR POWER OF ATTORNEY FOR SIGNING OF THE TENDER**

(To be executed by the Tenderer)

(if the tenderer is JV, to be executed by each JV Member including Lead Member)

(Ref. Clause 16 of "Instructions to Tenderers")

(On Non – judicial stamp paper of appropriate value in accordance with stamp act if in India or such equivalent document duly attested by notary public)

**POWER OF ATTORNEY**

Know all men by these presents, we \_\_\_\_\_ (name and address of the registered office of the Tenderer) do hereby constitute, appoint and authorize Mr. / Ms. \_\_\_\_\_ R/o \_\_\_\_\_ (name and address of residence) who is presently employed with us and holding the position of \_\_\_\_\_ as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to the submission of the Tender Proposal for the work of construction of ----- (insert name of the work), (herein after referred as "Project"), including signing and submission of all documents, participating in meeting and providing information / documents / responses to Bangalore Metro Rail Corporation Ltd.(BMRCL), Bangalore, representing us in all matters in connection with our Proposal for the said Project, and if successful, till the whole of the bid process.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

Accepted

For

(Signature)

(Signature)

(Name, Title and Address of the Attorney)

(Name, Designation and Address)

**Note:**

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.

Also wherever required, the executants(s) should submit for verification the extract of the charter documents and documents such as resolution/ power of attorney in favour of the person executing this power of attorney for the designation of power hereunder on behalf of the tenderer.

**APPENDIX-30****FORMAT FOR POWER OF ATTORNEY TO LEAD PARTNER OF JOINT VENTURE****(To be executed by the JV Members other than Lead partner)****(To be executed on non-judicial stamp paper of the appropriate value in accordance with relevant stamp Act if in India or such equivalent document duly attested by notary public)****POWER OF ATTORNEY**

Whereas Bangalore Rail Corporation Limited has invited Tender for the work of -----  
----- (insert name of the work).

Whereas, the members of the Joint Venture comprising of M/s. ...., M/s. ... and M/s. .... are interested in submission of tender for the work of ... [Insert name of work]... in accordance with the terms and conditions contained in the tender documents.

Whereas, it is necessary for the members of the Joint Venture to designate one of them as the Lead Partner, with all necessary power and authority to do, for and on behalf of the Joint Venture, all acts, deeds and things as may be necessary in connection as may be necessary in connection the Joint Venture tender for the project.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT:

We, M/s.....,M/s. ....,hereby designate M/s. ...., being one of the partners of the Joint Venture, as the lead partner of the Joint Venture, to do on behalf of the Joint Venture, all or any of the acts, deeds or things necessary or incidental to the Joint Venture tender for the contract, including submission of tender, participating in conferences, responding to queries, submission of information/ documents and generally to represent the Joint Venture in all its dealings with Bangalore Metro Rail Corporation Limited or any other Government Agency or any person, in connection with the contract for the said work until culmination of the process of tender till the contract agreement is entered into with the Bangalore Metro Rail Corporation Limited and thereafter till the expiry of the contract agreement.

We hereby agree to ratify all acts, deeds and things lawfully done by lead member, our said attorney, pursuant to this power of attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us.

Dated this the ..... Day of ..... 20.....

.....  
(Signature)

.....  
(Name in Block letters of Executant)

Seal of Company

Witness 1:

Name:

Address:

Occupation:

Witness 2:

Name:

Address:

Occupation:

**Note:**

1. To be executed by all the Partners of the JV except the lead Partner.
2. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.

**APPENDIX-31****DRAFT MEMORANDUM OF UNDERSTANDING (MOU)**

**For  
JOINT VENTURE PARTICIPATION  
among**

M/s ..... having its registered office at ..... (Hereinafter referred to as ..... ) acting as the Lead Partner of the first part,  
and

M/s ..... having its registered office at ..... (hereinafter referred to as ..... ) in the capacity of a Joint Partner of the second part.  
and

M/s ..... having its registered office at ..... (hereinafter referred to as ..... ) in the capacity of a Joint Partner of the third part.

The expressions of ..... and ..... shall wherever the context admits, mean and include their respective legal representatives, successors-in-interest and assigns and shall collectively be referred to as "the Parties" and individually as "the Party"

**WHEREAS:**

Bangalore Metro Rail Corporation Limited (BMRCL) [hereinafter referred to as "Employer"] has invited tenders for ... "[Insert name of work]....."

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. The following documents shall be deemed to form and be read and construed as an integral part of this MOU.
  - i) Notice Inviting Tender, and
  - ii) Tender document
  - iii) Any Addendum/Corrigendum issued by Bangalore Metro Rail Corporation Limited
  - iv) The tender submitted on our behalf jointly by the Lead Partner.
2. The 'Parties' have studied the documents and have agreed to participate in submitting a 'tender' jointly in the name of -----(insert name of the JV)
3. M/s .....shall be the lead member of the JV for all intents and purpose and shall represent the Joint Venture in its dealing with the Employer. For the purpose of submission of tender proposals, the parties agree to nominate ..... as the leader duly authorized to sign and submit all documents and subsequent clarifications, if any, to the Employer. However M/s ..... shall not submit any such proposals, clarifications or commitments before securing the written clearance of the other partners which shall be expeditiously given by M/s..... and M/s..... to M/s.....( insert lead partner name)
4. The 'Parties' have resolved that the distribution of share and responsibilities between the JV partners is as under:-
  - (A) Lead Partner .....(insert name)share .....% ;  
RESPONSIBILITIES  
(I) .....  
(II) .....
  - (B) Joint Partner .....(insert name) SHARE .....% ;  
RESPONSIBILITIES  
(I) .....  
(II) .....

- (C) Joint Partner .....(insert name) SHARE .....% ;  
**RESPONSIBILITIES**  
(I) .....  
(II) .....

#### 5. JOINT AND SEVERAL RESPONSIBILITY

The Parties undertake that they shall be jointly and severally liable to the Employer in the discharge of all the obligations and liabilities as per the contract with the Employer and for the performance of contract awarded to their JV

#### 6. ASSIGNMENT AND THIRD PARTIES

The parties shall co-operate throughout the entire period of this MoU on the basis of exclusivity and none of the parties shall make arrangement or enter into agreement either directly or indirectly with any other party or group of parties on matters relating to the project except with prior written consent of the other party and the employer.

#### 7. EXECUTIVE AUTHORITY

The said Joint Venture through its authorized representative shall receive instructions, payments from the Employer. The management structure for the project shall be prepared by mutual consultations to enable completion of project to quality requirements within permitted cost and time.

#### 8. GUARANTEES AND BONDS

(I) **THE TENDER SECURITY:** The JV member(s) M/s-----, M/s----- and M/s----- (insert name of the JV member(s)) has furnished the tender security for the tender.

(II) **PERFORMANCE SECURITY:** If contract is awarded, each member of the JV will submit the Performance Security in proportion to percentage of participation.

#### 9. TENDER SUBMISSION

Each party shall bear its own cost and expenses for preparation and submission of the tender and all costs until conclusion of a contract with the employer for the project. Common expenses shall be shared by all the parties in the ratio of their actual participation.

#### 10. INDEMNITY

Each party hereto agrees to indemnify the other party against its respective parts in case of breach/default of the respective party of the contract works of any liabilities sustained by the joint venture.

11. For the execution of the respective portions of works, the parties shall make their own arrangements to bring the required finance, plants and equipment, materials, manpower and other resources.

#### 12. DOCUMENTS & CONFIDENTIALITY

Each Party shall maintain in confidence and not use for any purpose related to the Project all commercial and technical information received or generated in the course of preparation and submission of the tender.

#### 13. ARBITRATION

Any dispute, controversy or claim arising out of or relating to this MoU shall be settled in the first instance amicably between the parties. If an amicable settlement cannot be reached as above, it will be settled by arbitration in accordance with the Indian arbitration and conciliation act 1996 or any amendments thereof. The venue of the arbitration shall be: Bangalore.

#### 14. VALIDITY

This MoU shall remain in force till the occurrence of the earliest to occur of the following, unless by mutual consent, the parties agree in writing to extend the validity for a further period.

- a. The tender submitted by the Joint Venture is declared unsuccessful, or
- b. Cancellation/shelving of the Project by the Employer for any reasons prior to award of work

- c. Execution of detailed JV agreement by the parties, setting out detailed terms after award of work by the Employer.
15. This MOU is drawn in **Three** copies with equal legal strength and status. One copy is held by M/s ..... and the others by M/s ..... and M/s ....., and a copy submitted with the tender.
16. This MOU shall be construed under the laws of India.

**17. NOTICES BETWEEN JV PARTNERS**

Notices shall be given in writing by fax confirmed by registered mail or commercial courier to the following fax numbers and addresses:

Lead Partner (First Part)

Second JV Partner

Third JV Partner

.....  
.....  
.....

.....  
.....  
.....

.....  
.....  
.....

(Name & Address)

(Name & Address)

(Name & Address)

IN WITNESS WHEREOF THE PARTIES, have executed this MOU the day, month and year first before written.

M/s.....

M/s..... M/s.....

.....  
(Stamp)

.....  
(Stamp)

.....  
(Stamp)

Witness

- 1..... (Name & Address)  
2..... (Name & Address)  
3..... (Name & Address)

**APPENDIX-32****BANK GURANTEE FOR TENDER SECURITY**

To,

BANGALORE METRO RAIL CORPORATION LIMITED (BMRCL)  
 3RD FLOOR BMTC COMPLEX, K.H.ROAD, SHANTHINAGAR  
 BANGALORE- 560027.  
 KARNATAKA, INDIA.

1. WHEREAS \_\_\_\_\_ (Name and Address of the Tenderer hereinafter called the "Bidder") has undertaken for submission of Tender in pursuance of contract No. \_\_\_\_\_ (description of the contract work of Bangalore Metro Rail Project to be specified, hereinafter called "the Tender").
2. AND WHEREAS it has been stipulated in the concerned Tender notification issued by Bangalore metro Rail Corporation Limited (BMRCL) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, herein after called the Employer) to the bidder that the bidder shall furnish to EMPLOYER (BMRCL) with a Bank Guarantee as per the conditions of the Tender, from an Indian scheduled Bank (excluding Cooperative Bank) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 r/w second schedule for, the sum specified herein below as Tender security for compliance of the obligation and performance, in accordance with the concerned Tender conditions.
3. AND WHEREAS we \_\_\_\_\_ (the name and full address of the Bank including Email address) having registered office at \_\_\_\_\_ (hereinafter referred to as the issuing Bank) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, do hereby agree to give the contractor such a Bank Guarantee, drawn and payable at Bangalore \_\_\_\_\_ through Bangalore \_\_\_\_\_ Branch.
4. NOW therefore, we hereby affirm that we are the guarantor and responsible to EMPLOYER (BMRCL) and their successor, on behalf the bidder up to a total sum of Indian Rupees of Rs. \_\_\_\_\_ (amount of Guarantee to be specified in figure and words), such sum being payable equal to the currencies in which the contract price is payable and we hereby further unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil, or arguments any sum or sums within the limits of Indian Rupee \_\_\_\_\_ (Bank guarantee amount to be specified) as aforesaid without your needing to prove or to show grounds or reasons for your demand, by depositing/crediting to the Current A/c. of EMPLOYER (BMRCL), the sums specified therein.
5. This Bank Guarantee is encashable or extendable at our designated Branch in Bengaluru (Bangalore) Karnataka, India, as mentioned below:

Name of the Bank, Branch and contact details

Address

Telephone no: & Fax No:

E-mail Address

Branch manager name& mobile No:

Bank Zonal Office Address, Telephone No:, Fax Number,  
 E-mail Address

6. "This Bank Guarantee shall be encashed unless renewed by the contractor at the request of the Employer, before the due date".
7. The Bank is liable to pay the EMPLOYER (BMRCL), any amount upto and inclusive of the aforementioned full amount upon written order from the EMPLOYER (BMRCL). The Bank will pay the money required by the EMPLOYER (BMRCL) immediately on demand without delay

- without reference to the bidder and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the liability or damages resulting from any defects or shortcomings or debts of the bidder.
8. BMRCL shall have full rights to encash this Bank Guarantee at any time during the guarantee period and the bidder shall have no right or claim whatsoever in the matter of encashment of the Bank Guarantee amount by the Employer (BMRCL). The Bank will have their responsibility in terms of the guarantee and obligation, to make immediate payment to the EMPLOYER (BMRCL), without the consent of the bidder and without referring the matter to the bidder.
  9. Courts at Bangalore, Karnataka, India shall have exclusive jurisdiction to adjudicate disputes arising out of encashment of the Guarantee, and we, the said Bank, undertake not to revoke this Guarantee during its currency, except with the previous consent of the Employer in writing and agree that any change in the constitution of the Bank shall not discharge our liability hereunder.
  10. This Bank Guarantee will not be discharged due to the change in the constitution of the bidder or change in the constitution of the issuing bank
  11. This guarantee is executed and issued by Shri \_\_\_\_\_ who is/are authorized by the Bank for issuing the guarantee in its behalf and his ID No. and Email address being----- .
  12. The Banks liability under this Guarantee shall not exceed the amount of INR \_\_\_\_\_ (to be specified in words and figures\_\_\_\_\_\_).
  13. This guarantee shall be valid for (period to be specified) till \_\_\_\_\_ (Period to be mentioned).
  14. The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.
  15. It is hereby agreed that the liability of the Bank under this guarantee shall cease on the first occurrence of either of the following events:
    - a) Payment by the Bank of the Guaranteed sum in full to the Employer/BMRCL  
Or
    - b) Receipt of written communication from the Employer/BMRCL, to the issuing Bank, along with the Original Bank Guarantees discharging the Bank of its liability covered by this Bank Guarantee.

SIGNATURE AND SEAL OF THE GUARANTOR  
 GUARANTOR NAME OF THE BANK  
 ADDRESS  
 DATE:

SIGNATURE AND SEAL OF THE  
 NAME OF THE BANK  
 ADDRESS  
 DATE:

Note: All bank guarantees should be 'Payable at Bangalore' at the designated branch or else it will be rejected

**APPENDIX-33****FORM OF BANKERS CERTIFICATE.**

(Note: Bankers format will also be acceptable)

This is to certify that M/s. \_\_\_\_\_ is a reputed company with a good financial standing. If the contract for the work of \_\_\_\_\_ (Name of work) is awarded to the above firm, we shall be able to provide over draft/credit facilities to the extent of Rs.\_\_\_\_\_ (in words Rupees\_\_\_\_\_) to meet the working capital requirement for executing the above contract.

Signature\_\_\_\_\_

Name of the issuing official of the Bank \_\_\_\_\_

Designation\_\_\_\_\_

Bank Name \_\_\_\_\_

Address\_\_\_\_\_

Phone No.\_\_\_\_\_

Fax No.\_\_\_\_\_

**APPENDIX-34****COVENANT OF INTEGRITY**

"We declare and covenant that neither we nor anyone, including any of our directors, employees, agents, joint venture partners or sub-contractors, where these exist, acting on our behalf with due authority or with our knowledge or consent, or facilitated by us, has engaged, or will engage, in any Prohibited Conduct (as defined below) in connection with the tendering process or in the execution or supply of any works, goods or services for the "**Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.**" and covenant to so inform you if any instance of any such Prohibited Conduct shall come to the attention of any person in our organisation having responsibility for ensuring compliance with this Covenant.

We shall, for the duration of the tender process and, if we are successful in our tender, for the duration of the Contract, appoint and maintain in office an officer, who shall be a person reasonably satisfactory to you and to whom you shall have full and immediate access, having the duty, and the necessary powers, to ensure compliance with this Covenant.

If (i) we have been, or any such director, employee, agent or joint venture partner, where this exists, acting as aforesaid has been, convicted in any court of any offence involving a Prohibited Conduct in connection with any tendering process or provision of works, goods or services during the five years immediately preceding the date of this Covenant, or (ii) any such director, employee, agent or a representative of a joint venture partner, where this exists, has been dismissed or has resigned from any employment on the grounds of being implicated in any Prohibited Conduct, or (iii) we have been, or any of our directors, employees, agents or joint venture partners, where these exist, acting as aforesaid has been excluded by the EU Institutions or any major Multi-lateral Development Bank (including World Bank Group, African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank or Inter-American Development Bank) from participation in a tendering procedure on the grounds of Prohibited Conduct, we give details of that conviction, dismissal or resignation, or exclusion below, together with details of the measures that we have taken, or shall take, to ensure that neither this company nor any of our directors, employees or agents commits any Prohibited Conduct in connection with the Contract [give details if necessary].

In the event that we are awarded the Contract, we grant the Project Owner, the European Investment Bank (EIB) and auditors appointed by either of them, as well as any authority or European Union institution or body having competence under European Union law, the right of inspection of our records and those of all our sub-contractors under the Contract. We accept to preserve these records generally in accordance with applicable law but in any case for at least six years from the date of substantial performance of the Contract."

For the purpose of this Covenant, Prohibited Conduct includes<sup>1</sup>,

- **Corrupt Practice** is the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.

---

<sup>1</sup> Most definitions are those of the IFI Anti Corruption Task Force's Uniform Framework of September 2006.

---

- **Fraudulent Practice** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.
- **Coercive Practice** is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party to influence improperly the actions of a party.
- **Collusive Practice** is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party
- **Obstructive Practice** is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of the EIB's contractual rights of audit or access to information or the rights that any banking, regulatory or examining authority or other equivalent body of the European Union or of its Member States may have in accordance with any law, regulation or treaty or pursuant to any agreement into which the EIB has entered in order to implement such law, regulation or treaty;

Signature of the Tenderer: .....

Name & Designation of Authorized signature: .....

Place, Date and seal/stamp of the Tenderer: .....

**CHECK LIST FOR SUBMISSION OF IMPORTANT INFORMATION (NOT EXHAUSTIVE)**

Sl. No.	Requirement	Submission Requirement	Ref. Page No.	Remarks, if any
1	Share of partners in the case of JV	Appendix -31 of FTT		
2	Conflict of Interest	Appendix- 2, 4 and 6 of FTT as applicable		
3	Covenant of Integrity	Appendix-34 of FTT		
4	Submission of documents (including Minutes of the Pre-bid Meeting and Corrigendum)	Stamped and signed on all the pages.		
5	Tender security	Appendix-32 of FTT		
6	Letter of application	Appendix -1, 3 & 5 of FTT as applicable.		
7	Only one bid either individually or as a partner of a JV	Appendix- 1, 3 and 5, of FTT as applicable		
8	Work Experience	Appendix-8, 9, and 9A of FTT		
9	Liquidity	Appendix-33 of FTT		
10	Profitability	Appendix-12 and Appendix 15 of FTT		
11	Net Worth	Appendix-12 and Appendix -14 of FTT		
12	Annual Turnover	Appendix-12and Appendix 13 of FTT		
13	Works in Hand	Appendix-11 of FTT		
14	Key Personnel	Appendix -23 of FTT & Appendix-2,4 and 6 of FTT		
15	Plant and Machinery	Appendix -16 of FTT & Appendix-2,4, and 6 of FTT		
16	Power of Attorney to sign and submit Letter of Application by Lead Partner	Appendix-30 of FTT		
17	MOA (Memorandum of Association) of each member.	Clause No: 9.2.1 (b) of ITT		
18	Power of Attorney to the person signing the Letter of Participation.	Appendix-29 of FTT		
19	Undertaking for "Joint and Several Responsibility" signed	Appendix-31 of FTT		
20	MOU/Joint Venture Agreement	Appendix-31 of FTT& Schedule-12 of Schedules to SCC		
21	Division of work between the members of the Joint Venture	Appendix 31 of FTT		

<b>Sl. No.</b>	<b>Requirement</b>	<b>Submission Requirement</b>	<b>Ref. Page No.</b>	<b>Remarks, if any</b>
22	Physical completion Certificate completed as referred	Appendix-8 of FTT		
23	Annual Reports	Clause No: 9.2.1 (a) of ITT		

**TECHNICAL PROPOSAL (VOLUME-1)  
GENERAL CONDITIONS OF CONTRACT: Section-E  
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## GENERAL CONDITIONS OF CONTRACT (GCC)

### 1 DEFINITIONS AND INTERPRETATION

- Definitions**
- 1.1 The following contract terms and expressions as used in the contract defined shall have the meanings assigned to them, except where the context otherwise requires. Words indicating persons or parties include corporations and other legal entities except where the context requires otherwise.
  - 1.1.1 **Documents**
  - 1.1.1.1 "**Appendix to Form of Tender**" means the completed pages in title Appendix, which are appended to and form part of the Tender.
  - 1.1.1.2 "**Construction and/or Manufacture Documents**" means all drawings, calculations, computer software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature, to be submitted by the Contractor.
  - 1.1.1.3 "**Contract**" means the written Contract Agreement, the Letter of Acceptance, General Conditions of Contract, Special Conditions of Contract, the Employer's Requirements, the Tender, the Notice of Invitation to Tender, Instructions to Tenderers, the Contractor's Proposal, the Schedules, Clarifications issued and such further documents which are listed in the Letter of Acceptance or Contract Agreement (if completed).
  - 1.1.1.4 "**Contract Agreement**" means the contract agreement pursuant to acceptance letter referred to in Sub-Clause 1.4. It shall also include all subsequent modifications/ amendments to record the Contract as a result of the communications or negotiation proceedings between the parties.
  - 1.1.1.5 "**Contractor's Proposal**" means the proposal submitted by the Contractor with the Tender, as modified and accepted by the Employer and included in the Contract. Such documents may include the Contractor's preliminary Design.
  - 1.1.1.6 "**Design Data**" means all specifications, plans, drawings, details, graphs, sketches, models, levels, setting-out dimensions, calculations duly checked by the Contractor and other documents relating to the Design of the works prepared or to be prepared by or on behalf of the Contractor.
  - 1.1.1.7 "**Drawings**" means the Employer's Drawings and the Drawings submitted by the Contractor and any modification of such drawings from time to time, for which the Engineer has issued a Notice of No Objection.
  - 1.1.1.8 "**Employer's Requirements**" means the description of the scope, standard, specifications, drawings, programme of work, indigenisation programme (where applicable) as included in the Contract, and any alterations and modifications thereto in accordance with the Contract.
  - 1.1.1.9 "**Letter of Acceptance**" means the letter from the Employer or the Engineer, or a person nominated by them on their behalf for this purpose, to the Contractor, conveying acceptance of the Tender, subject to any modifications agreed to between the parties and includes advance acceptance of the tender.
  - 1.1.1.10 "**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.
  - 1.1.1.11 "**Schedules**" means the information and data submitted with the Tender, as included in the Contract.
  - 1.1.1.12 "**Tender or Bid**" means the completed offer made by individual, Firm, Company, Corporation, Joint Venture for the execution of the works.  
"Tenderer" or "Bidder" means the person, firm or corporation, Joint Venture submitting a tender against the notice of invitation of tender and includes his authorized agents or representatives. Tenderer shall mean 'Contractor' wherever the context so requires and vice-versa.
  - 1.1.1.13 **Deleted.**
  - 1.1.1.14 "**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 acceptance of the Tender.

1.1.1.15 **"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.

#### **Persons**

**"Party"** means the Employer or the Contractor as the context requires

**"Contractor"** shall mean the person, firm, association of firms, Company or Corporation identified as the Contractor and whose tender for the work has been accepted by the Employer and responsible for carrying out the construction scope, in accordance with the Contract Documents and unless the context otherwise so requires shall include his/their executors, administrators, successors and permitted assignees.

1.1.2.3 **"Contractor's representative"** means the person (if any) named as such in the Contract or other person appointed from time to time by the Contractor under Sub Clause 4.3.

1.1.2.4 **"Designated Contractors"** means any of the following whose activities or the works they are engaged to carry out, affect or are affected by the Works, in any way or at any time:

- (a) Contractors, design consultants and utility authorities engaged on the Project from time to time by the Employer;
- (b) Sub-contractors of any tier of the contractors above; provided that the definition shall exclude the Contractor and his sub-contractors of any tier in relation to the Works.

1.1.2.5 **"Designer"** means the Contractor, or part of the group forming the contractor, person, firm or company or group of companies, or any replacement, carrying out the Design of Works or part thereof.

1.1.2.6 **"Employer"** means BANGALORE METRO RAIL CORPORATION LIMITED (BMRCL), its legal successors and assignees.

1.1.2.7 **"Engineer"** means Chief Engineer or Deputy Chief Engineer or General Consultant or any person/party nominated or appointed from time to time by the Employer to act as the Engineer for the purposes of the Contract and notified as such in writing to the Contractor.

1.1.2.8 **"General Consultant" or "GC"** means the firm/JV or consortium of firms appointed by the Employer as a general consultant to the Employer or any other person appointed from time to time and notified as such to the Contractor.

1.1.2.9 **"Sub-Contractor"** means the Individual, Firm, Company, Corporation, Joint Venture, having direct contract with the Contractor and to whom any part of the Work has been sublet by the Contractor, with prior permission of the Engineer or Employer and shall include his heirs, his executors, administrators, successors, legal representatives, as the case may be.

1.1.2.10 **"Partner/member"** means partner or member of joint venture as the context requires.

#### **Dates, Times and Periods**

**"Commencement Date"** means the date of signing the 'Contract Agreement'

**Deleted.**

**"Contract Period"** means the period from the Commencement Date to the end of final Defects Liability Period.

**"Day"** means a calendar day; **"Week"** means 7 calendar days, **"Month"** means 30 calendar days; and **"Year"** means 365 calendar days.

**"Effective Date"** means the date on which the Contract comes into force and effect.

**"Gazetted Holiday"** means every holiday which is observed by Bangalore Metro Rail Corporation Limited as a gazetted holiday.

**"General Holiday"** means Sunday.

- 1.1.3.8     **"Key Date"** means a date identified as such in the Contract documents as the same may be extended by the Engineer pursuant to GCC clause 8.4.
- 1.1.3.9     **Deleted.**
- 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 physically 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 and as applicable for the nature of 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      **"Key date certificate"** means the certificate to be issued by the Engineer in relation to the achievement or otherwise of Key dates
- 1.1.4.3      **"Performance Certificate"** means the certificate issued by the Engineer under Sub-Clause 10.9.
- 1.1.4.4      **"Taking Over Certificate"** means a certificate issued under Clause 9.1.
- 1.1.4.5      **"Tests on Completion"** means the tests specified in the Contract and designated as such, including Integrated Testing and any other such tests as may be agreed by the Engineer and the Contractor, or instructed as a Variation, which are to be carried out before the Works, or any Section are taken over by the Employer.
- 1.1.5       **Money and Payments**
- 1.1.5.1      **"Contract Price" or "Contract Value"** means the sum stated in the Letter of Acceptance as payable to the Contractor for execution of the work including remedying of any defect during completion and maintenance period therein, subject to such additions thereto or deductions there from as may be made under the provisions of the Contract.
- 1.1.5.2      **"Tender Price"** is the quoted price in the Financial Proposal at the time of bidding.
- 1.1.5.3      **"Cost"** means all expenditure properly incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.
- 1.1.5.4      **"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 11.7.
- 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 11.3, other than the Final Payment Certificate.
- 1.1.5.8      **"Local Currency"** means Indian Rupees.
- 1.1.5.9      **"Retention Money"** It is the Security Deposit to be paid by the contractor in token of due and faithful fulfilment of the contract, the amount/details of retention money is given under sub clause 11.5.
- 1.1.5.10     **"Tender security/Earnest money"** means a tender guarantee in the form of a Bank Guarantee/Pay Order/Bankers Cheque/Demand draft to be furnished along with tender by the Tenderer under clause 13.0 of ITT.
- 1.1.5.11     **"Performance Security"** means a guarantee for satisfactory completion of the work by the contractor under sub clause 4.2.1 of GCC and the Employer is guaranteed compensation for any monetary loss upto the amount of performance guarantee.
- 1.1.6       **Other Definitions**
- 1.1.6.1      **"Contractor's Equipment"** means all machinery, apparatus, appliances, other things of whatsoever nature required for purpose of the Contract, including without limitation, Contractor's plant and equipment, or

	materials to or from the Site, but does not include Plant, or Materials intended to form or forming part of the Permanent Works.
1.1.6.2	“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.
1.1.6.3	“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.
1.1.6.4	“Section” means a part of the Works specifically designated in the Appendix to Form of Tender as a Section (if any).
1.1.6.5	“Site” means the places provided by the Employer where the Works are to be executed and to which Plant and Materials are to be delivered and any other place as may be specifically designated in the Contract as forming part of the Site.
1.1.6.6	“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 Employer, in accordance with Clause 12.
1.1.6.7	“Works” means the work to be executed in accordance with the Contract and shall include both Permanent Works and Temporary Works.
1.1.6.8	“Permanent Works” means the permanent works to be executed, completed and maintained in accordance with the Contract.
1.1.6.9	“Temporary Works” means all temporary and enabling works of any kind required for the execution and completion of the works and the remedying of any defect therein, and which subsequently be removed by the Contractor.
1.1.6.10	“Project” means Bangalore Metro Rail Project, Phase-2.
<b>Interpretation</b>	<p><b>1.2</b> In the Contract except where the context requires otherwise:</p> <ul style="list-style-type: none"> <li>(a) words indicating one gender include all genders;</li> <li>(b) words indicating the singular also include the plural and words indicating the plural also include the singular and</li> <li>(c) “written” or “in writing” means hand-written, type written, printed or electronically made and resulting in a permanent record.</li> </ul> <p>The marginal words and other headings shall not be taken into consideration in the interpretation of these conditions</p>
<b>Law and Language</b>	<b>1.3</b> The Contract shall be governed by the Acts and Laws of India, the rules, regulations and bye-laws of the concerned public bodies and authorities. Language of the Contract shall be English.
<b>Contract Agreement</b>	<b>1.4</b> The Employer and the Contractor shall execute a Contract Agreement in the form annexed in Schedules to Special Conditions of Contract, with such modifications as may be necessary to record the Contract within 45 days from the date of issue of Letter of Acceptance by the Employer. The costs of stamp duties and similar charges imposed by law shall be borne by the Contractor.
	<b>Modification to contract to be in writing:</b>
	In the event of any of the provisions of the contract requiring to be modified after the contract documents have been signed, the modifications shall be made in writing and signed by the Employer and the Contractor, and no work shall proceed under such modifications until this has been done. Any verbal or written arrangements abandoning, modifying, extending, reducing or supplementing the contract or any of the terms thereof shall be deemed conditional and shall not be binding on the Employer unless and until the same is incorporated in a formal instrument and signed by the Employer and the Contractor, and till then the Employer shall have the right to repudiate such arrangements.
<b>Priority of Documents</b>	<b>1.5</b> 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 unless otherwise specified in

the Special Conditions of Contract:

1. Contract Agreement.
2. Letter of Acceptance.
3. Clarifications, Addenda, Corrigenda Issued to Tender document.
4. Pricing Document
5. Special Conditions of Contract
6. Special Conditions of Contract – Schedules
7. General Conditions of Contract
8. Outline design specification
9. Outline construction specification
10. Employer's Requirement
11. Any other document forming part of the Contract

In case of any ambiguity within a particular document above, then the Engineer decision will be final and binding.

**Care and Supply of Construction and/or Manufacture Documents**

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

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 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 personally or by courier or by electronic means.

**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.

**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	<p>The Contractor shall familiarise themselves and conform to the requirement in all aspects with:</p> <ul style="list-style-type: none"> <li>(a) the provision of any enactment in India as applicable from time to time</li> <li>(b) the regulations or bye-laws of any local body and utilities including, but not limited to Electricity Supply Regulation Act, Indian Electricity Rules, Pollution Control Rules, BBMP rules and regulations and byelaws etc.</li> <li>(c) The Contractor shall be bound to give all notices required by statute, regulations or bye-laws, as aforesaid and to pay all fees and bills payable in respect thereof. The Contractor will arrange necessary clearances and approvals before the Work is taken up.</li> </ul> <p>Ignorance of Rules, Regulations and Bye-laws shall not constitute a basis for any claim at any stage of work.</p> <p>The Contractor shall indemnify the Employer against all penalties and liabilities of every kind of breach of any such enactment, laws, regulations, bye-laws or rules.</p>
Joint and Several Liability	1.11	<p>If the Contractor is (under applicable Laws) a joint venture or other incorporated grouping of two or more Parties:</p> <ul style="list-style-type: none"> <li>a) these parties shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;</li> <li>b) these parties shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these parties; and the Contractor shall not alter its composition or legal status without the prior consent of the Employer. The Lead member should be there till the completion of work.</li> <li>c) In the event of default by any member in the execution of his part of the Contract, the lead member will have the authority to assign the work to any other party acceptable to the Employer to ensure the execution of that part of the Contract. In the event of default by Lead member, Employer reserves the right to terminate the contract.</li> </ul>
Severability	1.12	<p>If any clause, provision, section or part of the Contract is ruled invalid by a court of competent jurisdiction, then the parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, and (b) if necessary or desirable, apply to the court which declared such invalidity for a judicial construction of the invalidated portion to guide the negotiations. The invalidity or enforceability of any such clause, provision, section or part shall not affect the validity or unenforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision, section or part.</p>
	2	<h2>The Employer</h2>
General Obligations	2.1	<p>The Employer shall provide the Site in reasonable stretches/lengths/locations and shall pay the Contractor in accordance with the Contract. The judgement of 'reasonable stretches/lengths/locations' shall be decided by the Engineer and his decision is final and binding on the Contractor.</p>
Access to and Possession of the Site	2.2	<p>The Employer shall <b>acquire</b> and grant the Contractor <b>possession of the Site</b> in accordance with the alignment finalized by the Employer progressively for the completion of Works. Such possession may not be exclusive to the Contractor.</p> <p>The <b>Engineer</b> and the authorized representative of the <b>Contractor</b> shall, <b>within 15 days from</b> the date of signing the Contract Agreement inspect the site and prepare a <b>memorandum</b> containing inventory of the site including the vacant unencumbered land, buildings, structures, trees and any other immovable properties on or attached to the site. Such memorandum will be appended with an Appendix, specifying in reasonable details those parts of</p>

the site for which possession has not been given to the contractor. The Engineer and the authorized representative of the Contractor shall sign the memorandum and this shall be deemed to constitute a valid evidence of giving Right of Way to the Contractor for discharging its obligation of this Contract and for no other purpose whatsoever.

Whenever the Engineer is ready to handover any part or parts of the site, it shall inform the Contractor, by notice, the proposed date and time of such handing over. The Engineer and the Contractor shall, on the date so notified, inspect the specified part or parts of the site and prepare a memorandum containing inventory of the site including the vacant & unencumbered land, buildings, structures, trees and any other immovable properties on or attached to the site so handed over. The Engineer and the authorized representative of the Contractor shall sign the memorandum and this shall be deemed to constitute a valid evidence of giving the relevant Right of Way to the Contractor.

The Employer shall provide possession of 100% Site to the Contractor **within 90 days of signing of the Contract Agreement** progressively.

In the event of possession to **any part or parts of the site is not provided** by the Employer within 90 days of signing of Contract Agreement for any reason other than **Force Majeure, COURT STAY ON LAND ACQUISITION, UNIDENTIFIED UNDERGROUND UTILITIES or breach of this Contract Agreement** by the Contractor, the Employer shall **pay damages** to the contractor for a sum calculated in accordance with the following formula for and in respect of **those parts** of the Site for which possession of the Right of Way has not been provided:

Amount of Damages in Rs. Per day per meter =  $0.05 \times C \times 1/L \times 1/N$

Where

C = Original Contract price.

L = Length of work in meters

and

N = completion period of work in days as per Original Contract.

Length of work (excluding length of tunnel work executed by TBM & NATM) is to be recorded from start Chainage to end Chainage of the Contract plus any start and ending Chainage for depot entries. For claiming any damages under this clause, the length of the land for which right of way has not been granted by the employer to the contractor, shall be **measured and restricted to only** the physical part or parts of land where there is actual obstruction.

In the event of any damages are due and payable to the contractor under the provisions of this Clause, subject to provisions of GCC Clause 8.4, the Contractor shall be entitled to Time Extension equal to the period for which the Damages have become due and payable under this Clause, save and except that:

(a) If any delays involve time overlaps, the overlaps shall not be additive; and

(b) Such time extension shall be restricted only to the Works which are affected by the delay in providing the Right of Way.

Notwithstanding anything to the contrary contained in this Clause, the Contractor shall work on all parts of site for which possession is granted and the work shall be completed before the scheduled completion date and shall not qualify for any time extension under the provisions of this clause.

**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 may (where he is in a position to do so) provide reasonable assistance to Contractor at the request and cost of the Contractor in getting Permits, License or Approvals required during the Contract.

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

shall be the responsibility of the Contractor.

<b>Assignment by the Employer</b>	<b>2.4</b>	The Employer shall be fully entitled without the consent of the Contractor, to assign the benefit of the Contract or any part thereof and any interest therein or there under to any third party.
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### **3 The Engineer**

<b>Appointment of Engineer</b>	<b>3.1</b>	The Employer shall notify the Contractor in writing of the appointment and identity of the Engineer and of any replacement from time to time.
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<b>Duties and Authorities of the Engineer</b>	<b>3.2</b>	<p>The Engineer shall carry out the duties specified in the Contract. The Engineer shall have no authority to amend the Contract.</p> <p>The Engineer may exercise the authority specified in, or necessarily to be implied from the Contract. Any requisite approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer.</p>
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The Engineer shall have no authority to relieve the Contractor of any of his duties, obligations, or responsibilities under the Contract. Engineer shall watch and inspect the Works, monitor the test results and examine any material to be used and workmanship employed by the Contractor in connection with the Works. 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.

<b>Engineer's Authority to Delegate</b>	<b>3.3</b>	<p>i. The Engineer, with the prior approval of the Employer may from time to time assign and delegate authority to Engineer's representativesassistants and may also revoke such assignments and delegations. The delegation or revocation shall be in writing and shall be applicable only after same has been notified in writing to the Contractor.</p>
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ii. Each Engineer's representativeassistants to whom duties have been assigned or authority has been delegated shall be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any determination, approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by an Engineer's representativeassistants shall have the same effect as though the act had been an act of the Engineer. However:

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

<b>Engineer's Instructions</b>	<b>3.4</b>	The Contractor shall comply with instructions given by the Engineer in accordance with the Contract.
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The Contractor shall give reasonable notice to the Engineer of any instruction, which he considers necessary for the execution of the Works, to enable the Engineer to issue the instruction so that progress of the Works is not delayed. The Engineer shall not, however, be bound to issue any instruction which, in his opinion, is unnecessary.

No act or omission by the Engineer or Engineer's representativeassistants 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.

<b>Engineer to Attempt Agreement</b>	<b>3.5</b>	When the Engineer is required to determine value, cost or extension of time, he shall consult with the Contractor and the Employer in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall determine the matter fairly, reasonably and in accordance with the Contract, with the approval of Employer.
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## 4 The Contractor

<b>General Obligations</b>	<b>4.1</b>	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.
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The Contractor shall design, manufacture, execute, install, complete, test (including Integrated Testing) and commission, the Works, including providing Construction and/or Manufacture Documents, within the Time for Completion and shall remedy any defects within the Contract Period. The Contractor shall provide all superintendence, labour, Plant, Materials, Contractor's Equipment, Temporary Works and all other things, whether of a temporary or permanent nature, required in and for such design, manufacture, execution, installation, completion, testing (including Integrated Testing) and commissioning and remedying of defects.

Before commencing design, the Contractor shall satisfy himself regarding the Employer's Requirements (including design criteria and calculations, if any) and the items of reference mentioned in 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.

Notwithstanding that any design details may be included in the Contract, this shall in no way limit the responsibility on the Contractor to design, manufacture, supply, install, test and commission the Works so that they are fit for the purposes expressed or implied in the Contract.

The inclusion of the Contractor's Submission in the Contract shall in no way relieve the Contractor from any obligation under the Contract, including but not limited to design, manufacture, supply, test and commission of the Works or that the Employer accepts that any or all of the Contractor's Submission meets the requirements of the Contract, or that any design or design or design information contained in the Contractor's Submission does not mean that the Employer accepts that such design or design information is in accordance with the Contract, and the inclusion shall not relieve the Contractor from any or all of his obligations under the Contract.

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 (including Integrated Testing), commissioning of the Works and remedying of the Defects.

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

- (a) conditions bearing upon the proper transportation, disposal, handling and storage of materials (including but not limited to hazardous toxic

- substances and excavated materials);
- (b) availability of electricity, water and gas;
  - (c) availability of skilled manpower;
  - (d) the character of equipment and facilities needed preliminary to and during the manufacture, installation, execution, testing (including Integrated Testing), and commissioning of the Works and remedying of any defects;
  - (e) the protection of the environment and adjacent structures which will be necessary preliminary to and during the manufacture, installation, execution, testing (including Integrated Testing) and commissioning of the Works and remedying of any defects;
  - (f) the location of and the authorisation required for and the means of diversion of any services and facilities required for the purposes of the Works.

The Contractor shall whenever require 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

<b>Performance Security, Guarantee, Warranties and Undertakings.</b>	<b>4.2</b>	"Performance Security" is a guarantee for satisfactory completion of the work by the contractor and the Employer is guaranteed compensation for any monetary loss up to the amount of performance guarantee..
<b>Amount of Performance Security</b>	<b>4.2.1</b>	<p>i. Within 30 days of receipt of the Letter of Acceptance, the successful Tenderer shall furnish <b>Performance Security</b> at 5%(Five percent) of the Contract Price as mentioned in LoA (For the purpose of calculating the amount of performance security, only the value of contract as mentioned in LoA will be considered), in the form of a bank guarantee from an Indian Schedule bank (excluding Cooperative Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule in types and proportions of currencies in which the Contract Price as mentioned in LOA is payable.</p> <p>ii. If the offer of the successful Tenderer is considered as seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require that the amount of the performance security set forth above vide sub para (i) be increased for those schedule or schedules considered unbalanced and an <b>additional performance security</b> may be obtained at the expense of the successful bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful bidder under the contract.</p> <p>The approved form provided in the "Schedule to Special Conditions of Contract" or any other form approved by the Employer shall be used for Performance Guarantee and additional performance Guarantee.</p> <p>The Performance Guarantee and the Additional Performance Guarantee shall be valid up to issuance of Last Taking Over certificate by the Employer.</p> <p>iii. Failure of the successful Tenderer to furnish the required Performance Guarantee shall be a ground for the annulment of the award of Contract and forfeiture of the Tender Security. The contractor shall be responsible to extend the validity of Performance BG.</p>
<b>Release of performance security</b>	<b>4.2.2</b>	<p>i. The whole or such portion of the Performance Security amount as he may consider fit shall be liable to be forfeited by the Employer at the discretion of the Employer, in the event of any breach of Contract on the part of the Contractor.</p> <p>ii. After completion of the entire Work, the Performance Security shall be released to the Contractor, on issue of last Taking Over Certificate if more than one Certificate exist, by the Engineer, in accordance with 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 final Defects Liability Period.</p>

<b>Guarantees and Warranties</b>	<b>4.2.3</b>	<p>Within 30 days of the date of Letter of Acceptance of the Tender, the Contractor shall submit to the Employer:</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(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.</li> <li>(c) A warranty in the approved format from the Contractor.</li> <li>(d) Designer's warranty.</li> </ul> <p>The formats of Performance Guarantee, Parent Company Undertaking, Parent Company Guarantee, Designer's warranty and Contractor's Warranty are provided in the Schedule to Special Conditions of Contract.</p> <p>In the event that the Contractor shall comprise a joint venture, each member shall submit a parent company Undertaking and Guarantee.</p>
<b>Representation on Works</b>	<b>4.3</b>	<p>Unless the Contractor's Representative is named in the Contract, the Contractor shall, within 14 days of signing the 'Contract Agreement', submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint. The Contractor shall not revoke the appointment of the Contractor's Representative without the prior consent of the Engineer. The Contractor's Representative so nominated shall have full authority to act on behalf of the Contractor. The Contractor's Representative shall give his whole time to directing the preparation of the Construction and/or Manufacture Documents and the execution of the Works. The Contractor's Representative shall receive (on behalf of the Contractor) all notices, instructions, consents, approvals, certificates, determinations and other communications under the Contract. Whenever the Contractor's Representative is to be absent from the Site, a suitable replacement person shall be appointed, with prior consent of Engineer.</p> <p>Failure on part of the Contractor to comply with these provisions shall constitute a breach of Contract leading to action under Sub Clause no. 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.</p>
<b>Facilities for and Co-ordination with Others.</b>	<b>4.4</b>	<p>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:</p> <ul style="list-style-type: none"> <li>a The Contractor shall take all reasonable steps to ensure that the Works are co-ordinated and integrated with the Design works, manufacture, installation execution and testing of such other works and shall in particular (but without limitation): <ul style="list-style-type: none"> <li>(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;</li> <li>(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</li> </ul> </li> </ul>

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

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

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

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

**Sub-Contractors**      **4.5**      The Contractor shall sub-contract the Works only with prior consent of Engineer/Employer, 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 standards 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
- d) The Contractor shall give fair and reasonable opportunity for contractors in India to be appointed as Sub-contractors.

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 the details of sub contracts upon request of the Engineer. The Contractor shall Endeavour to resolve all matters and payments amicably and speedily with the sub-contractors.

**Assignment of Contractor's and Sub-contractor's Obligations**      **4.6**      The Contractor shall not assign a right or benefit under the Contract without first obtaining Employer's prior written consent, otherwise than by:

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

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

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

		(as the case may be), the Contractor shall immediately assign or obtain the assignment of the benefit of such warranty or obligation to the Employer or at the direction of the Employer, to any third party referred to in Sub-Clause 2.4.
<b>Compensation for Breach</b>	<b>4.7</b>	Any breach of Sub-clauses 4.5 to 4.6 shall entitle the Employer to rescind the Contract under Sub Clause 13.2 of these conditions and also render the Contractor liable for loss or damage arising due to such termination.
<b>Setting Out</b>	<b>4.8</b>	
<b>Accurate Setting Out</b>	<b>4.8.1</b>	<p>The Contractor shall be responsible for</p> <ul style="list-style-type: none"> <li>(a) the accurate setting out of the Works in relation to the original points, lines and levels of reference given in the documents provided by the Engineer in writing.</li> <li>(b) the correctness of position, levels, dimensions and alignments of all parts of the Works</li> <li>(c) the provisions of all necessary instruments, equipment, apparatus and labour in connection with the foregoing responsibilities</li> <li>(d) Carefully protecting and preserving all bench marks, sight rails, pegs and other things used in setting out the Works</li> </ul> <p>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.</p> <p>The Contractor shall survey and fix the alignment, maintaining vertical &amp; horizontal clearances and keeping in view important site references and obligatory locations in consultation with Engineer.</p> <p>The Contractor shall establish at his cost, at suitable points, additional reference lines and bench marks as may be necessary. The Contractor shall remain responsible for the sufficiency and accuracy of all his bench marks and reference lines. He shall take precautions to see that lines, points and bench marks fixed by the Engineer are not disturbed by his work and shall make good any damage thereto.</p>
<b>Errors in Setting out</b>	<b>4.8.2</b>	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.
<b>Site Data</b>	<b>4.9</b>	<p>The Employer shall have made available to the Contractor with the Tender documents such relevant data in Employer's possession on Geo technical data and sub-surface conditions. The Geotechnical and other related data provided by the Employer are based on the investigation conducted by BMRCL and are for reference purposes only. The accuracy or reliability of the data/studies/reports and of any other information supplied at any time by the Employer or Engineer is not warranted with respect to the viability of his Design and execution of Works and the Contractor shall be responsible for interpreting all such data any error, discrepancies. The Contractor shall conduct further investigations considered necessary by him at his own cost and any error, discrepancies if found in Employer's data at any stage will not constitute ground for any claim for extra time and costs. Any change in design or construction methodology later during execution on account of change will be borne by the Contractor.</p> <p>The Contractor shall not be relieved from any risk or obligation imposed on or undertaken by him under the Contract on any such ground or on the ground that he did not or could not foresee any matter which may affect or have affected the execution of the Works, or compliance with his other obligations under the Contract.</p> <p>The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works.</p> <p>The Contractor shall also be deemed to have inspected and examined the</p>

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.

<b>Sufficiency of accepted Contract Amount</b>	<b>4.10</b>	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 of works execution and completion of the Works, testing and commissioning (including Integrated Testing and Commissioning) and remedying of any defects.
<b>Access Route</b>	<b>4.11</b>	<p>The Contractor shall be deemed to have satisfied himself as to the suitability and availability of the access routes he chooses to use. The Contractor shall (as between the Parties) be responsible for the maintenance of access routes. The Contractor shall provide at his cost signs or directions, which he may consider necessary or as instructed by Engineer for the guidance of his staff, labour and others. The Contractor shall obtain any permission concessions and related easement right that may be required from the relevant authorities for the use of such routes, signs and directions.</p> <p>All operations for the execution of the Works shall be carried out so as not to interfere unnecessarily with the convenience of the public or the access to public or private roads or footpaths or properties owned by the Employer or by any other person.</p> <p>The Contractor shall select routes, choose and use vehicles so that movement of Contractor's Equipment, Plant and Materials from and to the Site is limited so that traffic is not delayed and damage to highways and bridges is prevented. If there is any delay or damage or injury, the cost of rectification or reconstruction of highways or bridges shall be borne by the Contractor. The Contractor shall indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters.</p> <p>If during the execution of the Works the Contractor shall receive any claim arising out of the execution of the Works in respect of damage to highways or bridges, he shall immediately report the facts to the Engineer. The Contractor shall negotiate a settlement in respect of such claims and indemnify the Employer in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto.</p> <p>The Employer will not be responsible for any claims which may arise from the use or otherwise of any access route. The Employer does not guarantee the suitability or availability of any particular access route, and will not entertain any claim for any non-suitability or non-availability for continuous use during construction of any such route.</p>
<b>Rights of way and Facilities</b>	<b>4.12</b>	The Employer will acquire and provide land for Permanent Works and right of way (within BMRCL's land) for access thereto over routes established by the Contractor. The Contractor shall bear all cost and charges for special or temporary rights of way which he may require including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facility outside the Site which he may require for the purpose of the Works. The Employer reserves the right to make use of these service roads/rights of way

for itself or for other contractors working in the area, as and when necessary without any payment to the Contractor.

**Programmes**      **4.13**      The Contractor shall submit a detailed programme to the Engineer after receipt of the Letter of Acceptance but not later than 28 days from the date of receipt of 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.
- d. Requirement of funds, month wise.

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, 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**      The contractor shall have to arrange TBMs and other construction plant & equipment required for execution, completion or maintenance of the works within the Scope of Work. The following conditions regarding use of equipment in works shall be satisfied:

The Contractor shall be required to give a trial run of the equipment on works intended to use, for establishing their capability to achieve the laid down / claimed specifications, tolerances and production output to the entire satisfaction of Engineer before commencement of work.

All plant/equipment deployed on the work shall be of proven efficiency and shall be operated and maintained at all times in a manner prescribed by the manufacturer and / or acceptable to the Engineer.

All plants/equipment to be deployed on the work shall carry designated authority certificate. Where not specified, it shall have third party safety

certificate for the safe working of the equipment and shall be renewed after every 3 months. This certificate shall be produced to the Engineer as and when required.

All the construction plant shall be provided with the experienced operators having valid license issued by the competent authority.

Any material or equipment not meeting the approval of the Engineer shall be removed from the site immediately.

**4.15.2** 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.

Upon completion of the Works the Contractor shall remove from the Site all the said Contractor's Equipment, Temporary works and his unused materials.

**4.15.3** The Employer shall not at any time be liable for the loss or damage to any of the Contractor's Equipment, Temporary Works or materials save as mentioned in Clause 14.1

**4.15.4** In respect of any Contractor's Equipment which the Contractor shall have imported for the purpose of the Works, the Employer may assist the Contractor, where required, in procuring any necessary Government consent for re-export of the same after the completion of the Works.

**4.15.5** The Employer may assist (but is not obliged to) the Contractor, where required, in obtaining clearance through the Customs of Contractor's Equipment, materials and other things required for the Works.

#### Safety of Works

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

- takes full responsibility for the adequacy, stability, safety and security of the Works, Plant, Contractor's, Temporary Works, operations on Site and methods of manufacture, installation, construction and transportation;
- 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.
- provides 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
- where any work would otherwise be carried out in darkness, ensure that all parts of the Site where work is being carried out are so lighted as to ensure the safety of all persons on or in the vicinity of the Site and of such work.

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

#### Protection of the Environment

**4.17** The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to avoid injury, damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Contractor shall ensure that air emissions, surface discharges and effluent from the Site during the Contract Period shall not exceed the values indicated in the Employer's Requirements, and shall not exceed the values prescribed by law. The Contractor shall conform to the Employer's Requirements and shall indemnify the Employer against any liability or damages or claims arising out of

		his operations. The Contractor shall be responsible and liable for any stoppage, closure or suspension of the works due to any contravention of statutory requirements relating to the protection of the environment and shall indemnify and keep indemnified the Employer in this regard.
<b>Electricity, Water and Gas</b>	<b>4.18</b>	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 his discretion assist the Contractor in giving recommendatory letters etc.
<b>Tools, Plants And Equipment Supplied By The Employer</b>	<b>4.19</b>	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.  No tools, plant and equipment shall be supplied by the Employer. Unless specifically incorporated in special conditions, the Contractor has to arrange all tools, plant, equipment required for the work.  On completion of the Works, the Contractor shall hand over the unused balance of the tools, plants and Equipment to the Employer in good order and repair, fair wear and tear expected, and shall be responsible for any failure to account for the same or any damage done thereto.
		The decision of the Engineer as to the amount recoverable from the Contractor on this account shall be final and binding.
<b>Employer's Materials</b>	<b>4.20</b>	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.
<b>Sheds, Stores, Yards</b>	<b>4.21</b>	It shall be the responsibility of the Contractor to provide at his own expense the required sheds, store houses, and yards for both Permanent and Temporary Works and provide free access to the Engineer and the Engineer's Representative who will have right of inspection including that of instructing the Contractor to remove a particular material from the stores and not to use the same on the Works.
<b>Temporary Works</b>	<b>4.22</b>	The Contractor's proposals for erection of all ancillary and temporary works shall be in conformity with the proposals submitted along with the Tender and modifications thereto as approved by Engineer.  The Contractor shall submit drawings, supporting design calculations where called for by the Engineer and other relevant details of all such works to the Engineer for approval at least one month before he desires to commence such works. Approval by the Engineer of any such proposal shall not relieve the Contractor of his responsibility for sufficiency of such works.  All temporary works necessary for the proper execution of the Works shall be provided and maintained by the Contractor at his cost (unless otherwise provided in tender document) and subject to the consent of the Engineer shall be removed by Contractor at his own expense when they are no longer required and in such manner as the Engineer shall direct. In case the Contractor fails to remove the temporary works on completion the Engineer is authorized to get the same removed and recover the cost thereof from the Contractor.

<b>Unforeseeable Physical Conditions</b>	<b>4.23</b>	<p>In this Clause "physical conditions" means natural physical conditions, which the Contractor encounters at Site while executing the Works excluding climatic conditions.</p> <p>If, during the execution of the Works, the Contractor shall encounter physical conditions, which, in his opinion, could not have been reasonably foreseen by an experienced Contractor, the Contractor shall forthwith give written notice thereof to the Engineer and if, in the opinion of the Engineer, such conditions could not have been reasonably foreseen by an experienced Contractor, then the Engineer shall certify and the Employer shall pay reasonable additional cost to which the Contractor shall have been put by reason of such conditions in the following cases:</p> <ul style="list-style-type: none"> <li>a. for complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and</li> <li>b. for any proper and reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engineer, as a result of such conditions or obstructions being encountered.</li> </ul> <p>The decision of the Engineer as to the additional cost shall be final and binding.</p>
<b>Access for Engineer</b>	<b>4.24</b>	<p>The Contractor shall allow at all times the Engineer or the Engineer's assistant or any other person authorised by the Engineer 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.</p>
<b>Access Road and Way Leaves</b>	<b>4.25</b>	<p>Providing access roads/ way leaves to the site will be Contractor's responsibility.</p> <p>The Contractor shall pay the statutory vehicle license and permit fees for use of public roads.</p> <p>The Contractor's heavy construction traffic or tracked equipment shall not travel on any public road or bridge, unless the Contractor has made arrangements with the authority concerned and has obtained the approval of the Engineer to such arrangements.</p> <p>The Contractor shall repair any damage to the road or bear the cost thereof due to movement of contractor's plants and equipment, vehicles etc. to the specifications and satisfaction of road authorities as well as of Engineer.</p> <p>The Contractor shall plan transportation of construction materials to work site in accordance with traffic regulations enforced by local traffic authorities from time to time and in such a way that congestion on the roads and road accidents are avoided. The Contractor should study this aspect thoroughly before quoting for the work.</p>
<b>Contractor to keep Site Clear</b>	<b>4.26</b>	<p>During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.</p> <p>On completion of the works, the Contractor shall clear away and remove from site all Constructional Plant, surplus material and Temporary Works. He should leave the whole of the site and Works in a clean, tidy and workman like condition to the satisfaction of the Engineer.</p> <p>On completion of Work the Contractor shall also clear away the labour camps, hutments and other related installations and restore the land to its original condition to the satisfaction of the Engineer within 45 days of the physical completion of Work. The cost on account of delay in return of land and reinstatement of original condition within the stipulated time as determined by Engineer will be recovered from the Contractor's dues.</p> <p>All garbage shall be removed from site daily or as they accumulate. All surface and sub-soil drains shall be maintained in a clean, sound and satisfactory state</p>

of performance. No extra payment shall be made on this account.

No final payment in settlement of the accounts for Works shall be made till, in addition to any other condition necessary for such final payment, site clearance and clearances of labour camps etc. shall have been effected by him. Such clearance may be made by the Engineer through any other agency at the expense of the Contractor in the event of the Contractor's failure to comply with this provision within 7 days after receiving notice to that effect from the Engineer. All expenses on such removal / clearance shall be debit able to the Contractor as loans due from the Contractor to the Employer, and the Employer shall be competent to recover the same from Contractor's on-account or final bills, or from Performance Security amount or from any other amount payable to the Contractor in any other Contract.

**Security of the Site**      **4.27**

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

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

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

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

The Contractor shall be wholly responsible for security of site and Works. The Contractor shall follow relevant Safety and Security instructions issued by the concerned Authorities from time to time and shall work in close coordination with the concerned Authorities.

**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.

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

All lights provided by the Contractor shall be so placed or screened as not to interfere with signs, signals or lights. The Contractor shall not in any way obscure or affect signs, signals or lights, in use by any relevant authority. In the event that the Contractor does so, the Contractor shall pay all costs associated with the re-fitting, re-instating or provision of alternatives for any sign, signal or light, obscured or affected.

For the purposes of this Clause only, "Site" shall include off-Site places of

		manufacture or storage and the Contractor's Work Areas and shall include, areas provided to the Contractor by others.
<b>Discoveries</b>	<b>4.29</b>	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.
<b>Publicity</b>	<b>4. 30</b>	The Contractor shall not publish or otherwise circulate alone or in conjunction with any other person, any articles, photographs or other materials relating to the Contract, the Site, the Works, the Project or any part thereof, nor impart to the press, or any radio or television network any information relating thereto, nor allow any representative of the media access to the Site, Contractor's Works Areas, or off-Site place of manufacture, or storage except with the permission, in writing, of the Employer. The Contractor shall ensure that his sub-contractors of any tier shall be bound by 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.
<b>Disclosure Of Relationship</b>	<b>4.31</b>	If the Contractor or any partner of the Contractor or Director of the Contractor's company is closely related to any of the Officers of the Employer or the Engineer, or alternatively, if any close relative of an officer of the Employer or the Engineer has financial interest / stake in the Contractor's firm, the same shall be disclosed by the Contractor at the time of filing his tender. Any failure to disclose the interest involved, shall entitle the Employer to rescind the Contract, without payment of any compensation to the Contractor. The Contractor shall note that he is prohibited from developing such interest during the Contract period.
<b>Use Of Explosives</b>	<b>4.32</b>	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 explosives shall be handled, stored in a special magazine to be provided at the cost of the Contractor and used under the strict supervision of persons licensed for this purpose under the requisite statutory rules and regulations. The Contractor shall take all precautions in transporting and using the explosives and avoid damage to nearby structures and utilities. The Contractor shall be responsible for taking all the precautions in the usage of the explosives at Contractor's cost, sole risk and responsibility. The Contractor shall hold the Employer harmless and indemnify for the above.
<b>Corrupt or fraudulent practices</b>	<b>4.33</b>	
	<b>4.33.1</b>	The Employer requires that the Tenderers/Contractors observe the highest standards of ethics during Tendering and execution of this Contract. In pursuance with this policy, the Employer: <ol style="list-style-type: none"> <li>defines, for the purpose of these provisions, the terms set forth below as follows:           <ol style="list-style-type: none"> <li>"corrupt practice" means the offering, giving, receiving or soliciting of anything of value to Employer, Engineer or any of their employees, influence in the procurement process or in Contract execution; and</li> <li>"fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Employer, and includes collusive practice among Tenderers (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open competition.</li> </ol> </li> <li>Will reject the Tender for the Work or rescind the Contract if the Employer determines that the Tenderer/Contractor has engaged in</li> </ol>

		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.
<b>Compensation to Contractor on rescission of Contract under this clause</b>	<b>4.33.2</b>	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.
<b>Quality Assurance</b>	<b>4.34</b>	<p>Unless otherwise stated in Special Conditions of Contract and/or Employer's Requirement, the Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. Such system shall be in accordance with the details stated in the Contract. Compliance with the quality assurance system shall not relieve the Contractor of his duties, obligations or responsibilities.</p> <p>Details of all procedure and compliance documents shall be submitted to the Engineer for his consent before each Design and execution stage is commenced.</p>
<b>Work by Persons Other than Contractor</b>	<b>4.35</b>	<p>If the Contractor shall fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Engineer in accordance with the Contract within a reasonable time, the Engineer may give the Contractor 14 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by his own workmen or by other contractors in whatever manner the Engineer decides, be it single Tender or limited Tender or open Tender or on entrustment basis without any right of appeal by the contractor. However, in case of emergencies/urgencies/affecting safety the period of 14 days' notice shall be 24hours notice in writing. The Classification of work as emergencies/urgencies/affecting safety is the prerogative of Engineer and his decision is final and binding on the contractor. Without prejudice to any other right or remedy, all additional expenditure properly incurred by the Employer in having such work or instruction carried out shall be recoverable by the Employer from the Contractor.</p> <p>If by reason of any accident or failure or other event occurring to, in, or in connection with the Works any remedial or other work shall, in the opinion of the Engineer, be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Engineer may authorize the carrying out of such remedial or other work by a person other than the Contractor. If the remedial or other work so authorized by the Engineer is work, which, in the Engineer's opinion, the Contractor was liable to do under the Contract, all expenses properly incurred in carrying out the same shall be recoverable by the Employer from the Contractor. Provided that the Engineer shall, as soon after the occurrence of any such emergency as may be reasonably practicable, notify the Contractor thereof in writing.</p>
<b>Confidentiality of Information</b>	<b>4.36</b>	<p>The Contractor shall not use or divulge, except for the purpose of the Contract or with the written permission of the Employer, any information relating to the Works or the Project provided in the Contract or otherwise provided by the Employer, or the Engineer. The Contractor shall ensure that his sub-contractors of any tier shall be bound by a like confidentiality undertaking. The Employer and the Engineer and any third party to whom an assignment has been made in accordance with Sub-clause 2.4 may use any information provided by the Contractor in accordance with the Contract. The Employer shall use reasonable endeavors to ensure that the Engineer and any third party- referred to in aforesaid Sub-Clause 2.4 shall not, divulge such information except for any purpose connected with the Contract.</p>

## 5      Design

<b>General Obligations</b>	<p><b>5.1</b> The Contractor shall carryout and be responsible for the design of the works. The Contractor shall employ the Detailed Design Consultant who shall open his design office in Bangalore to undertake and prepare the design. No progress payment with respect to design will be made if the DDC fails to establish an office in Bangalore and employ the required minimum staff. Similarly, no Notice of No Objection will be issued for any submitted design. Design Data shall be prepared by or under the supervision of the Designer. The Designer shall satisfy himself that the Design Data, in the case of submissions up to and including the proposed Design, comply with the Employer's Requirements and is in accordance with, and incorporates the Contractor's Technical Proposals. Each Design Submittal shall be accompanied by a Design Certificate signed by the Designer and countersigned by the Contractor.</p> <p>The Engineer may require the Contractor to remove (or cause to be removed) any Detailed Design Consultant personnel employed on Site office, who:</p> <ul style="list-style-type: none"> <li>(a) Persists in any misconduct or lack of care,</li> <li>(b) Carries out duties incompetently or negligently,</li> <li>(c) Fails to conform with any provisions of the Contract, or</li> <li>(d) Persists in any conduct which is prejudicial to safety, health, or the protection of the environment.</li> </ul> <p>If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.</p> <p>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.</p> <p>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.</p> <p>The Contractor shall furnish Designer's Warranty in the format given in Schedules to SCC.</p>
<b>Contractor's warranty of Design</b>	<p><b>5.2</b></p> <ul style="list-style-type: none"> <li>a. The Contractor shall be fully responsible, for the suitability, adequacy, integrity, durability and practicality of the Contractor's proposal.</li> <li>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.</li> <li>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</li> <li>d. The Contractor warrants that the Works will, when completed, comply with enactments and regulations relevant to the Works</li> <li>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</li> <li>f. The Contractor shall also provide a guarantee from the Designer for the design for suitability, adequacy, practicality of design for Employer's Requirements</li> <li>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.</li> <li>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:</li> </ul>

- i. Notwithstanding that such design may be or have been prepared, developed or issued by the Employer, any of the Contractor's consultants, his sub-contractors and/or his qualified personnel/persons or cause to be prepared, developed or issued by others.
- ii. Notwithstanding any warranties, guarantees 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.

<b>Construction and/or Manufacture Documents</b>	<b>5.3</b>	<p>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). 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.</p>
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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. This submittal shall be made sufficiently before the Works are to be carried out to give the Engineer and the Employer reasonable time to examine the drawings or other documents, to prepare comments and for any changes to be accommodated by the Contractor. 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 to 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.

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

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

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,

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

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

- (a) That the Contractor's proposed methods of manufacture, installation and construction have the consent of the Engineer; or
- (b) In what respects, in the opinion of the Engineer the Contractor's proposed methods of manufacture, installation and construction:
  - (i) fail to comply with the Employer's Requirements and/or the Definitive Design and/or the Final Design;
  - (ii) would be detrimental to the Works and/or to the other works comprising the Project;
  - (iii) do not comply with the other requirements of the Contract; or
- (c) as to the further documents or information which are required to enable the Engineer to properly assess the proposed methods of manufacture, installation and construction.

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

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

		No examination by the Engineer of the drawings or documents submitted by the Contractor, nor any consent of the Engineer in relation to the same, with or without amendment, shall absolve the Contractor from any of his obligations under the Contract or any liability for or arising from such drawings or documents.
		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.
		The Operation and Maintenance Manuals and drawings submitted by the Contractor shall, if required, be updated by him during the Defects Liability Period and re-submitted for review by the Engineer.
<b>Technical Standards and Regulations</b>	<b>5.4</b>	The Design, the Construction and/or Manufacture Documents, the execution and the completed Works (including remedying of defects therein) shall comply with the specifications, technical standards, building construction, safety and environmental regulations and other standards specified in the Employer's Requirements applicable to the Works or defined by the applicable laws and regulations.
<b>Samples</b>	<b>5.5</b>	<p>The Contractor shall submit at his own cost the following samples and relevant information to the Engineer for pre-construction and/or pre-manufacture review in accordance with the procedure for Construction and/or Manufacture Documents described in Sub-Clause 5.3:</p> <ul style="list-style-type: none"> <li>a manufacturer's standard samples of Materials,</li> <li>b samples (if any) specified in the Employer's Requirements.</li> </ul> <p>Each sample shall be labelled as to origin and intended use in the Works.</p>
<b>As-Built Drawings and Documents</b>	<b>5.6</b>	<p>The Contractor shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Works, showing the exact "as-built" locations, sizes and details of the Works as executed, with cross references to relevant specifications and data sheets. These records shall be kept on the Site and shall be used exclusively for the purposes of this Sub-Clause. Four copies shall be submitted to the Engineer prior to the commencement of the Tests on Completion.</p> <p>In addition, the Contractor shall prepare and submit to the Engineer "as-built drawings" of the Works, showing all Works as executed. The drawings shall be prepared as the Works proceed, and shall be submitted to the Engineer for his inspection. The Contractor shall obtain the consent of the Engineer as to their size, the referencing system, and other pertinent details.</p> <p>Prior to the issue of any Taking Over Certificate, the Contractor shall submit to the Engineer As-Built Drawings, endorsed by the Contractor to the Engineer for a Notice of No Objection in 4 sets of hard copy preferably in A3 size and also in electronic format using a commercially available CAD program and any further Construction and/or Manufacture Documents specified in the Employer's Requirements</p>
<b>Operation and Maintenance Manuals</b>	<b>5.7</b>	The Contractor shall prepare, and submit to the Engineer, Operation and Maintenance Manuals in accordance with the Employer's Requirements and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair the Works. The Works shall not be considered to be completed until such Operation and Maintenance Manuals have been submitted to the Engineer and received his consent.
<b>Intellectual Property Rights and Royalties</b>	<b>5.8</b>	The Contractor shall indemnify the Employer and the Engineer from and against all claims and proceedings on account of infringement (or alleged infringement) of any patent rights, registered designs, copyright, design, trademark, trade name, know-how or other intellectual property rights in respect of the Works, the Contractor's Equipment, machines, work method, or Plant, or Materials, or anything whatsoever required for the Works and from

and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. The Contractor shall pay all traffic surcharges and other royalties, licence fees, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials, machine, process, systems, work methods, or the Contractor's Equipment required for the Works. The Contractor shall, in the event of infringement of Intellectual Property Rights, rectify, modify or replace at his own cost the Works, Plant or materials or anything whatsoever required for the Works so that infringement no more exist or in the alternative shall procure necessary rights/license so that there is no infringement of Intellectual Property Rights.

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

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

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

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

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

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

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

## 6 Staff and Labour

<b>Engagement of Staff and Labour</b>	<b>6.1</b>	The Contractor shall make his own arrangements for the engagement of staff and labour at his own cost. The Contractor shall, if required by the Employer, deliver to the Engineer or to his office, a return in detail, in such form and at such intervals as the Employer may prescribe, showing the number of labour employed in different categories by the Contractor on the Site.
<b>Rates of Wages and Conditions of Labour</b>	<b>6.2</b>	<p>Full compliance of statutory requirements apart, the Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or the industry where the work is carried out.</p> <p>The Contractor shall 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.</p> <p>Labour provided by the Contractor, either directly or through sub-contractors, for the exclusive use of the Employer or the Engineer, shall, for the purpose of this Sub-Clause, be deemed to be employed by the Contractor.</p>
		<p>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 therefor is filed in the office of the Labour Authorities and proof thereof is furnished to the satisfaction of the Labour Authorities, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to the said Labour Authorities and any sums so paid shall be recoverable by the Employer from the Contractor.</p> <p>In the event of exceptional situations (mainly arisen due to the contractor's inability to deploy adequate resources on the work, on its own) when default being made in the payment by the contractor to his sub-contractors (who are directly fixed by him with prior consent of Engineer/Employer) for carrying out this contract and if a claim is submitted by such sub-contractor(s) to the Employer and proof thereof is furnished to the satisfaction of the Employer, the Employer may, failing payment of the said amount by the contractor, make payment of such claim on behalf of the contractor to the said sub-contractor and any sums so paid shall be recoverable by the Employer from the contractor.</p>
<b>Persons in the service/retired of Employer/Engineer</b>	<b>6.3</b>	<ul style="list-style-type: none"> <li>a) The Contractor shall not recruit or attempt to recruit staff and labour from amongst the Employer and the Engineer's personnel during the Contract period.</li> <li>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.</li> </ul>
<b>Labour Laws</b>	<b>6.4</b>	<p>In case of non-compliance of above, in addition to any or several of the courses, referred in Sub-clauses 13.2.1 and 13.2.2 being adopted by the Employer the Contractor on Termination of the Contract for the aforesaid reasons will have no claim whatsoever against the Employer except for actual value of the Work executed till the time of Termination.</p> <p>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.</p>

<b>Working Hours</b>	<b>6.5</b>	<p>The Contractor will have to carry out work during night hours also and in shifts unless specifically provided otherwise in the Contract. No increase in rates or extra payments shall be admissible for night work. Temporary lighting arrangements as per approved layout shall be provided, installed, maintained for the duration of the contract and removed after completion of work by and at the expense of the Contractor. Flashing lights to warn the traffic on roads shall be used at all times on all obstructions. No extra payment will be made for the provision of temporary lighting, flashing lights.</p> <p>Should there be complaints received by members of the public regarding excessive noise or vibration, etc. especially at night, and if such complaints are valid, then the contractor shall take remedial measures to prevent such nuisance. No extra payment will be made to the contractor for this.</p>
<b>Facilities for Staff and Labour</b>	<b>6.6</b>	<p>The Contractor shall provide and maintain all necessary accommodation and welfare facilities as stipulated in the Employer's Requirements for his (and his Sub-contractor's) staff and labour. All accommodation shall be maintained in a clean and sanitary condition, by the Contractor at his cost.</p> <p>No staff and labour housing facilities will be allowed at the Site. The Contractor will have to make his own arrangement for the same at his own cost.</p>
<b>Health and Safety</b>	<b>6.7</b>	<p>Precaution shall be taken by the Contractor to ensure the health and safety of his staff and labour. The Contractor shall, in collaboration with and to the requirements of the local health authorities, ensure that medical staff, first aid facilities, sick bay and ambulance service are available at the accommodation and on the Site at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as per the Engineer's requirement and will ensure complete compliance with relevant clauses of Employer's Health, Safety and Environment Manual (SHE Manual).</p> <p>The Contractor's Site Safety Plan shall be developed from his Outline Safety Plan as per Employer's Requirements and SHE Manual of the Employer.</p> <p>The Contractor shall appoint a member of his staff at the Site to be responsible for maintaining the safety, and protection against accidents, of personnel on the Site. This person shall be qualified for his work and shall have the authority to issue instructions and take protective measures to prevent accidents.</p>
<b>Contractor's Superintendence</b>	<b>6.8</b>	<p>The Contractor shall provide all necessary superintendence during the Design and execution of the Works, and as long thereafter as the Engineer may consider necessary for the proper fulfilling of the Contractor's obligations under the Contract. Such superintendence shall be provided by sufficient persons having adequate knowledge of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe execution of the Works.</p>
<b>Contractor's Personnel</b>	<b>6.9</b>	<p>The Contractor shall employ (or cause to be employed) only persons who are careful and appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may advise or enforce the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative, who in the opinion of the Engineer:</p> <ul style="list-style-type: none"> <li>a. persists in any misconduct,</li> <li>b. is incompetent or negligent in the performance of his duties,</li> <li>c. fails to conform with any provisions of the Contract, or</li> <li>d. persists in any conduct which is prejudicial to safety, health, or the protection of the environment.</li> </ul>
<b>Preservation of Peace and orderly conduct.</b>	<b>6.10</b>	
	<b>6.10.1</b>	<p>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</p>

		expenses for the same shall be borne by the Contractor.
6.10.2		The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour, and to preserve peace and protection of persons and property in the neighbourhood of the Works against such conduct.
Labour to be Contractor's Employee	6.11	If, the Contractor directly or through petty contractors or Sub-Contractors supplies any labour to be used wholly or partly under the direct orders and control of the Engineer or the Employer, whether in connection with any work being executed by the Contractor or otherwise for the purposes of the Employer, such labour shall, for the purpose of this clause, be deemed to be persons employed by the Contractor
Report of Accidents To Labour	6.12	The Contractor shall be responsible for safety of all employees, employed by him on Works, directly or through petty contractors or Sub-Contractors, and shall report accidents to any of them, however, and wherever occurring on Works, to the Engineer and shall make every arrangement to render all possible assistance and to provide prompt and proper medical attention. The compensation for affected Workers or their relatives shall be paid by the Contractor in such cases with utmost 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 amount 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 amount shall be deemed to be amount 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 amount 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 amount due or accruing to the Contractor under this or any other Contract with the Employer.

## 7 QUALITY CONTROL

Proposed Site Quality Plan and Manner of Execution	7.1	<p>Within 28 days of the issue of the Letter of acceptance, the Contractor shall submit to the Engineer, for his consent, his proposed Site Quality Plan based on the Outline Quality Plan and the Employer's Requirements. The quality manual should address the quality system as required by ISO 9001-1991. Any supplement to the Site Quality Plan shall be submitted at least 14 days before commencement of the relevant work.</p> <p>Upon the Engineer notifying his consent to the Site Quality Plan, or any supplement thereto, the Contractor shall, adhere to the principles and procedures contained in such document, except where the Engineer gives his consent to any amended or varied version thereof. The Contractor shall cause any sub-contractors to adhere to this Plan.</p> <p>The Contractor shall appoint a suitably qualified and experienced person, not otherwise engaged in the performance of the Contract, to act as manager of the quality assurance system and shall provide such other personnel and resources as required to ensure effective operation of the quality assurance system. The said manager shall carry out audits of the application of the quality assurance system, and ensure effective quality control and delivery of quality assurance.</p> <p>The Contractor shall provide all necessary access, assistance and facilities to enable the Engineer to carry out surveillance visits both on and off the Site to verify that the quality assurance system is being properly and fully implemented. No extra payment shall be made in this regard and the cost of the Work under this element shall be deemed to be included in the Contract Price.</p>
<p>All Plant and Materials to be supplied shall be manufactured, and all work to be done shall be executed, in the manner prescribed in the Contract. Where the manner of manufacture and execution is not set out in the Contract, the</p>		

		work shall be executed in a proper, workmanlike and careful manner, with properly equipped facilities and non-hazardous Materials, and in accordance with modern recognized good practice.
Delivery to Site	7.2	The Contractor shall be responsible for procurement, transport, receiving, unloading and safe keeping of all Plant, construction, Materials, Contractor's Equipment and other things required for the completion of the Works.
Inspection	7.3	<p>The Employer and the Engineer shall at all reasonable times</p> <ul style="list-style-type: none"> <li>a. has full access to all parts of the Site and to all places from which natural materials are being obtained, and</li> <li>b. during production, manufacture, fabrication and construction (at the site and elsewhere) be entitled to inspect, examine, measure and test the materials and workmanship, and to check the progress of manufacture, of all Plant and Materials to be supplied under the Contract.</li> </ul> <p>The Contractor shall give the Engineer full opportunity to carry out these activities including providing access, facilities, permissions and safety equipment. No such activity/inspection shall relieve the Contractor from any obligation or responsibility.</p>
Testing	7.4	<p>This sub- clause shall apply to all tests specified in the Contract.</p> <p>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.</p> <p>The Contractor shall agree, with the Engineer, the time and place for the testing of any Plant, Materials and other parts of the Works as specified in the Contract.</p> <p>The Engineer shall give the Contractor not less than 24hours' notice of his intention to attend the tests.</p> <p>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.</p> <p>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.</p> <p>The expense of conducting such Tests shall be borne by the Contractor. No such testing shall relieve the Contractor from any obligation or responsibility.</p>
Rejection	7.5	<p>As a result of inspection, examination or testing, any Plant, 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.</p> <p>If the Engineer requires such Plant, Material, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If such rejection and retesting cause the Employer to incur costs, such costs shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due, or to become due, to the Contractor.</p>

<b>Liability after Inspection and Testing</b>	<b>7.6</b>	The Contractor shall not be released from any liability or obligation under the Contract by reason of any such inspection or testing or witnessing of testing, or by the submission of reports of inspection or testing to the Engineer.
<b>Ownership of Plant and Materials</b>	<b>7.7</b>	Each item of Plant 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.
<b>Cost of Employer's Attendance Including Travel</b>	<b>7.8</b>	The Employer shall bear the costs of attendance including travel, boarding and lodging for the Employer, the Engineer or his assistant for the purposes of Sub-Clauses 7.3 and 7.4 above. The cost of attendance including travel, boarding and lodging for the Employer, Engineer or his assistants for the purpose of Sub-clause 7.5 shall be borne by the Contractor.
<b>Covering up of Works</b>	<b>7.9</b>	
<b>Examination of work before covering up</b>	<b>7.9.1</b>	No work or part of work shall be covered up or put out of view, without the prior approval of the Engineer or the Engineer's Representative.
<b>Cost of uncovering the work already covered up</b>	<b>7.9.2</b>	<p>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 7.4 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.</p> <p>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 as a Contractor's deemed variation at lower negotiated price.</p> <p>The decision of the Engineer in this regard shall be final and binding on the Contractor.</p>
<b>Tests on Completion</b>	<b>7.10</b>	
<b>Contractor's Obligations</b>	<b>7.10.1</b>	<p>The Contractor shall carry out the Tests on Completion at his own cost in accordance with the Contract and shall provide the documents in accordance with 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 with in 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"> <li>(a) pre-commissioning test, which shall include appropriate instructions and ("dry" or "cold") functional tests to demonstrate that each item of the Plant and Work can safely undertake the next stage</li> <li>(b) Commissioning Test shall include the specified operational tests to demonstrate Works or Sections can be operated safely and as specified under all available operating condition</li> <li>(c) trial operation which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract</li> </ul> <p>The Contractor at his own cost shall arrange all tools, equipment, gadgets, facilities or as deemed necessary by the Engineer for such tests, in considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed the Tests on Completion described in sub-paragraphs (a) (b) or (c), the Contractor shall provide the Engineer and the Employer with a certified report of the result so fall such Tests.</p>

<b>Delayed Tests</b>	<b>7.10.2</b>	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
<b>Retesting</b>	<b>7.10.3</b>	If the Works, or a part thereof, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 "Rejection" shall apply, and the Engineer or the Contractor may require such failed Tests and the Tests on Completion on any related work, to be repeated under the same terms and conditions at Contractor's cost. Cost of Employer's attendance shall be governed by clause 7.8 above.
<b>Failure to Pass Tests on Completion</b>	<b>7.10.4</b>	If the Works, or a part thereof, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 7.10.3, the Engineer shall be entitled to:  (a) order further repetition of Tests on Completion under Sub-Clause 7.10.3; (b) reject the Works, or a part thereof, or a Section (as the case may be), in which event the Employer shall have the same remedies against the Contractor as are provided under Clause 13; or (c) issue a Taking Over Certificate if the Employer so requires. The Contract Price shall then be reduced by such amount as determined by the Engineer 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.
<b>Integrated testing and system commissioning</b>	<b>7.11</b>	
<b>Integrated Testing</b>	<b>7.11.1</b>	Tests on Completion shall also include Integrated Testing. The Contractor shall, following satisfactory completion of tests on his works, equipment, sub-systems or system, perform, at the direction of the Engineer, programme of tests to verify and confirm the compatibility and complete performance of his works, equipment, sub-systems or system with the works, equipment, sub-systems or system provided by others.
<b>Compilation of Test Results</b>	<b>7.11.2</b>	The results of the Integrated Testing and Commissioning shall be compiled and evaluated by the Engineer and the Contractor.
<b>Retesting</b>	<b>7.11.3</b>	If the Works, or a part thereof, or a Section, fail to pass the Integrated Testing and Commissioning, the Engineer may order such failed tests to be repeated with the same terms and conditions. If such failure and retesting result from a default of the Contractor and cause the Employer to incur costs, the same shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any amount due, or to become due, to the Contractor.
<b>Failure to Pass Test</b>	<b>7.11.4</b>	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.

<b>Statutory Requirements</b>	<b>7.11.5</b>	<p>The Design and Construction Standards to be adopted by the Contractor shall be in conformity with the requirements of "Rules for Opening of a Railway or a Section of a Railway for Public Carriage of Passengers" and "Rules for Introduction of New Type of Rolling Stock" and to the satisfaction of the Commissioner of Metro Railway Safety (CMRS) whose sanction is mandatory for commissioning of the System.</p> <p>The Contractor along with others under the supervision of the Engineer, shall carry out all tests and trial run and prepare reports and documents, required for obtaining all approval and sanction of the Commissioner of Metro Railway Safety (CMRS) and any other statutory authority for introduction of the system for public carriage of passengers.</p>
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## **8 Commencement, Completion and Delay**

<b>Commencement of Works</b>	<b>8.1</b>	<p>The Contractor shall commence the Works on the date of signing the 'Contract Agreement'. Thereafter the Contractor shall proceed with due diligence, without delay, and in accordance with the programme or any revised or modified programme of the Works. Time is the essence of Contract and time for Completion shall run from the date the Contractor is to commence the Works under this Clause.</p> <p>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.</p>
<b>Time for Completion</b>	<b>8.2</b>	<p>Time is the essence of Contract and will remain so at all times during the pendency of the Contract including the extended period of Contract. The Contractor shall ensure defect free completion and have passed the tests on Completion, including Integrated Testing and Commissioning of the whole of the Works and/or parts thereof before the same is taken over by the Employer.</p>
<b>Delay</b>	<b>8.3</b>	<p>In case of delay on the part of the Contractor, the Contractor shall be liable to pay liquidated damages and any other compensation for the damages suffered by the Employer as per Clause 8.5. This is without prejudice to the right of the Employer to rescind the Contract.</p> <p>Failure or delay by the Employer or the Engineer, to hand over to the Contractor the Site necessary for execution of Works, or any part of the Works, or to 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 except to the extent given in GCC Clause 2.2 and in any such case, the Engineer shall extend the time period for the completion of the Contract, as in his opinion is / are reasonable.</p>
<b>Extension of Time for Completion</b>	<b>8.4</b>	
<b>Extension of Time</b>	<b>8.4.1</b>	<p>The Contractor may apply for an extension of the Time for Completion if the Work is or will be delayed either before or after the Time for Completion by any of the following causes</p> <ul style="list-style-type: none"> <li>a. "Force Majeure" referred to in Clause 16.0</li> <li>b. The Contractor's work held up for not being given possession of or access to the Site in accordance with the Contract</li> <li>c. Instruction of the Engineer to suspend the Works and the Contractor not being in default as to reasons of suspension.</li> <li>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.</li> <li>e. Any act of prevention or Breach of the Contract by the Employer and not mentioned in this Clause</li> <li>f. Any order of Court restraining the performance of the Contract in full or in any part thereof and the Contractor not being in default as to reason of such order of court.</li> </ul>

- 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.

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 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 except to the extent given in GCC Clause.2.2 and 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, 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. If the cause of delay continued for a period exceeding 7 days, the Contractor shall submit interim details at intervals of not more than 28 days (from the first day of such delays).

The Engineer shall proceed in accordance with 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.

<b>Extension of time for completion for other reasons</b>	<b>8.4.2</b>	The Contractor shall not be entitled to an extension of time by reason of any delay to any activity in carrying out of the Works unless in the opinion of the Engineer such delay results in or may be expected to result in a delay to completion of the Works, or achievement of any Stage by the relevant Key Date. Whether or not the Contractor fails to achieve any Milestone by reason of any delay shall not by itself be material to the Contractor's entitlement to an extension of time. Any extension to a Key Date shall not by itself entitle the Contractor to an extension to any other Key Date and the Time for Completion.
<b>Extension of time for delays due to Contractor</b>	<b>8.4.3</b>	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. Engineer/Employer may also consider levy of token penalty as based on the merit of the case.
<b>Failure to seek Extension of time by contractor</b>	<b>8.4.4</b>	Non application by the contractor for seeking Extension of time shall not be a bar for giving a fair and reasonable Extension by the Employer and this shall be binding on the contractor.
<b>Liquidated Damages for Delay</b>	<b>8.5</b>	Time is the essence of the Contract. As per Appendix – 17 of the Form of Tender, defined percentage of the total contract value will be recoverable from the Contractor as liquidated damages for each week or part of a week for delay in completion of the Whole of the Works by a particular Key Date. However, the total

ceiling limit of which is 10% of Contract Price.

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

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

The liquidated damages shall be recovered as specified in Appendix – 17 of the Form of Tender. The Contractor shall use and continue to use his best endeavours to avoid or reduce further delay to the Works, or any relevant Stages.

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

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

<b>Rate of Progress</b>	<b>8.6</b>	If for any reason which does not entitle the Contractor to an extension of time, the rate of progress of the Works is at any time, in the opinion of the Engineer, too slow to ensure timely completion of the Works or achievement of any Stage by the relevant Key Date the Engineer may so notify the Contractor in writing. The Contractor shall thereupon take such steps as are necessary, or in default of taking such steps, shall take such steps as the Engineer may reasonably instruct in writing, to expedite progress so as to complete the Works or any Section in time or achieve any Stage by the relevant Key Date. The Contractor shall not be entitled to any additional payment for taking such steps. If any steps taken by the Contractor in meeting his obligations under this Sub-Clause cause the Employer to incur additional costs, such costs shall be recoverable from the Contractor by the Employer, and shall be deducted by the Employer from any monies due, or to become due, to the Contractor.
<b>Suspension of Work</b>	<b>8.7</b>	The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works stating the grounds for such action. During suspension, the Contractor shall protect, store and secure such part or whole of the Works against any deterioration, loss or damage.
<b>Consequences of Suspension</b>	<b>8.8</b>	<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> <ul style="list-style-type: none"> <li>a. provided for in the Contract, or</li> <li>b. necessary for proper execution of Works or by reasons of weather condition or by some default on the part of the Contractor, or</li> <li>c. necessary for the safety of Works or any part thereof or</li> <li>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</li> <li>e. to ensure safety and to avoid disruption of traffic and utilities, as also to permit fast repairs and restoration of any damaged utilities,</li> </ul>

If suspension is ordered by the Engineer for reasons other than those mentioned in Sub Clause 8.8 then the Contractor's entitlement is in the table below. However, Engineer's decision is final and binding in regard to defining suspension and specifying the suspension period. Contractor has no right to claim or appeal against this decision.

Sr. No.	Suspension Period	Extension of Time	Cost Compensation for the suspension period	Remarks
1	Up to 60 days	NO	NO	Engineer may give extension of time in exceptional circumstances.
2	60-90 days	YES	NO	Extension of time as considered proper by the Engineer
3	Above 90 days	YES	As per Daily rate of wages for idle labour/employees. 70% of the rate for hire charges for idle plant and machinery (excluding cost of fuel and lubricants). 15% above all these items to cover overhead costs.	Compensation as assessed by the Engineer on submission of documentary proof by the Contractor to Engineer's satisfaction

**Resumption of Work**      **8.9**      After receipt of permission or of an instruction to proceed, the Contractor shall, after notice to the Engineer, and together with the Engineer, examine the Works, Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works, Plant and Materials, which has occurred during the suspension.

## **9 Handing over by Contractor and Taking over by Employer.**

**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. The Taking Over Certificate for the Works will be issued by the Engineer/Employer.

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

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

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

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

## 10 Defects Liability

<b>Completion of Outstanding Work and Remedyng Defects</b>	<b>10.1</b>	<p>"Defects Liability Period" is for a period of 12 months from the date mentioned in the Taking over Certificate for whole of the Works and not any sub-section or part thereof or as extended under sub clause 10.3 of GCC.</p> <p>Provided that, if any part of the Works or sub-systems or component of that part has been replaced, renewed or repaired, the "Defects Liability Period" in respect of that part or sub-system or components of that part shall start from the date of such replacement, renewal or repair has been completed to the satisfaction of the Engineer.</p> <p>The Contractor shall provide free of cost competent and skilled supervisory personnel, including all materials and spares required for the operation and maintenance (routine and breakdown) of the Works. The operating and maintenance staff other than the supervisory staff shall be provided by the Employer.</p> <p>The Contractor shall remedy, at no extra cost to the Employer, the defect or failure (fair wear and tear excluded) after any part of the Work are taken over by the Employer until the end of Defects Liability Period.</p> <p>In order that the Construction and/or Manufacture Documents and the Works shall be in the condition required by the Contract (fair wear and tear excepted) at, or as soon as practicable after the expiry of the Contract Period, the Contractor shall:</p> <ul style="list-style-type: none"> <li>(a) Complete any work which is outstanding on the date stated in a Taking Over Certificate, as soon as practicable after such date, and</li> <li>(b) Execute all such work of amendment, reconstruction, and remedying defects or damage, as may be instructed in writing by the Employer or the Engineer during the Contract Period.</li> </ul>
<b>Cost of Remedyng Defects</b>	<b>10.2</b>	<p>All work referred to in Sub-Clause 10.1(b) shall be executed by the Contractor at his own cost, if the necessity for such work is due to:</p> <ul style="list-style-type: none"> <li>(a) The design of the Works;</li> <li>(b) Plant, Materials or workmanship not being in accordance with the Contract; or</li> <li>(c) Failure by the Contractor to comply with any of his other obligations.</li> </ul> <p>If in the opinion of the Engineer, such necessity is due to any other cause, he shall determine an adjustment to the Contract Price, with the approval of the Employer, and shall notify the Contractor accordingly. In this event, Sub-Clause 12.3 shall apply to such work.</p>
<b>Extension of Defect Liability Period</b>	<b>10.3</b>	<p>The Defect Liability Period shall be extended by a period, after the Works are taken over, during which the Works or any Section or item of Plant, cannot be used, for the purposes for which they are intended, by reason of a defect or damage.</p> <p>When delivery of Plant, 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 and/or Materials would otherwise have been delivered, erected and taken over.</p>
<b>Failure to Remedy Defects</b>	<b>10.4</b>	<p>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):</p> <ul style="list-style-type: none"> <li>(a) Carryout 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;</li> <li>(b) Require the Engineer to determine and certify a reasonable reduction in the Contract Price ;or</li> </ul>

		(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 and Materials to the Contractor, and Sub-Clause 13.1 shall not apply.
Removal of Defective Work	10.5	If the defect or damage is such that it cannot be remedied expeditiously on the Site and if the Employer gives consent, the Contractor may, remove from the Site for the purposes of repair any part of the Works, which is defective or damaged. This consent may require the Contractor to increase the amount of Performance 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 Sub Clause 7.10 and 7.11.
Right of Access	10.7	Until the Performance Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the working and performance of the Works, except as may be inconsistent with any reasonable security restrictions by the organisation responsible for operating the Works.
Contractor to Search	10.8	The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is one for which the Contractor is liable, the Cost of such search shall be added to the Contract Price.
Performance Certificate	10.9	Performance of the Contractor's obligations shall not be considered to have been completed until the Employer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract. The Employer shall issue the Performance Certificate <b>within 28 days</b> after the expiry of the Defects Liability Period (latest date of any extended Defect Liability period). Only the Performance Certificate shall be deemed to constitute acceptance of the Works.
Unfulfilled Obligations	10.10	After the Performance Certificate has been signed by the Engineer and delivered to the Contractor, stating the date on which the Contract or completed his obligations to the Engineer's satisfaction, the Contract shall be considered to be complete. However, the Contractor and the Employer shall remain liable for the fulfilment of any obligation, which remains unperformed at that time. For the purposes of determining the nature and extent of any such obligation, the Contract shall be deemed to remain in force.
Emergency defect rectification	10.11	If any defect or damage is one requiring immediate attention from safety, environmental or operational viewpoint, the Engineer has the authority to proceed with rectification in any manner suitable and deduct such sums from the Contract Price.

## 11 Contract Price and Payment

**The Contract Price** 11.1 **Contract Price** is the sum stated in the Letter of Acceptance as payable to the Contractor for execution of the work including remedying of any defect during completion and maintenance period therein, subject to such additions thereto or deductions there from as may be made under the provisions of the Contract.

### 11.1.1 Change in Law

"Change in Law" means the occurrence or coming into force of the following, at any time after the latest Date of submission of tender.

Any new Central and State Taxes, duties, cess, levies, which is imposed or any

existing Central and State Taxes, duties, cess, levies are withdrawn after the due date of submission of tender and which impacts the performance of the contractor with increased cost or which results in extra financial gains to the contractor due to decreased cost in execution of contract. Then such additional or reduced cost shall be certified by the Engineer after examining records provided by the contractor and shall be paid by or credited to the employer.

However, change in the rate of any existing Central and State Taxes, duties, cess, levies will not be considered a change in Law. Any risk of change of Central and State Taxes, duties, cess, levies `rate what so ever of Tax rate to the contract lies with the contractor.

<b>Advance Payments</b>	<b>11.2 Advance Payments</b>	
<b>Mobilisation Advance</b>	<b>11.2.1</b>	The Employer shall pay mobilisation advance as specified in Special Conditions of Contract. The requisite Bank Guarantee shall be accompanied with the Contractor's written request for mobilisation advance. Upon request by the Contractor the mobilization advance BG's shall be released as and when the mobilization advance is recovered from the RA bills by the Employer.
<b>Advance against Plant and Machinery</b>	<b>11.2.2</b>	Unless otherwise specified in the Special Conditions of Contract, Plant and machinery advance shall not be paid.
<b>Advance against Materials</b>	<b>11.2.3</b>	Unless otherwise specified in the Special Conditions of Contract, Material advance shall not be paid.
<b>Written Request for Advances</b>	<b>11.2.4</b>	Advances may be considered by the Employer in the interest of expediting progress/completion of works. Special condition shall govern the same. All advances shall have Bank Guarantees supporting the advance plus 12% extra. i.e., the BG shall be for an amount of 112% of the advance with suitable validity period.  Advances as admissible, shall be payable only on Contractor's written request to the Employer.
<b>Recovery of Advances</b>	<b>11.2.5</b>	The Commencement and the period of recovery of advance shall be as specified in the Special Conditions of Contract.  The Contractor shall always have the option to have the recoveries commenced and/or completed earlier, and/or to have recoveries affected in statements of higher amount and also to repay part or whole of the advance by direct payment rather than through interim payments.
<b>Advances to be Used only for This Work.</b>	<b>11.2.6</b>	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 18% per annum till the advance is recovered back from him. The Contractor shall return the advance and pay the interests in one go without demur. The Employer retains the right for any other remedy prescribed for breach of Contract in this regard. The Contractor, if required by the Employer shall provide the details of Mobilization advance expended or to be expended.
<b>Issue of Interim Payment Certificates</b>	<b>11.3</b>	No amount will be certified or paid until the Employer has received, and approved, the Performance Security and signing of the Contract Agreement. If no payment is considered to be due, the Engineer shall promptly notify the Contractor and Employer 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.
<b>Payment- Interim and Final</b>	<b>11.4</b>	<p>All payments will be subject to certification by the Engineer.</p> <p>The contractor to submit final bills along with 'as built drawings' otherwise, final bills will not be entertained and final bills will be considered as incomplete and returned. The Employer shall pay the amount certified in the Final Payment Certificate within 56 days from the date of issue of the Final Payment Certificate.</p> <p>Payment made against any item doesn't necessarily mean acceptance are hundred percent with respect to quality of construction (as defects could arise later on), tests to be done may not have been undertaken due to whatever reason before release of payment.</p> <p>Payments shall be made into the designated bank account(s) of the Contractor only in a bank unless otherwise permitted in Special Conditions of Contract.</p>
<b>Retention Money</b>	<b>11.5</b>	<p>Retention money equal to 10 percent of the amount due to the Contractor in running bills from time to time will be retained, so as to maintain a reserve in the hands of the Employer equal to 5 percent of the Contract Price in respective currencies. Alternatively, the contractor may submit Bank Guarantee, in an acceptable form, equal to 5 per cent of the Contract Price as retention money at the beginning of contract period. This Bank Guarantee should be made valid at least for a period of one year beyond the date of completion of the contract and should be extended, as and when required by the Employer.</p> <p>The Retention money shall be held by the Employer without obligation to invest them or account for interest thereon or to place them in a designated account. No interest of whatsoever nature and type will be paid to the Contractor by the Employer in respect of Retention money.</p> <p>The Employer shall at six monthly intervals release 100% of retention money upon submission of Bank Guarantee (BG to be submitted by each member of JV in proportion to their participation) of like amount in respective currencies as per format given in schedule to the Special Conditions of Contract and issued by an Indian Schedule bank (excluding Cooperative Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule.</p> <p>50% of the Retention money (Bank Guarantees and/or money) shall become due to the Contractor on the date of issue of the Taking Over Certificate for the whole of the works or the date of issue of last Taking over Certificate, if more than one Taking Over Certificate exist.</p> <p>25% of the Retention money (Bank Guarantees and/or money) shall become due to the Contractor on the date of issue of the Performance Certificate and the balance 25% shall become due to the Contractor upon the issue of Final Payment Certificate by the Engineer.</p> <p>When contract amount exceeds the contract price due to variation in quantities of certain BOQ items on the higher side or due to operation of additional non tendered items as per site requirement, the additional retention money at 5% of the increased amount shall be recovered from Interim Payment bills. The additional retention Money recovery shall start when the actual cumulative payment exceeds the original Contract Price. The contractor will also have an option to submit the additional retention money in the form of Bank Guarantee, in an acceptable form, instead of recovery from the Interim Payment Bill and the BG should be made available along with the Interim Payment Bill. This BG should be made available up to one year beyond completion of contract.</p> <p>All Retention Money BGs shall be valid at least for a period of one year beyond the date of completion of the contract, to be suitably extended as needed at contractors cost.</p> <p>Wherever Bank Guarantee or any other instrument is to be extended or fresh BG to be obtained, the cost towards getting extension of BG or fresh BG will be on contractor's account.</p>

		No recovery of retention money will be made against the Price Variation sums paid to the contractor in accordance with SCC Clause 6.1.
<b>Statement at Completion</b>	<b>11.6</b>	<p>Not later than 60 days after the issue of the Taking Over Certificate for the whole of Works, the Contractor shall submit, to the Engineer, six copies of a statement of completion with supporting documents, showing in detail, in the form approved by the Engineer under Sub-Clause 11.3:</p> <ul style="list-style-type: none"> <li>(a) the final value of all work done in accordance with the Contract, up to the date stated in such Taking Over Certificate,</li> <li>(b) any further sums which the Contractor considers to be due, and</li> <li>(c) an estimate of amounts which the Contractor considers will become due to him under the Contract.</li> </ul> <p>(a) As built drawings.</p> <p>The estimated amounts shall be shown separately in such statement at completion. The Engineer shall certify payment under Sub-Clause 11.4.</p>
<b>Application for Final Payment Certificate</b>	<b>11.7</b>	<p>Not later than 60 days after the issue of the Performance Certificate, the Contractor shall submit to the Engineer six copies of a draft final statement with supporting documents showing in detail, in a form approved by the Engineer:</p> <ul style="list-style-type: none"> <li>(a) the value of all work done in accordance with the Contract, and</li> <li>(b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.</li> </ul> <p>If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the Final Statement as agreed.</p> <p>If, following discussions between the Engineer and the Contractor and any changes to the draft final statement which may be agreed between them, it becomes evident that a dispute exists, the Employer shall pay those parts of the draft final statement as certified by the Engineer as not being in dispute. The remainder of the dispute may then be resolved under Clause 17, in which case the Contractor shall then prepare and submit to the Engineer a Final Statement in accordance with the outcome of the dispute.</p>
<b>Discharge</b>	<b>11.8</b>	<p>When submitting the final statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all amounts due to the Contractor under the Contract. Such discharge may state that it shall become effective only after payment due under the Final Payment Certificate has been made and the Performance security referred to in Sub-Clause 4.2 has been returned to the Contractor.</p>
<b>Issue of Final Payment Certificate</b>	<b>11.9</b>	<p>The Engineer shall issue to the Employer, with a copy to the Contractor, the Final Payment Certificate within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clauses 11.7 and 11.8 stating:</p> <ul style="list-style-type: none"> <li>(a) the amount which is finally due, and</li> <li>(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.</li> </ul> <p>If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clauses 11.7 and 11.8, 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.</p>
<b>Cessation of Employer's Liability</b>	<b>11.10</b>	<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</p>

		Contractor shall have included a claim for it in his Statement at Completion described in Sub-Clause 11.6. For any such matter or thing arising after the issue of the Taking Over Certificate for the whole of the Works, the Employer shall not be liable to the Contractor unless the Contractor shall have included a claim for it in his Final Statement.
<b>Calculation of Payments in Foreign Currency</b>	<b>11.11</b>	All payments made by the Employer pursuant to the terms of the Contract shall be in the currency or currencies specified in the Contract. Wherever any sum in a foreign currency has to be converted into Indian Rupees for any purpose, the exchange rate to be employed for such conversion shall be the selling rate of exchange at the close of business of the State Bank of India 14 days before the latest date of submission of Tenders.
<b>Round off</b>	<b>11.12</b>	In every payment to the Contractor, sums of less than fifty paisa shall be omitted and sums of fifty paisa and more up to one rupee shall be reckoned as one rupee.
<b>Payment by Cheque and E-Payment</b>	<b>11.13</b>	All payments to the Contractor will be made generally by RTGS (Real Time Gross Settlement).
<b>Tax Deduction at Source</b>	<b>11.14</b>	<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> <p>(a) Income tax deduction: Income Tax deduction shall be as per law.</p> <p>(b) Labour Cess &amp; Royalties: The labour Cess &amp; Royalties will be deducted as per norms from each IPCs and remitted to the respective Authorities</p>
<b>Production of Vouchers</b>	<b>11.15</b>	<p>i. The Contractor shall, whenever required by the Engineer, produce or cause to be produced for examination by the Engineer, any quotation, invoice, cost or other account books, vouchers, receipts, letters, memoranda or any copy of or extract from any such documents and also furnish information and returns, as may be required, relating to the execution of this Contract or relevant for verifying or ascertaining the cost of execution of this Contract or ascertaining the Materials supplied by the Contractor are in accordance with the Specifications laid down in the Contract. The Engineer's decision on the question of relevancy of any documents, information or returns shall be final and binding on the parties.</p> <p>ii. If any part or item of the Work is allowed to be carried out by a Sub-Contractor, assignee or any subsidiary or allied firm, the Engineer shall have power to secure the books of such Sub-Contractor, assignee or any subsidiary or allied firm through the Contractor, and shall have power to examine and inspect the same. The above obligations are without prejudice to the obligations of the Contractor under any statute, rules or orders.</p>
<b>Withholding And Lien For Sums Claimed</b>	<b>11.16</b>	<p>i. The Employer shall have lien on and over all materials of every description, tools, tackles, plant, equipment or any amount due and/or that may become due and payable to the Contractor under the Contract, and / or on and over the deposit of Performance Security or other amount or amounts made under the Contract and which may become payable to the Contractor. Employer may exercise a general lien also.</p> <p>ii. And further, unless the Contractor pays and clears immediately on demand any claim of the Employer, the Employer shall at all times be entitled to deduct the amount of the said claim from the amount, securities and / or deposits which may have become or will become payable to the Contractor under the existing contract, or under any other Contract or transaction whatsoever between the Employer and the Contractor even if the matter stands referred to Arbitration. The Contractor shall have no claim for any interest or damage whatsoever in respect of any amounts withheld or treated as withheld under the lien referred to above and duly notified as such to the Contractor.</p>
<b>Signature On</b>	<b>11.17</b>	Every receipt of payment to Contractor including refund of the Performance

<b>Receipts For Payments</b>	Security shall be signed by the person authorized to do so on his behalf. In the event of death of any of the Contractor's partners in case the Contractor is a partnership firm, during the currency of the Contract, it is hereby expressly agreed that every receipt by any one of surviving Contractor's partners, shall, if so signed as aforesaid, be a good and sufficient discharge as aforesaid, provided that nothing in this Clause shall be deemed to prejudice or affect any claim, which the Employer may hereafter have against the legal representatives of any Contractor's partner so dying, for or in respect of breach of any of the conditions of the Contract. Provided also that nothing contained in this clause shall be deemed to prejudice or affect the respective rights and obligations of the Contractor's partners, or of the legal heirs / representatives of any deceased Contractor / partner interest
<b>Post Payment Audit</b>	<b>11.18</b> It is an agreed term of the Contract, that the Employer reserves to himself the right to carry out a post payment audit and / or technical examination of the Works, and the Final bill including all supporting vouchers, abstracts, etc., and to make a claim on the Contractor for the refund of any excess amount paid to him, if as a result of such examination, any over-payment to him is discovered to have been made in respect of any work done or alleged to have been done by the Contractor, under the Contract. If any under-payment is discovered, the same shall be paid by the Employer to the Contractor. Such payments or recoveries, however, shall not carry any interest.
<b>Recovery of money due to the Employer</b>	<b>11.19</b> All damages (including, without limitation, liquidated damages), costs, charges, expenses, debts, or sums for which the Contractor is liable to the Employer under any provision of the Contract may be deducted by the Employer from amount due to the Contractor under the Contract including, without limitation, and the Employer shall have the power to recover any balance not so deducted from amount due to the Contractor under any other contract between the Employer and the Contractor. When the Contractor has assigned to a third party the right to receive amount due, or, to become due, under the Contract to the Contractor or charged such amount in favour of a third party, the Employer's right to deduct damages (including without limitation liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer from amount due to the Contractor under the Contract shall be limited to the right expressed above.
<b>Deemed Export</b>	<b>11.20</b> Presently in respect of Projects funded by agencies such as EIB and AIIB are not eligible for benefits of "Deemed exports". However, in future, if BMRCL procures financing from eligible international agencies/Banks or if the Projects funded by EIB and AIIB become eligible for "Deemed export" benefits due to change of Government of India policy, then following actions shall be taken:  The bidders shall solely be responsible for claiming and availing all "Deemed export" benefits as applicable. However, for availing the said benefits necessary payment certificate in accordance with the laws of the land and extant policies of the government will be issued by BMRCL at the specific request of the contractor. If and when Deemed Benefit is available to the contractor, the contractor has to make his own arrangements for claiming the reimbursement of customs duty/basic customs duty (as applicable).  The Contractor shall ensure full compliance with tax laws of India with regard to this contract and shall be solely responsible for the same. He shall submit copies of acknowledgements evidencing filing of returns every year and shall keep the Employer fully indemnified against liability of tax, interest, penalty etc, of the Contractor's in respect thereof, which may arise. Post award, Benefits of concessions / waiver of taxes and duties as per procedure advised by BMRCL, shall be passed on to BMRCL.  This tender being an International Competitive Bidding (ICB). Incase tenderer is eligible for ab-initio exemption from Terminal Excise Duty (TED) as per the para 8.3 (c) of the Foreign Trade Policy. In view of this position, Bidders shall not include TED in their quoted price. Any certificate/declaration required to avail ab-initio exemption from terminal excise duty shall be issued by BMRCL.

## 12 Variations

<b>Right to Vary</b>	<b>12.1</b>	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.
<b>Contractor's Variations</b>	<b>12.2</b>	<b>Value Engineering or Innovation</b>
<b>Value Engineering Proposals</b>	<b>12.2.1</b>	The Contractor may submit to the Employer, in writing at his own cost, value engineering proposals for modifying the Employer's Requirements, provision of additional land, access or feasibility over and above that is provided in the Contract for the purpose of saving in time, construction or manufacture costs. The value engineering proposal shall not impair the essential character, functions or characteristics or the Work, including service life, economy of operation, ease of maintenance, desired appearance, or Design and safety standards. The Contractor shall provide his value engineering proposal in a time limit prescribed by the Engineer. The Engineer's decision in this regard shall be communicated to the Contractor within a reasonable period of time. If by any reason the time limit specified by the Engineer is exceeded, the proposal may not be considered. The decision of the Engineer in this regard shall be final and binding.
<b>Value Engineering Proposals – Contents</b>	<b>12.2.2</b>	If the Employer requires or accepts it, and if the Contractor wants to proceed with the proposal, the Contractor must provide (at no cost to the Employer) a detailed report prepared by a consultant acceptable to the Employer and which shall include:
		a. a general description of the original Contract requirements for the Works and the proposed changes b. any detail of all the proposed modifications to the drawings and specifications c. any detail of all Work and goods affected by the value engineering proposal d. a detailed estimate of the construction cost based on the original Contract requirements and based on the proposed changes e. any resultant time extensions or reductions for the Contract f. statement to the extent of minimum saving expected. The Contractor's cost of preparing value engineering proposal shall be excluded in determining the estimated net savings in construction costs.
<b>Value Engineering Proposals- Employer Review</b>	<b>12.2.3</b>	The Employer may in his sole discretion, accept or reject the value engineering proposal or any part thereof and determine the estimated net saving in the construction cost. The Employer shall not be liable for delays or damages to the Contractor due to any failure of the Employer to accept or act upon any value engineering proposal submitted pursuant to this Clause. If the submitted value engineering proposal is similar to a change / variation already under consideration by the Employer, the Employer may make such changes without respect to the value engineering proposal.  Once, the Employer or the Engineer rejects the value engineering during proposition due to any reason, it shall not be pursued by the Contractor in any other form.
<b>Amendments- Employer Issuance</b>	<b>12.2.4</b>	If the value engineering proposal is acceptable to the Employer in whole or in parts, it will accept by execution of an amendment. Such amendment shall identify all the changes in the specifications, Contract Period etc., shall specify net savings on construction costs and shall provide that the Contractor be paid 30% of saved net savings amount based on the difference between the amount contained in the Contract and the estimated net savings both as determined by the Employer.
<b>Contractor's Acceptance and Payment</b>	<b>12.2.5</b>	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 compensation of 30% of the value shall constitute the full compensation. The Contractor will be paid this 30% or less but not more at the time of final payment on Engineer's certification that the net savings as intended by value engineering have been achieved.

<b>Employer's Variations</b>	<b>12.3</b>	If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall submit at his own cost within 14 days or within the period as specified by the Engineer, the following details. <ul style="list-style-type: none"> <li>a a description of the proposed work to be performed and a programme for its execution,</li> <li>b the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 4.13, and</li> <li>c the Contractor's proposal for adjustment to the Contract Price, Time for Completion and/or modifications to the Contract.</li> </ul> The decision of the Employer with regard to consider it as Employer's variation or not is final and binding on the contractor.
<b>Variation Procedure</b>	<b>12.4</b>	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. <p>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.</p> <p>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 Payments as per SCC Clause 12.</p>
<b>Payment in Applicable Currencies</b>	<b>12.5</b>	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.
	<b>13</b>	<b>Determination/Termination of the Contract</b>
<b>Notice to Contractor</b>	<b>13.1</b>	<b>Right of Employer to determine the contract</b> <p>The Employer shall be entitled to determine/terminate the contract at any time should, in the Employer's option, the cessation of work become necessary owing to paucity of funds or from any other cause whatsoever, in which case the value of approved materials at site and work done to date by the Contractor will be paid for in full at the rate specified in the contract. Notice in writing from the Employer of such determination and the reasons therefore shall be conclusive evidence thereof.</p> <p><b>Payment on determination of contract by Employer.</b></p> <p>(i) Should the contract be determined under Sub-Clause 13.1 and the Contractor claims payment for expenditure incurred by him in the expectation of completing the whole of the works, the Employer shall admit and consider such claims as are deemed reasonable and supported by voucher to the satisfaction of the Engineer. The Employer's decision on the necessity and propriety of such expenditure shall be final and conclusive.</p> <p>(ii) The Contractor shall have no claim to any payment of compensation or otherwise, howsoever on account of any profit or advantage which he might have derived from the execution of the work in full but which he did not derive in</p>

		consequence of determination of contract.
<b>Termination Of Contract Due To Contractor's Default</b>	<b>13.2</b>	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.
<b>Conditions Leading To termination Of Contract</b>	<b>13.2.1</b>	<p>The Employer shall be entitled to terminate the Contract if the Contractor or any one of its constituents,</p> <ul style="list-style-type: none"> <li>a) fails to comply with a notice under Sub clause 13.2 above.</li> <li>b) abandons or repudiates the Contract</li> <li>c) without reasonable excuse acceptable to the Engineer, fails to commence the Works in accordance with the Contract</li> <li>d) sub contracts the whole of the Works or goes beyond the permitted limit as given in the General Conditions of Contract Clause 4.5 or assigns the Contract without approval of the Employer.</li> <li>e) becomes bankrupt or insolvent or goes into liquidation except voluntary liquidation for the purpose of amalgamation or reconstruction</li> <li>f) persistently disregards instructions of the Engineer or contravenes any provisions of the Contract, or</li> <li>g) fails to adhere to the agreed programme of work on review weekly / fortnightly / monthly basis by margin of 10% or 60 days, whichever is earlier or fails to complete the Works or parts of the Works within the stipulated or extended period of completion, or is unlikely to complete the whole Work or part thereof within time because of poor record of progress; or</li> <li>h) fails to remove materials from the Site, or pull down and replace work, after receiving notice from the Engineer to the effect that the said materials or Works have been condemned or rejected, or</li> <li>i) fails to take steps to arrange and/or augment machinery, tools, plant and or equipment employ competent and/or additional staff and labour, or</li> <li>j) fails to afford the Engineer or his representative proper facilities for inspecting the Works or any part thereof, or</li> <li>k) indulges in corrupt or fraudulent practices as explained in Clause 4.33.1.</li> <li>l) Diversion of advances as explained in Clause 11.2.6.</li> </ul>

In any one of the above events or circumstances, the Employer may upon giving 14 days' notice to the Contractor, terminate the Contract in whole or in parts in so far as it is practicable to do so and expel the Contractor from the Site for that portion of the Work which is terminated. However, in case of sub-paragraph (e) or (k), the Employer may by notice terminate the Contract immediately, viz. within 24 hours.

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

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

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

- a. forfeits the whole or such portion of the Performance Security amount and Retention money as he may consider fit, and
- b. recovers from the Contractor the cost of carrying out the balance work in excess of the sum which he would have been paid according to the certificate of the Engineer, if the works had been carried out and completed by the Contractor under the terms of Contract. Such certificate shall be final and binding upon the Contractor. The amount to be recovered may be deducted by the Employer from any amount then due or which, at any time thereafter, may become due to the Contractor alone or jointly under this or any other Contract or otherwise.

<b>Valuation at</b>	<b>13.2.2</b>	The Engineer shall, as soon as possible after termination under Sub-Clause
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<b>the date of Termination</b>	13.2.1, determine and advise the Contractor of the value of the Construction and/or Manufacture Documents, Plant, Materials, Contractor's Equipment and works and all sums then due to the Contractor as at the date of termination.
<b>Payment after Termination</b>	<p><b>13.2.3</b> 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> <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 13.2.2. If there are no such extra costs, the Employer shall pay any balance amount to the Contractor.</p> <p>The contractor shall not seek the possession of machinery brought to the site till the Advance obtained from Employer is fully settled.</p> <p>Employer shall be the sole custodian of the entire plant and machinery whenever the advance amount is given to the contractor and the same shall remain in the custody of Employer, till the Advance obtained from Employer, is fully settled.</p> <p>The machinery and brought to the site shall be exclusively intended for the execution of the work of Employer and shall not be removed without the consent of the Engineer.</p> <p>The contractor shall indemnify and hold harmless, the Employer against all actions, suits, proceedings, claims, damages, losses, expenses, demands pertaining to advance amount towards plant and machinery.</p> <p>The contractor;</p> <ul style="list-style-type: none"> <li>a) Shall not mortgage/ create charge/ hypothecate/encumber, in any way the machineries and brought to site from the amounts advanced by Employer and shall give an undertaking in writing to that effect in favour of Employer.</li> <li>b) Shall not sell or alienate any part/ portion of machinery and without the consent of Employer.</li> <li>c) In the event of any such sale/ alienation of any portion or part of machinery, Employer shall hold First Charge and the proceeds of such sale or alienation shall be appropriated towards the loan/ credit/ advance in respect of plant and machinery brought to the site by contractor.</li> </ul> <p>The Employer has full right to take the custody of plant and machinery brought to site by the contractor and offer the machinery for use by any other contractor to get the balance work completed.</p> <p><b>Right of Employer after rescission of contract owing to default of Contractor.</b></p> <ul style="list-style-type: none"> <li>a) The Contractor shall have no claim to compensation for any loss sustained by him by reason of his having purchased or procured any materials or entered into any commitments or made any advances on account of or with a view to the execution of the works or the performance of the contract and Contractor shall not be entitled to recover or be paid any sum for work thereto for actually performed under the contract, unless and until the Engineers have certified the performance of such work and value payable in respect thereof and the Contractor shall only be entitled to be paid the value so certified;</li> <li>b) The Engineer or the Engineer's representative shall be entitled to take possession of any material, tools, implements, machinery and buildings on the works or on the property on which these are being or ought to have been executed, and to retain and employ the same in the further execution of the works or any part thereof until the completion of the works without the Contractor being entitled to any compensation for the use and employment thereof or for wear and tear or destruction thereof;</li> </ul> <p><b>Non-exercise of power not</b></p> <p><b>13.2.5</b> Provided always that in case any of the powers conferred upon the Employer by Sub-clause 13.2 and Sub Clause 13.2.1above, shall have become exercisable,</p>

<b>to constitute waiver</b>	and the same may not have been exercised, the non-exercise thereof shall not constitute waiver of any of the conditions thereof.
<b>Termination by Contractor</b>	<b>13.3</b>
<b>Default of Employer</b>	<b>13.3.1</b> In the event of the Employer becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or Amalgamation, then, the Contractor may give notice requiring the Employer to remedy the default within 28 days after receipt of the notice. If the Employer fails to remedy the default or fails to propose steps reasonably acceptable to the Contractor to do so and in that case, the Contractor may terminate the Contract after issue of 14 days' notice to the Employer with a copy to the Engineer. In this case, the Contractor shall be compensated as per Sub Clause no.13.3.4.  The Engineer's decision on the amount payable on this account shall be final and binding.
<b>Contractor's Entitlement to Suspend the Work</b>	<b>13.3.2</b> If the Contractor suspends work or reduces the rate of progress of work in accordance with the provisions of this Sub-Clause and thereby suffers delay or incurs costs the Engineer shall, after due consultation with the Employer and the Contractor, determine any extension of time to which the Contractor is entitled under sub-clause-8.4.
<b>Cessation of Work by Contractor</b>	<b>13.3.3</b> After termination under Sub-13.3, the Contractor shall: <ul style="list-style-type: none"> <li>a. ceases all further work, except for such work as may be necessary and instructed by the Engineer for the purpose of making safe or protecting those parts of the Works already executed, and any Work required to leave the Site in a clean and safe condition,</li> <li>b. hand over all Construction and/or Manufacture Documents, Plant and Materials for which the Contractor has received payment,</li> <li>c. hand over those parts of other Works executed by the Contractor up to the date of termination, and</li> <li>d. remove all Contractor's Equipment which is on the Site and repatriate all his staff and labour from the Site.</li> </ul> Any such termination shall be without prejudice to any other right of the Contractor under the Contract.
<b>Payment on Termination</b>	<b>13.3.4</b> 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: <ul style="list-style-type: none"> <li>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</li> <li>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.</li> <li>c in addition a sum not exceeding 2% (two percent) of the value of the work remaining incomplete on the date of Termination notice taking effect.</li> </ul> The payment as above are full compensation for termination under this clause and the Contractor has no claim for damages or other entitlements whether under the contract or otherwise.
<b>13.3.5</b>	In case of termination/ foreclosure of the Contract under whatsoever circumstances, any remaining tools, plants, equipments and surplus materials of the Employer with the Contractor will be returned to the Employer at Employer's depot at the Contractor's cost. In case of the failure of the Contractor to do so, the Employer will be entitled to recover their cost from the Contractor from the amount becoming due to the Contractor or from any other amount 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, plants, equipment and tools from the Contractor, where such material have been supplied free of cost and plants ,equipment and tools, free of cost or on lease basis to the Contractor as stipulated in the Contract

<b>Survival</b>	<b>13.4</b>	Termination of this Contract <ol style="list-style-type: none"> <li>shall not relieve the Contractor or the Employer of any obligations already incurred hereunder which expressly or by implication survives Termination hereof and</li> <li>except as otherwise provided in any provision of this Contract expressly limiting the liability of either party, shall not relieve either party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.</li> </ol>
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## 14 Risk and Responsibility

<b>Indemnity</b>	<b>14.1</b>	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: <ol style="list-style-type: none"> <li>sickness, or disease, or death of, or injury to any person; and</li> <li>loss of, or damage to, or destruction of any property (other than the Works) including consequential loss of use; and</li> <li>loss, damage or costs arising from the carriage of Plant and Materials and/or ownership or chartering of marine vessels by the Contractor, or any sub-contractor of any tier.</li> </ol>
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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 Sub Clause 5.7.

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

<b>Contractor's Care of the Works</b>	<b>14.2</b>	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 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.
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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
<b>Employer's Risks</b>	<b>14.3</b>	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: <ul style="list-style-type: none"> <li>(a) War, hostilities (whether war be declared or not), invasion, act of foreign enemies, act of terrorism.</li> <li>(b) rebellion, revolution, insurrection, or military or usurped power, or civil war, within India,</li> <li>(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,</li> <li>(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,</li> <li>(e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, and</li> <li>(f) use or occupation by the Employer of any part of the Works, except as may be specified in the Contract.</li> </ul>
<b>Consequences of Employer's Risks</b>	<b>14.4</b>	If an Employer's risk results in loss or damage, the Contractor shall promptly notify the Engineer and shall rectify this loss or damage to the extent required by the Engineer.  If the Contractor suffers delay and/or incurs cost from rectifying this loss or damage, the Contractor shall give notice to the Engineer and shall be entitled to claim: <ul style="list-style-type: none"> <li>(a) Extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4, and</li> <li>(b) amount of such cost, which shall be added to the Contract Price.</li> </ul>
<b>Contractor's Risks</b>	<b>14.5</b>	The Contractor's risks are all risks other than the Employer's risks given in sub-clause 14.3.
<b>Limitation of Liability</b>	<b>14.6</b>	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: <ul style="list-style-type: none"> <li>(a) under Sub-Clauses 4.18, 4.19, 5.7, 7.9, 7.10, and 8.6</li> <li>(b) under any other provisions of the Contract which expressly impose a greater liability,</li> <li>(c) in cases of fraud, wilful misconduct or illegal or unlawful acts, or</li> <li>(d) in cases of acts or omissions of the Contractor which are contrary to the most elementary rules of diligence which a conscientious Contractor would have followed in similar circumstances.</li> </ul>
	<b>15.</b>	<b>Insurance.</b>
<b>Injury to third party personnel and Property of third party/ies</b>	<b>15.1</b>	The contractor shall be liable for and shall indemnify the Employer (principal) against any liability, loss claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whosoever arising out of or in the course of or caused by the carrying out the contract works, unless due to any act or neglect of the Employer (principal).  The contractor shall be liable for and shall indemnify the Employer (Principal) against any expenses, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or

		damage arises out of or in the course of or by reason of the carrying out of the contract works, and provided always that the same is due to any negligence, omission or default of the contractor, his servants or agents of any sub-contractor, his servant or agent.
<b>Insurance Against Injury to Persons and Property.</b>	<b>15.2</b>	Without prejudice to his liability to indemnify the Employer (Principal), the contractor shall take all types of insurance policies such as Contractors All Risks and Workmen's Compensation (Employers Liability) Policy at his cost in the JOINT NAMES OF THE EMPLOYER (PRINCIPAL) AND CONTRACTOR AND SUB CONTRACTOR, IF ANY and maintain such policies throughout the period of contract works.  Such insurance as are necessary to cover the liability of the contractor or as the case may be of such Sub-Contractor in respect of personal injuries or death of workmen engaged by the contractor or sub-contractor, arising out of or in course of or caused by carrying out of work.  The contractor at his cost shall maintain in the joint names of the Employer(principal) and contractor such insurances as may be required in respect of any expenses, liability, loss, claim or proceedings which the Employer( principal) may incur or sustain by reason of injury or damage to property real or personal arising out of or in the course or by reason of the carrying out the work, and caused otherwise than by the negligence, omission or default of the contractor, his servants or agents or any sub-contractor, his servants or agents.
		Any such insurance policy or policies or receipts effected shall have to be deposited in original with the Employer (principal).
<b>Insurance of the contract works under a Contractors All Risks Insurance Policy.</b>	<b>15.3</b>	The contractor at his cost shall in the JOINT NAMES OF THE EMPLOYER (PRINCIPAL) AND CONTRACTOR:  <ul style="list-style-type: none"> <li>i. Insure the plant, material and works forming part of the contract works against loss or damage by all types of risks as envisaged under the standard Contractors All Risks policy.</li> <li>ii. obtain the insurance policy for the full replacement cost at site of the contract works entrusted to the contractor, sub-contractor.</li> <li>iii. include in the insurance policy the cost of demolition works if any.</li> <li>iv. ensure that the policy shall remain in force till the entire contract works is completed and the Taking Over Certificate issued.</li> </ul> The Contractors All Risks policy which is an All Risks policy with only named exclusions normally extends cover for loss or damage caused by fire, storm, tempest, lightning, flood, aircraft or anything dropped there from, aerial objects, riot and civil commotion, defective materials, defective workmanship, etc. and shall be extended to cover the following: <ul style="list-style-type: none"> <li>a. earthquake risks</li> <li>b. terrorism</li> <li>c. Third Party Liability including Cross Liability to the extent of at least 10% of the contract works.</li> <li>d. Debris removal (of insured property) to the extent of at least Rs. 50 lakhs</li> <li>e. Owners(Principal's) surrounding property to the extent of 10% of the policy limits.</li> <li>f. Maintenance visits (Defect Liability) for a period of 12 months from the date mentioned in the taking over certificate for the whole of the works. Design Defect.</li> </ul>
<b>Contractor's plant &amp; machinery.</b>	<b>15.4</b>	All the Contractor's Plant, Equipment & Materials shall be brought and kept at the Facilities Site at the sole cost, risk and expense of the Contractor. The Employer shall not be liable for any loss or damage thereto until the completion of work or removal of materials, plant & machinery, whichever is later. The Contractor, at its sole cost, shall maintain adequate, appropriate and prudent insurance with respect thereto. Any insurance policy carried by the Contractor, any Subcontractor or any third party on the Contractor's Equipment shall provide for a waiver of the underwriter's right to subrogation against the Employer, the Lenders, affiliates, employees, insurers and underwriters. The Contractor shall obtain adequate insurance to cover all equipment, tools and the Constructional Plants rented or leased from third parties.

The Contractor shall obtain insurance for all plant & equipment and materials whether at Site as aforementioned or whether in transit or in storage awaiting shipment to the Site, including erection/re-erection and testing at site and subsequent operation and until their removal from site.

The policy shall be on floater basis including Earthquake, Terrorism, underground works, third party liability including cross liability for not less than 10% of the total value of the machinery. The policy should also cover clearance and removal of debris for not less than 10% of the claim amount, any other relevant add on cover. Plant and Machinery brought to the site in semi or completely knocked down condition is to be insured under the storage cum erection All Risks policy. Once assembled and put to use and which are in readiness for operation are to be insured under the contractor's plant & machinery insurance policy.

The policy shall be obtained in the joint name of the Principal ie. BMRCL and the contractor.

The contractor before commencing the contract shall file with BMRCL the list of the Plant & machinery that would be in use at the project site, their make, model, year of manufacture, current cost of replacement and the insurance shall be availed based on the list so submitted.

**15.5 Workmen Compensation (Employers Liability) Insurance.**

Workman's compensation policy with the following endorsement no.140 to protect Employer (Principal) interest.  
 "It is hereby understood and agreed that in the event of any workman employed by the within named insured or any dependent of such workman bringing or making a claim under Section 12 of the Workmen's Compensation Act 1923, and subsequent amendments of the said Act against .....for personal injury or disease sustained whilst at work on any contract covered by the terms and conditions of the within policy which the Insured may be carrying out for the said.....the Company will indemnify the said.....against such claim and/or any costs, charges and expenses in respect thereof Provided always that the Company shall not be liable hereunder unless the Company have the sole conduct and control of all claims covered by this endorsement. Nothing in this endorsement shall be construed as affecting the Insured's title to recover damages under any other Section of the said Act."

The policy shall be:

- a. In the joint names of the Employer(Principal), contractor and sub-contractor
- b. for the declared wages and emoluments as per standard terms of the policy.
- c. cover all the workmen of the contractor and sub-contractor
- d. in force till the completion of the work
- e. include cover for medical expenses incurred on account of an accident or injury sustained by the workmen in the course of and during the employment
- f. include cover for Liability as per Fatal Accidents Act and Common Law.

**15.6 Professional Indemnity Insurance.**

The Contractor shall effect and maintain a Professional Indemnity Insurance jointly in the name of Principal Employer in respect of any design works to be carried out by or on behalf of the contractor. This Insurance shall ensure the contractors liability by reason of Professional negligence and errors in the design of works. Professional Indemnity Insurance Policy to provide cover in a sum not less than **5% of the Contract Price** for any one occurrence, or for any series of occurrences where these arise out of one event. The Contractor shall ensure to maintain such insurance from the date of commencement of works, until after the date of issue of Performance Certificate with a clause in the Insurance policy stipulating a discovery period of 05 years from the date of issue of Performance Certificate.

The Contractor/its Design Consultant shall demonstrate that the said PI Policy expressly covers the Works or that they have been issued for the design consultant(s) on a global basis by submitting copies of the policies to the Employer and such policies shall remain in force for a period of 05 years, from the date of issuance of performance certificate including discovery period of 05 years. BMRCL may require the Contractor and its design consultant to obtain the policy jointly in the name of BMRCL, designate or assign the insurance policies in the favour of the Lenders as security for the financial assistance provided by the Lenders to the Project, if deemed necessary.

The PI policy will have to be obtained including all covers to hold the Principal

Employer harmless and not limited to the following:

- i. Principal's indemnity
- ii. Vicarious liability
- iii. Loss rectification and mitigation expenses
- iv. Intellectual property rights
- v. Loss of documents

The Contractor and / or its Design Consultant shall be responsible for the amount of minimum deductible offered by the Insurer under Professional Indemnity Insurance. Regardless of the loss, any deduction in excess of the deductibles prescribed under the Insurance, or any amounts not recovered from the Insurer by the Contractor, shall also be borne by the Contractor/Design Consultant.

The Contractor and /or its design Consultant shall from time to time promptly pay any insurance premium amounts due, keep the insurance policies in force and valid and furnish copies thereof to the Employer in accordance with this Clause: \_\_\_, within 25 (twenty-five) days of receiving any insurance policy certificates in respect of the Insurances and evidence that the insurance premiums have been paid in respect of such Insurances.

**15.7 General requirements for insurances.** The Contractor shall, within the respective periods stated in the Appendix 17 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.
- (b) Deposit the original of the policies with the Employer (Principal) for the insurances described as above.

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

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

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

If the Contractor fails to effect and keep in force any of the insurances required under the Contract, or fails to provide satisfactory evidence, policies and receipts in accordance with this 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 nominal administrative charge shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any amounts due, or to be come due, to the Contractor or recover the same as debt due from the Contractor. The Contractor shall not dispute the amount of premium paid by the Employer or the overhead charges thereon.

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

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

All insurances mentioned shall be obtained with insurers approved by the Employer (Principal) and the contractor shall deposit with the Employer (Principal) the policy or policies and the receipts in respect of premium paid.

Should the contractor make default in insuring or continuing to insure different from stated aforesaid the employer(principal) may himself insure against any risk with respect of which the default shall have occurred and deduct the premium from any amounts due to or to become due to the contractor. The Deductions shall be as envisaged in of the General Requirement for insurance given above.

Provided always that if the contractor shall independently of his obligations under this contract maintain a policy of insurance which covers (inter-alia) the said work, materials and goods against the aforesaid contingencies to the full value thereof then the maintenance by the contractor of such policy shall if the employer's (principal)interest is endorsed thereon, be a discharge of the contractor's obligation to insure in the joint names of the employer(Principal) and the contractor and the production by the contractor as and when may reasonably be required by the Employer(Principal) of a current certificate of insurance from the company or firm which shall have issued the said policy shall be a discharge of the contractor's obligation to deposit with the Employer(Principal) a policy or policies and the receipts in respect of premium paid.

Upon settlement of any claim by the insurance companies under the insurances aforesaid, the contractor shall diligently with due diligence shall restore work damaged, replace or repair unfixed materials or goods which have been destroyed or injured, remove or dispose of any debris and proceed with the carrying out and completion of the work. All amounts received from such insurances shall be paid to the contractor by installments under certificates of the Employer issued at the "Period of interim Certificate". The contractor shall not be entitled to payment in respect of restoration of work damaged, replacement and repair of any unfixed materials or goods and removal and disposal of debris Employer(Principal) other than amounts received under said insurance.

## 16 Force Majeure

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|--------------------------------------|-------------|--|
| <b>Definition of Force Majeure</b>   | <b>16.1</b> | 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.   |
| <b>Effect of Force Majeure Event</b> | <b>16.2</b> | 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.      |
| <b>Contractor's Responsibility</b>   | <b>16.3</b> | 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 signing of agreement. Upon the occurrence of such Force Majeure, the affected party shall endeavour to continue to perform its obligations as far as reasonably practicable |
|                                      |             | 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.
<b>Employer's Responsibility</b>	<b>16.4</b>	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.
<b>Payment to Contractor</b>	<b>16.5</b>	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.
<b>Resumption of Work</b>	<b>16.6</b>	<p>The obligations under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.</p> <p>In case of doubt or dispute, whether a particular occurrence should be considered an "event" as defined under this clause, the decision of the Engineer shall be final and binding.</p> <p>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.</p>
<b>Optional Termination, Payment and Release</b>	<b>16.7</b>	<p>Irrespective of any extension of time, if a Force Majeure occurs and its effect continues for a period of 6 months, after notice has been given under Sub-Clause 16.1, either party may give to the other party a notice of termination the Contract which shall take effect 28 days after the notice is given. Unless at the end of 28 days period the effect of the Force Majeure has ceased, the Contract shall terminate upon that date. Otherwise, the Contract shall remain in effect.</p> <p>The Contractor shall be paid fully for the work done under the Contract, but not for any defective work or work done which has been destroyed or damaged before its measurement. The Employer shall have the option to take over any Plant and Materials lying at site, at rates provided for in the Contract, failing that, as per rates, which are determined to be fair and reasonable by the Engineer.</p>
<b>Release from Performance Under the Law</b>	<b>16.8</b>	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.
	<b>17</b>	<b>CLAIMS, DISPUTES, CONCILIATION AND ARBITRATION</b>
<b>Procedure for Claims</b>	<b>17.1</b>	<p>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.</p> <p>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.</p> <p>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.</p>

		If the Contractor fails to comply with this Sub-Clause, he shall not be entitled to claim any additional payment.
<b>Payment for Claims</b>	<b>17.2</b>	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.
<b>No legal action Till Dispute Settlement Procedure is Exhausted</b>	<b>17.3</b>	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.
<b>Notice of Dispute</b>	<b>17.4</b>	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.
<b>Two Stages for Dispute Resolution</b>	<b>17.5</b>	Disputes shall be settled through two stages: <ol style="list-style-type: none"> <li>Conciliation procedures as established by "The Arbitration and Conciliation Act, 1996" as amended by "The Arbitration and Conciliation (Amendment) Act, 2015". In the event this procedure fails to resolve the Dispute then;</li> <li>Arbitration procedures undertaken as provided by "The Arbitration and Conciliation Act, 1996" as amended by "The Arbitration and Conciliation (Amendment) Act, 2015".</li> </ol>
<b>Conciliation</b>	<b>17.6</b>	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 Conciliation shall be undertaken by one Conciliator selected from a panel of Conciliators maintained by the Employer. The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner.
<b>Conciliation Procedure</b>	<b>17.7</b>	The Employer shall maintain a panel of Conciliators with requisite qualifications and professional experience who shall be from serving or retired engineers of Government Departments, or of Public Sector Undertakings. Panel list not to include serving or former employees of the Employer. Out of this panel, a list of three Conciliators shall be sent to the Contractor who shall choose one of them to act as Conciliator and conduct conciliation proceedings in accordance with "The Arbitration and Conciliation Act, 1996", of India. The party serving notice of dispute on the other party shall also serve such notice on the Conciliator chosen as per this Clause. The Employer at the time of offering the panel of Conciliators to be appointed as Conciliator shall also supply the information with regard to the qualifications of the said Conciliators nominated in the panel along with their professional experience, phone nos. and addresses to the Contractor.  In the event of the Contractor not choosing the Conciliator from the panel furnished by the Employer, within a period of 30 days, the Employer is at liberty to choose and nominate a Conciliator from the same panel and communicate to the Contractor which will be final and binding on the Contractor.

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

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

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

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

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

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

**Termination of Conciliation Proceedings**

17.8 The conciliation proceedings shall be terminated:

- by the signing of the settlement agreement by the Parties on the date of agreement; or
- 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
- 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
- by a written declaration of a Party to the other Party and the Conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration.

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

**Arbitration**

17.9

If the efforts to resolve all or any of the disputes through conciliation fails, then such disputes and differences arising out of in connection with the contract, whether during the progress of the work or after its completion and whether before or after the determination of the contract, shall be referred by the Contractor to the Engineer/Employer and the Engineer/Employer shall on receipt of the Contractor's representation, make and notify decisions on all matters referred to by the Contractor in writing provided that matters for which provision has been made in clauses of the General conditions of contract (clause 17.16 of GCC) or in any clause of the special conditions of contract shall be deemed as "excepted matters" (matters not arbitrable) and decisions of the Engineer/Employer, thereon shall be final and binding on the Contractor; provided further that 'excepted matters' shall stand specifically excluded from the purview of the arbitration clause. All disputes other than excepted matters shall be referred to arbitration in accordance with the following provisions:

- Matters to be arbitrated upon shall be referred to a Sole Arbitrator where the individual claim does not exceed Rs. Five (5) million or the total value of claims does not exceed Rs. Fifteen (15) millions. Beyond the above limit(s), there shall be three Arbitrators. For this purpose the Employer

shall maintain a panel of Arbitrators with the requisite qualifications and professional experience relevant to the field to which the Claims relate. In case of a Sole Arbitrator, the Panel will be of three Arbitrators, out of which the Contractor will choose one. In case three Arbitrators are to be appointed, the Employer will make out a panel of five. The Contractor and the Employer will choose one Arbitrator each from the above and the two so chosen will choose the third Arbitrator from the above Panel only who will act as the 'Presiding arbitrator' of the Arbitration Panel.

If in a dispute, the Contractor fails to choose the Arbitrator within thirty (30) days after the Employer has nominated the Panel, the Employer may apply to the Indian Council of Arbitration, New Delhi, to nominate an Arbitrator from the same panel of Arbitrators given by the Employer for the matter in dispute.

If, in a dispute, the two chosen Arbitrators fail to appoint third Arbitrator within thirty (30) days after they have been appointed, the Employer may apply to the Indian Council of Arbitration, New Delhi, to nominate the third Arbitrator from the same panel of Arbitrators given by the Employer for the matter in dispute.

Neither Party shall be limited in the proceedings before such Arbitrator(s) to the evidence nor did arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the Arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to Arbitrator(s). The arbitration proceedings shall be held in BANGALORE only. The language of proceedings, which of documents and communication shall be English.

- (b) The Employer at the time of offering the panel of Arbitrators to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrators nominated in the panel along with their professional experience, phone nos. and addresses to the Contractor.
- (c) The award of the sole Arbitrator shall be binding on all parties.
- (d) In arbitral proceedings with more than one Arbitrator, any decision of the arbitral tribunal shall be made by a majority of all the members and shall be binding on all parties.

The Venue of Arbitration shall be BMRCL.

<b>Reasoned Award</b>	<b>17.10</b>	The Arbitrator(s) shall always give item-wise and reasoned award(s) irrespective of the value of claim(s) in the dispute in all cases.
<b>Interest on Arbitration Award</b>	<b>17.11</b>	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.
<b>Cost of Arbitration</b>	<b>17.12</b>	The cost of arbitration shall be borne equally by both the Parties. The cost shall, inter alia, include the fees of the Arbitrator(s) fixed by the Employer. All other expenses of respective Arbitrator(s) shall be borne by the concerned parties.
<b>Jurisdiction of Courts</b>	<b>17.13</b>	Where recourse to a Court is to be made in respect of any matter, the court at BANGALORE shall have the exclusive jurisdiction to try all disputes between the parties.
<b>Suspension of Work on Account of Arbitration</b>	<b>17.14</b>	The reference to Conciliation / Arbitration shall proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, Engineer and the Contractor shall not be altered by reasons of arbitration being conducted during the progress of the Works. Neither party shall be entitled to suspend the work or part of the work to which the dispute relates on account of arbitration and payments to the Contractor shall continue to be made in terms of the Contract.
<b>Matters</b>	<b>17.15</b>	If the Contractor (s) does/do not prefer his/ their specific and final claims in

<b>finally determined by the Employer.</b>	writing, within a period of 90 days of receiving the intimation from the Employer that the final bill is ready for payment, he/they will be deemed to have waived his/their claims (s) and the Employer shall be discharged and released of all liabilities under the contract in respect of these claims.
<b>Excepted matters.</b>	<p><b>17.16</b> The following are the list of excepted matters in arbitration.</p> <ul style="list-style-type: none"> <li>a. Assistance by Employer for the Stores to be obtained by the Contractor.</li> <li>b. Illegal Gratification.</li> <li>c. Meaning and intent of specifications and Drawings.</li> <li>d. Rates for extra items of works.</li> <li>e. Signing of "No claim Certificate"</li> <li>f. Measurement of works.</li> <li>g. Provisions of Payment of Wages Act.</li> <li>h. Provisions of Contract labour (Regulation and Abolition) Act, 1970.</li> <li>i. Provisions of Workmen's Compensation Act.</li> <li>j. Provisions of Mines Act.</li> <li>k. Right of Employer to determine the contract</li> <li>l. Payment on determination of contract by Employer.</li> <li>m. Determination of contract owing to default of Contractor as per Clause 13.2.1 of GCC:</li> </ul>
<b>18 Service of Notices</b>	
<b>Notice to Contractor</b>	<p><b>18.1</b> 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.</p> <p>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.</p> <p>c. The Contractor shall furnish to the Employer/Engineer the postal address of his site office. Any notice or instructions to be given to the Contractor under the terms of the contract shall be deemed to have been served on him if it has been delivered to his authorized agent or representative at site or if it has been sent by registered post to the site office, or to the address of the firm last furnished by the Contractor</p>
<b>Notice to Employer and Engineer</b>	<p><b>18.2</b> 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.</p>
<b>Change of Address</b>	<p><b>18.3</b> Parties to the Contract may change the nominated address with a notice to all concerned.</p>
<b>Conflict of Interest</b>	<p><b>19</b> The remuneration of the Tenderer shall constitute the Tenderer's sole remuneration in connection with this Contract or the Services and, the Tenderers shall not accept for their own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations hereunder, and the Tenderers shall use their best efforts to ensure that any Personnel either of them, similarly shall not receive any such additional remuneration</p> <p>Neither the Tenderer nor the Personnel of either of them shall engage, either directly or indirectly, in any of the following activities:</p> <p>(a) During the term of this Contract, any business or professional activities in India which would conflict with the activities assigned to them under this Contract</p> <p>The tenderer shall not be one of the following:</p> <p>(i) A firm which has been engaged by the Employer to provide consulting services for the preparation related to procurement for or implementation of this project.</p> <p>(ii) Any association/affiliation (inclusive of parent firms) of a firm or an organization mentioned in para (i) above.</p> <p>(iii) A Tenderer who lends, or temporarily seconds its personnel to firms</p>

or organizations which were engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.

- (iv) Any firm, either individually or in Joint Venture (JV), submits more than one offer against this tender. The tenders submitted by two different tenderers, having any common participant in JV formation or any common partner in partnership firms, will be treated as having conflict of interest. However this does not limit the inclusion of the same subcontractor in more than one bid.

## 20 Jurisdiction of Court

Any suit or application, arising out of any dispute or differences on account of this contract shall be filed in a competent court at Bangalore, Karnataka only and no other court or any other district of the country shall have any jurisdiction in the matter.

R6 - UG-RT03 / TNL & STN / BMRCL

## TECHNICAL PROPOSAL (VOLUME-1)

### Special conditions of contract (SCC) - Section-F

The following Special Conditions of Contract (SCC) shall supplement and will be in addition to the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions here in (SCC) shall prevail over those in the GCC. Special conditions of contract add, amend, modify or delete clauses contained in the General conditions of contract.

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## Special Conditions of Contract (SCC): Section-F

### GCC

1. **Sub-Clause 4.5 Sub-contractors** The value of a sub-contract, as and when awarded, should be intimated by the Contractor to the Engineer and in any case value should not cross 30% of the Contract Price.
- At the request of the Engineer, a copy of the contract between the Contractor and Sub-Contractor shall be given to the Engineer and the Contractor shall not carry any modification without the consent in writing of the Engineer. The terms and conditions of sub-contracts and the payments that have to be made to the sub-contractors shall be the sole responsibility of the Contractor. Payments to be made to such sub-contractors will be deemed to have been included in the Contract price. It will be obligatory on the part of the Contractor to obtain consent of the Employer to the identity of the sub-contractor. The Employer will give his consent after assessing and satisfying himself of the capability, experience and equipment resources of the sub-contractor. Decision of the Engineer is final and binding in this regard. The Contractor shall provide sufficient superintendence, whether on the site or elsewhere, to ensure that the work to be carried out by a sub-contractor complies with the requirements of the Contract.
- The subcontract works exclusion are supply of building materials like sand, fabrication of steel structures, construction of special structures like high service over head tanks etc. Engineer decision to define whether the party is subcontractor or not is final and binding on the Contractor.
- Employer reserves the right to have access to the agreement/MOU between the contractor and the sub-contractor and demand a copy of the same for records.
- The proposed sub-contract terms and conditions shall impose on the sub-contractor such terms of the Contract as are applicable and appropriate to the part of the Works to be sub-contracted, to enable the Contractor to comply with his obligations under the Contract.
- Notwithstanding any consent to sub-contract given by the Engineer, if in his opinion he considers it necessary, the Engineer shall have full power to order the removal of any sub-contractor from the Site or off-Site place of manufacture or storage, which power shall not be exercised unreasonably.
- “Provided further that in the event of poor/unsatisfactory performance of subcontractor in terms of quality, progress, poor workmanship, adhering to safety norms the Engineer may order for removal of such subcontractor from the site of work. The Contractor shall demobilize/remove such subcontractor within 10 days from the receipt of such instructions from the Engineer”.
2. **Sub-Clauses 4.13 Programmes** The Engineer shall inform the Contractor in writing within 21 days after receipt of the above information;
- (a) That the programme has received his consent; or
  - (b) That the programme is rejected, in which case reasons for such rejection shall be given; or
  - (c) That further information is required to clarify or substantiate the programme or to satisfy the Engineer as to its reasonableness, or
  - (d) That the programme has received his consent subject to

incorporation of comments attached to the Notice of No Objection

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

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

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

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

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

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

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

#### **Design Submission Programme**

The Contractor shall submit to the Engineer, the Design Submission Programme and updated versions thereof in the form and content and at the times prescribed in the Employer's Requirements – Design, including the dates on which major decisions should be made.

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

- a) revise the description or content of any design package (as referred to in the Employer's Requirements - Design) identified in the initial version of Design Submission Programme;
- b) reduce the periods provided for review by the Engineer of any submission of Design Data as set out in the initial version of the

Design Submission Programme;

(c) revise the sequence of submissions of Design Data shown in the initial version of the Design Submission Programme.

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

#### **Three Month Rolling Programme**

Within 30 days of the date of Letter of acceptance, and thereafter at the end of each calendar month, the Contractor shall submit to the Engineer his Three Month Rolling Programme for each agreed major section of Works in the Contract, in the form and detail prescribed in the Employer's Requirements, setting out the work to be carried out during the following three months.

3      **Sub-Clauses  
4.16 and 6.7  
Safety of Works,  
Health and Safety**

Within 8 weeks of receipt of letter of acceptance, the Contractor shall submit a detailed and comprehensive contract-specific Site Safety Plan based on the Employer's Safety, Health and Environmental Manual (SHE Manual). The Contractor is required to make himself aware of all the requirements of the Employer's Safety, Health and Environmental Manual in this regard and comply with them. The Site Safety Plan shall include detailed policies, procedures and regulations which, when implemented, will ensure compliance with Sub-Clauses 4.16 and 6.7 of General Conditions of Contract and SHE Manual (Vol-4).

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

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

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

The Contractor shall adhere to the Site Safety Plan and shall ensure that all sub-contractors of all tiers have a copy of the Site Safety Plan and comply with its provisions.

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

The contractor shall have full regard for the safety of works (till it is handed over to the Employer), adjoining properties and all persons on/ or in the vicinity of the site (including without limiting to the persons to whom the access has been allowed by the contractor), existing utilities etc. and comply with all the relevant safety regulations as appropriate or as directed by Engineer.

He shall be responsible for accidents, injury, damage to properties, loss of life / time etc. whatsoever may be the cause in connection with or as a result of execution of the work until they are taken over by the Employer even though all reasonable and proper precautions may have been taken by him. Such cost, loss or damage or compensation (including that payable under the provisions of Workmen's Compensation Act or any statutory amendment thereof) to any person or persons including third party sustaining damage as omission on part of the contractor is to be borne by the contractor and he shall keep the Employer / Engineer indemnified against the same.

The Contractor shall notify the Engineer immediately of any occurrence or incident that results in death or serious injury as defined in the Indian Penal Code. Such initial notification may be verbal and confirmed in writing thereafter and shall be followed by a comprehensive written report within 24 hours of the occurrence/incident. The Contractor shall duly complete standard forms as required by the Engineer and Statutory Authorities.

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

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

#### **First aid Base**

The Contractor shall provide a First Aid Base at his principal Works Area/ Construction Depot, suitable medical facilities for Workmen's Camps, suitable and sufficient first aid boxes at worksites for the Contractor's workforce and his Sub-contractors' workforce as further described in the Employer's Requirements.

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| <b>4</b> | <b>Sub-Clause</b><br><b>Protection of</b><br><b>the Environment</b> | <b>4.17</b> Outline Environmental Plan means the environmental plan forming part of the Tender, setting out, in summary form, the Contractor's proposed means of complying with his obligations in relation to environmental quality. Site Environmental Plan means the site environmental plan including all supplements thereto, or any amended or varied version thereof, as submitted by the Contractor in accordance with Employer's Safety, Health and Environmental Manual (SHE Manual), this Clause and which has received the Engineer's consent. The Site Environmental Plan shall include detailed policies, procedures and regulations which, when implemented, will ensure compliance with this Clause. The Contractor is required to make himself aware of all the requirements of the Employer's SHE Manual in this regard and comply with them.<br><br>Within 8 weeks of the receipt of Letter of acceptance, the Contractor shall submit a detailed and comprehensive Site Environmental Plan based on the Employer's Safety, Health and Environmental Manual (SHE Manual), and shall include such further material, which the Contractor considers necessary and relevant.<br><br>Upon the Engineer notifying his consent to the Site Environmental Plan, or any supplemental part thereof, the Contractor shall adhere to |
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the principles and procedures contained in such document save to the extent that the Engineer may give his consent to any amended or varied version thereof.

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

**5. Sub-Clause 5.3  
Construction and/or  
Manufacture  
Documents**

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

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

Following receipt of a submission of Design Data the Engineer shall, within 28 days, return one copy of the Design Data to the Contractor, together with either a Notice of No Objection, or a statement of objections which shall identify the aspects of the Design Data which do not conform to the above requirements. If the Engineer returns any Design Data with a Notice of No Objection, the Contractor shall proceed with the Works in accordance with the Contract.

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

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

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

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

**6 Sub-Clause-11.1  
The Contract Price**

**Price Variation**

The rates and price as per pricing document shall be applicable till the completion of the work and will be varied only to the extent of permissible price variation under this clause. However, this adjustment shall be to the extent that full compensation for any rise or fall in costs to the contractor is not covered by the price variation formula, the rates and price in the pricing document shall be deemed to include amounts to cover the contingency of such rise or fall of costs.

Contract price shall be adjusted for increase or decrease in rates and prices of components like labour, Fuel & lubricants, Plant machinery & spares, steel and cement in accordance with the following principles and procedures and as per formula given under:

$$V=VL +VF+VP+VS+VC \text{ Where}$$

V = Total adjustment on account of all components.

VL = Adjustment on account of labour component.

VF = Adjustment on account of High speed diesel component.

VP = Adjustment on account of Plant, machinery and spares.

VS = Adjustment on account of steel component.

VC = Adjustment on account of cement component.

Fixed cost co-efficient to total cost = 0.15

- a) The price adjustment shall be determined during each month from the formula given above
- b) To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other Clauses in the Contract, the unit rates included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.
- c) R= Gross value of the work done by the Contractor for the month of work under consideration, after excluding there from the cost of any materials supplied free or at fixed rate to the Contractor as also any specific payments to be made to the Consultants engaged by the Contractor, which shall be indicated in the Contractor's offer letter.

#### **Adjustment for labour Component:**

Price adjustment for increase or decrease in the cost due to labour shall be paid in accordance with following formula. (Base: 2001=100).

$$VL= R \times PL \times [(Li - Lo)/Lo] \text{ Where}$$

VL= Increase or decrease in the cost of work during the month under consideration due to change in rates for local labour

Lo =. The average consumer price index for industrial workers for Bangalore Centre as applicable for the month of submission of the tender as published by Labour Bureau, Ministry of Labour, GOI.

Li = The average consumer price index for industrial workers for Bangalore Centre during the 'month under consideration' as published by Labour Bureau, Ministry of Labour, GOI.

PL (cost co-efficient of labour to the total cost) = 0.22

#### **Adjustment for High Speed Diesel component:**

Price adjustment for increase or decrease in the cost of High Speed Diesel component shall be paid in accordance with following formula (Base: 2011-12=100).

**VF = R X PF x [(Fi - Fo)/Fo]** where

VF = Increase or decrease in the cost of work during the month under consideration due to change in rates for High Speed Diesel components.

Fo = The all India average wholesale price index for High Speed Diesel component as applicable for the month of submission of the tender as published by Office of the Economic Adviser.

Fi = The all India average wholesale price index for High Speed Diesel component for the 'month under consideration' as published by Office of the Economic Adviser.

PF (cost co-efficient of fuel and lubricants to the total cost) = 0.05

#### **Adjustment on account of Plant, machinery and spares:**

Price adjustment for increase or decrease in the cost of plant, machinery and spares component shall be paid in accordance with following formula (Base: 2011-12=100).

**VP = R X PP x [(Pi - Po)/Po]** where

VP = Increase or decrease in the cost of work during the month under consideration due to change in rates for plant, machinery and spares components.

Po = the wholesale price index for **manufacture of machinery for mining, quarrying and construction** as applicable for the month of submission of the tender as published by Office of the Economic Adviser.

Pi = the wholesale price index for **manufacture of machinery for mining, quarrying and construction** during the month preceding the 'month under consideration' as published by Office of the Economic Adviser.

PP (cost co-efficient of Plant, machinery and spares to the total cost) = 0.18

#### **Adjustment on account of steel component:**

Price adjustment for increase or decrease in the cost of Steel shall be paid in accordance with following formula. (Base: 2011-12=100)

**VS = R X PS x [(Si - So)/So]** where

VS= Increase or decrease in the cost of work during the month under consideration due to change in rates for Structural Steel / TMT rebars / MS Steel / Pre-stressing strands.

So = the all India average wholesale price index for **Mild Steel – Long products** as applicable for the month of submission of the tender as published by Office of the Economic Adviser.

Si = the all India average wholesale price index for **Mild Steel – Long**

**products** for the month preceding the ‘month under consideration’ as published by Office of the Economic Adviser.

PS (cost co-efficient of steel to the total cost) =0.25

#### **Adjustment on account of cement component:**

Price adjustment for increase or decrease in the cost of cement shall be paid in accordance with following formula. (Base: 2011-12=100)

$$\text{VC} = R \times PC \times [(Ci - Co)/Co] \text{ where}$$

VC= Increase or decrease in the cost of work during the month under consideration due to change in rates for cement component.

Co = The all India average wholesale price index for **Ordinary Portland Cement** as applicable for the month of submission of the tender as published by Office of the Economic Adviser.

Ci = The all India average wholesale price index for **Ordinary Portland Cement** for the month preceding the ‘month under consideration’ as published by Office of the Economic Adviser.

PC (cost co-efficient of Cement to the total cost) = 0.15

Period of Work under consideration will mean as under:

In the case of first Bill, the period from the date of signing of agreement to the date of measurement of the first bill.

In the case of second and subsequent and final bills, the Period from the date of measurement for previous bill to the date of measurement of that bill.

Responsibility of arranging the Price indices from the Office of the Economic Adviser/ Labour Bureau (Ministry of Labour, GOI) etc, as desired by the Employer or the Engineer shall rest with the Contractor.

In case, Office of the Economic Adviser stops publishing the Price indices, then Price indices of any other Government Publications shall be considered.

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

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

#### **Adjustment on Account of Price Variation:**

in which case extra amount shall be paid to the Contractor), or negative (in which case the amount of Price Variation shall be recovered from the Contractor). Adjustment on account of Price Variation shall be calculated monthly and price bills to be submitted once in three months.

After verifying the Price variation bill, the Engineer shall certify the adjustment amount and advise the same to the Employer along with

the Payment. Should any extra amount be due to Contractor, the Employer shall pay the same as far as possible within 28 days of certification by Engineer.

Any amount due from Contractor on account of negative adjustment shall be recovered from his pending or other bills at the earliest.

#### **Price Variation during Extended Period of Completion:**

The price adjustment shall apply for the work done from the "date of signing of the 'Contract Agreement" up to the end of original period of completion or extensions of time granted by the Employer as per the clause 8.4.1 of General condition of contract. When extension of time is granted as per clause 8.4.3. of GCC, price variation indices will be frozen and price adjustment amount will be paid as per frozen indices. However, if the indices are lower than the frozen indices, the lower indices will be considered for price variation

#### **Price Variations for Extra/Varied Item/New Item:**

If the rate of the proposed new item is derived from BOQ/ KPWD/NH/BWSSB/BESCOM SRs 2016-17, the price variation will be applicable only up to the date of proposal of the new item. No further price variation will be granted. In case the rates are derived based on market rates, price variation will not be applicable.

#### **7. Sub-Clause 11.2.1**

##### **Mobilization advance.**

Mobilizations Advance is a need based advance and Payment shall be made upto 5 % of the Contract Price on submission of BGs. The advance will carry a simple interest of SBI MCLR+2% per annum. The following shall be calculated on the first day of every month separately:

- (a) Amounts of mobilization advance outstanding on the last day of the preceding month;
- (b) Amounts of interest remaining to be recovered on the last day of the preceding month.

The Mobilization advance will become payable on signing of Contract agreement based on the Contractor's request for the following activities:

1. Setting up of casting yard, laboratory.
2. Transportation charges and the refurbishing charges of old plant and equipment.
3. Purchase of new plant and machineries not covered by advance against Plant and Machinery.
4. Setting up of office and other establishments.
5. Shuttering materials.

The contractor is to utilise the advance payment only to pay for Mobilization expenses required specifically for execution of the works. The contractor shall demonstrate that advance payment has been used by submitting copies of invoices and other documents to the Employer.

The contractor shall draw the Mobilization advance latest by the end of 20% of contract period.

Mobilisation Advance will be paid against submission of Bank Guarantees for 112% of advance value requested. This BG is to be given by a sole contractor or each member of the JV in proportion to their participation (in case of JVs) as per format given in schedule to SCC from an Indian Schedule bank (excluding Cooperative Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act

1934 read with Second Schedule. All Bank Guarantees should be payable in Bangalore at the designated Branch.

The Mobilisation Advance shall be paid within 30 days of receipt of the Contractor's written request and upon submission of equivalent irrevocable Bank Guarantees.

The contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid.

Wherever Bank Guarantee or any other instrument is to be extended or fresh BG to be obtained, the cost towards getting extension of BG or fresh BG and other incidental charges will be on contractor's account.

**8. Sub Clause 11.2.2  
Advance for Plant & Machineries.**

This advance is payable against plant, equipment and machinery, required for the work. The plant and machinery shall be valued by the Engineer and the advance will be as follows:

- a. New items: 80% of purchase price on submission of firm purchase order and proforma invoices or equivalent as submitted by the manufacturer.
- b. Used TBM: 80% of the depreciated value as assessed by the approved Registered valuer. The TBM should be in working order and advance will be payable on reaching the site. Cost of valuation shall be borne by the contractor.

Items valued at less than Rs 10,000,000 (Rs Ten million) per unit will not be considered for advance payment.

For imported plant and equipment, advance will be payable in Indian currency equivalent to selling rate of exchange at the close of business of the State Bank of India as per the date mentioned in the proforma invoices or equivalent.

The **total advance for Plant and Machinery shall be limited to 10%** of the Contract Price and will carry a simple interest of **SBI MCLR+2% per annum.**

The Advance will be paid against submission of Bank Guarantees for 112% of value of that instalment. This BG is to be given by a sole contractor or each member of the JV in proportion to their participation (in case of JVs) as per format given in schedule to SCC from an Indian Schedule bank (excluding Cooperative Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule. All Bank Guarantees should be payable in Bangalore at the designated Branch.

The contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid.

Wherever Bank Guarantee is to be extended or fresh BG to be obtained, the cost towards getting extension of BG or fresh BG and other incidental charges will be on contractor's account.

The following shall be calculated on the first day of every month separately:

(a) Amounts of advance outstanding on the last day of the preceding month;

(b) Amounts of interest remaining to be recovered on the last day of the preceding month.

The contractor shall submit along with Bank Guarantees an Indemnity bond in favour of an Employer as against Third Party claim.

<b>9</b>	<b>Sub-Clause 11.2.4 Special/Acceleration Advance</b>	<p>The Special/Acceleration Advance shall be paid on request of the Contractor. Employer at his sole discretion, may provide Special/Acceleration Advance based on the recommendation of the Engineer to expedite works or to bring forward the completion date(s) and on account of immediate additional mobilisation to complete balance works as targeted, the Employer may grant 'Special/Acceleration Advance' to the contractor.</p> <p>The maximum cumulative Special/Acceleration Advance shall be 5% of the contract price, which shall be released in stages as and when deemed appropriate as decided by the Engineer/Employer.</p> <p>The Special/Acceleration Advance shall carry interest at SBI MCLR+2% per annum, provided further that if the contractor does not accelerate even after getting the advance and does not fulfil the commitments regarding work, then the interest shall be levied @ 18% per annum on the balance amount to be recovered against the Special/Acceleration advance, from the date of communication to the contractor by the Engineer/Employer.</p> <p>The Special/Acceleration Advance Payment shall be paid in Indian Rupees.</p> <p>This Advance will be paid against submission of Bank Guarantees for 112% of value of that instalment. This BG is to be given by a sole contractor or each member of the JV in proportion to their participation (in case of JVs) as per format given in schedule to SCC from an Indian Schedule bank (excluding Cooperative Banks) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 read with Second Schedule. All Bank Guarantees should be payable in Bangalore at the designated Branch.</p> <p>Wherever Bank Guarantee or any other instrument is to be extended or fresh BG to be obtained, the cost towards getting extension of BG or fresh BG and other incidental charges will be on contractor's account.</p>
<b>10</b>	<b>Sub-Clause 11.2.5 Recovery of Advances</b>	<p><b>Mobilization Advance, Advance against Plant &amp; Machinery and Special Advance.</b></p> <p>The recovery of advances will be made from IPCs. The contractor will propose the schedule of recovery of advance (only principal amount) while seeking advance. Accordingly, the recoveries will be effected. The interest element will be recovered from the succeeding IPCs after payment of advance. No amount of advance should be outstanding against contractor at the time of issue of Last Taking over certificate. In case of any outstanding advances at the time of issue of Last Taking over certificate, the BGs will be encashed.</p> <p>The contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid.</p>
<b>11.</b>	<b>Sub-Clause 11.3 &amp; 11.4</b>	<p>For tunneling work, stations temporary &amp; structural work, launching shaft temporary work, ramp temporary work and Cut &amp; cover tunnel temporary work for the purpose of on-account payment, the contractor shall submit detailed statement of payment due to him along with the supporting documents.</p> <p>For station architectural work for the purpose of on-account payment the contractor shall submit detailed measurements recorded in Measurement sheets, Abstract sheets along with recorded bill for the</p>

item actually executed including soft copy of the same for checking and payment. Payment will be effected based on unit rates as approved in the Bill of Quantities subject to fulfillment of the other conditions of the Contract. The method of measurements has been provided in the outline construction specification

The contractor shall submit certified copies of vouchers showing quantity of cement and steel brought at site for Engineer's record. The Engineer may exclude any item certified in any previous interim payments or reduce the proportion of any item previously certified in any of the interim payments in light of any information provided at a later stage.

(a) The Engineer shall, within 4 days of receiving a statement and supporting documents, deliver to the Employer, with a copy to the Contractor, certificate for adhoc payment of 80% of bill value. Further, 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 balance amount (i.e. 20%) which the Engineer considers to be due.

(b) After scrutiny and certification by the Engineer for payment of 80% of bill value, the Employer within 04 working days shall make the payment for the certified value. The balance amount (if any), will be paid within 12 working days from the date of submission of Interim Payment Certificate by the Engineer for the balance amount after carrying out detailed checks.

(c) The Price variation bill to be segregated. The contractor is required to submit Price variation bills quarterly. The employer reserves the right to adjust the Price Variation claim for any advances/financial assistance provided to the contractor. The Price Variation bills will be processed separately and payment shall be released only after detailed check.

No Price variation shall be allowed for items quoted in Indian Rupees for items to be supplied from within India as per contract and later on allowed to be imported.

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

(e) All payments to the Contractor for the Rupee portion shall be made by RTGS/crossed cheque. No cheque will be issued for an amount of less than Rs. 1000/- This shall not apply to the final payment.

(f) In the IPC, the contractor should certify that the amount received through IPC No. \_\_\_\_\_ for a value of Rs. \_\_\_\_\_ has not been diverted to other projects and the funds are fully utilised for execution of the subject contract. The copies of the supporting vouchers of the disbursement made by the Contractor should also be attached with the IPC.

(g) In case the contractor diverts the funds from this work to other projects resulting in poor progress/mobilization of resources at work site, then the employer is at liberty to either have the jointly managed account or monitoring mechanism for contractor's Bank account.)

(h) For payment of the contractor's bills and such other payment releases, BMRCL, at its discretion, may adopt ESCROW mechanism of accounts, which shall be binding on the contractor.

- (i) The Bank Guarantees to be submitted by contractors. The Bank Guarantees of subcontractors are not acceptable.

11.1

**Incorrect Measurements and Billing.**

In the event of Contractor submitting incorrect measurements or bill for the first time, the Engineer will issue a written warning to him to the effect that the facility of 80% payment without detailed check will be withdrawn in future. If the contractor repeats the same, this 80% payment facility may be completely withdrawn in respect of this contract with BMRCL.

In addition, a penalty of Rupees one lakh shall be imposed for submission of the incorrect bill.

11.2

**"On-Accounts" Payments not prejudicial to final settlement.**

"On-Accounts" Payments made to the Contractor shall be without prejudice to the final making up of the accounts (except where measurements are specifically noted in the Measurement Book as "Final Measurement" and as such have signed by the Contractor) and shall in no respect be considered or used as evidence of any facts stated in or to be inferred from such accounts nor of any particular quantity/quality of work having been executed nor the manner of its execution being satisfactory.

11.3

It is an agreed term of contract that the Employer reserves to itself the right to carry out a post-Payment audit and or technical examination of the works and the final bill, including all supporting vouchers, abstract, 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 overpayment to him is discovered to have been made in respect of any work done or alleged to have been done by him under contract.

11.4

**Withholding and lien in respect of sums claimed.**

Whenever any claim or claims for payment of a sum of money arise out of or under the contract against the Contractor, the Employer shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the Contractor and for the purpose aforesaid, the EMPLOYER shall be entitled to withhold the said Security Deposit or the security, if any, furnished as the case may be also have a lien over the same pending finalisation or adjudication of any such claim. In the event of security being insufficient to cover the claimed amount or amounts or if no security has been taken from the Contractor, the Employer shall be entitled to withhold and have a lien to the extent of such claimed amount or amounts referred to supra, from any sum or sums found payable or which at any time thereafter may become payable to the Contractor under the same contract or any other contract with the Employer or any Department of the Central and State Government pending finalisation or adjudication of any such claim. It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above, by the Employer will be kept withheld or retained as such by the Employer till the claim arising out of or under the contract is determined by the arbitrator ( if the contract is governed by the arbitration clause) or by the competent court as the case may be and that the Contractor will have no claim for interest or damage

whatsoever on any account in respect of such withholding or retention under the lien referred to Supra and duly notified as such to the Contractor. For the purpose of this clause, where the Contractor is a partnership firm or a limited company, the Employer shall be entitled to withhold and also have a lien to retain towards such claimed amount or amounts in whole or in part from any sum found payable to any partner limited company, as the case may be whether in his individual capacity or otherwise.

Amount due for recovery on account of hire charges of Employer's Machinery and other facilities (if provided) as also for other services and electricity charges and expenditure, if any, incurred by the Employer on Contractor's behalf on labour, materials and equipment which may become due from the Contractor as per terms of this contract as well as under any other prevailing laws will be recovered from the payments to the Contractor as and when due.

## **12. Sub-Clauses12.3**

### **Employer's Variation and Variation Procedure**

"Employer's Variation" means a change in the Employer's Requirements which makes necessary alteration or modification of the Design, quality or scope of Works as described by or referred to in the Employer's Requirements.

Variation in quantities for tunnelling works (Schedule A of Pricing document) as mentioned in APPROVED PAYMENT SCHEDULE will be compared with actual quantities during execution. The Contractor shall be bound to carry out such changes. In case of any increase in quantities, payment will be made based on the percentage in APPROVED PAYMENT SCHEDULE for that item proportionately. If increase in quantity is due to change affected by the contractor for his convenience, such variations will not be paid. Amount towards decrease in quantity due to any reason will be deducted accordingly.

Any change made for station structural works (Schedule B of Pricing Document) after approval of Design will constitute Employer's variation. The Contractor shall be bound to carry out such changes. The payment for the same will be made as per the percentage in the APPROVED PAYMENT SCHEDULE. For this purpose, the percentage in the APPROVED PAYMENT SCHEDULE will be considered on pro-rata basis after deducing quantities from approved drawings.

Changes to any sequence, method or timing of construction, manufacture, testing and Commissioning including Integrated Testing and Commissioning and changes to any part of the Site or the work area or access thereto will not constitute Employer's Variation.

An Employer's Variation shall be requested and implemented in accordance with and subject to the following provisions:

- (a) within 14 days (or such other period as the Engineer may allow) of the request for an Employer's Variation, the Contractor shall notify the Engineer in writing whether in his opinion the Employer's Variation would, if ordered:
  - (i) give rise to any entitlement to an extension of time; or
  - (ii) affect the achievement of any Key date; or
  - (iii) give rise to any entitlement to additional payment; or
  - (iv) affect the warranties of the Contractor set out in GCC Clause 4.2

and shall submit his proposals as to the terms upon which he would agree to implement the Employer's Variation. The

contractor shall furnish sufficient information in terms of rates/prices of the equipment/components manufactured by the Contractor or sourced from the Vendors/Sub-contractors such as: estimated man-hours, man-hours rates for manufactured items, design costs, basic rate of materials, sub-assemblies, taxes, duties, overheads & profits and inflation rate, so as to establish the reasonableness of the variation price.

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

In the event of the Engineer and the Contractor failing to reach agreement on the revisions to be made to the schedules in pricing documents the Engineer shall, with the approval of the Employer, determine the amount which should be added or deducted from the relevant schedules amount which shall be binding on the Contractor. In case the Contractor supplies part/incomplete information or refuses to supply the required information, the Employer shall determine the cost of Variation based on the information available to him from any sources which in his judgment can be used to determine the case. The Contractor will proceed with the Work on this basis but may submit his Claim if necessary.

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

- c) If the Engineer withdraws the request for an Employer variation, the contractor shall have no claim of any kind whatsoever arising out of or in connection with any of the proposal made or any failure to reach agreement in case the Employer's variation involves omission of part of the works the agreement shall address the issue of reduction in the Contract Price.

## 12.1

### **Variation in Quantity of Items Covered by the Bill of Quantities**

#### **(For stations architectural works only)**

The quantities of items shown in the Bill of Quantities are approximate, and liable to vary during the actual execution of the Work. The Contractor shall be bound to carry out and complete the stipulated work, irrespective of the variations in individual items specified in the Bill of Quantities. The Employer does not guarantee work also under each item of Bill of Quantities (BOQ).

### 12.1.1

Such variations in quantities as spelt out in 12.1 above shall be paid for in the manner laid down below:

- a) At the accepted rates of the Contract for up to a variation of Quantity of an Item to the extent of 25% on either side i.e., increase/decrease, except in the case of Foundation works.

b) The Contractor shall be bound to notify the Engineer at least 7 days before the necessity arises for the execution of quantities of any items.

c) If the variation is more than 25% the rate for that individual item shall be negotiated between the Engineer and the Contractor and mutually agreed rates arrived at in accordance with the clause SCC 12.2.2. Till such time, the rates are negotiated and approved, Payment for Work done shall be made only with the accepted rates of the contract. Provided that,

The limit of ±25% variation shall not apply to items individually costing up to or less than 1% of the value of the original contract price. All variations under such items, shall be payable at the accepted rates of the Contract, limited to an overall value of 2% of the Original contract value, for each such item i.e., any Variation of quantity shall be allowed for such Item until its Value becomes 2% of Original Contract Value, the rate for such item shall be negotiated between the Engineer and the Contractor and mutually agreed rates arrived at in accordance with the clause SCC 11.2.2.

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

#### **12.1.2**

In case mutually agreed rate between the Engineer and the contractor is not arrived at, and If the Engineer or the Employer so directs, the Contractor shall be bound to carry out any such variation in quantities more than 25% of the original quantities, 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 disputes under Relevant Clause.

### **12.2 Extra Items**

#### **12.2.1**

##### **Operation of extra items of work**

In case any extra item of work as ordered by Engineer is to be operated, the Contractor on receipt of instructions from the Engineer, shall be bound to carry out such works.

#### **12.2.2**

##### **Derivation of rates for extra/new items of work.**

The contractor may within 15 days of receipt of order or occurrence of the item(s) claim rates, supported by proper analysis, for the work and the Engineer shall within 30 days of receipt of the claims/rates submitted by the contractor shall determine the rates on the following basis:

(i) If the item is available in KPWD/NH/BWSSB/BESCOM SRs 2016-17, then with the accepted Tender premium for that particular schedule of BOQ, the rate will be calculated.

(ii) If not available in KPWD/NH/BWSSB/BESCOM SRs 2016-17, then the rate of such items will be derived wherever possible from rates of similar items available in BOQ of the accepted tender.

(iii) In case derivation of rates in above two methods is not possible, the same will be derived from rate analysis with market rates as below:

a. Cost of material at current market rates, as actually utilized in the final finished permanent work, including a reasonable percentage for

- wastage and transportation but excluding GST if applicable.
- b. Cost of temporary works if any (unless provided for separately) worked out on the above basis but with relaxed specifications minus salvage value of serviceable material released after completion of work and cost of material released as scrap.
  - c. Cost of labour actually used at the site of work at the rates under payment of Minimum Wages Act for the area of work for each category of worker, further enhanced by a percentage of 30% of the aforesaid rates to account for labour not directly utilized at site and other ancillary and incidental expenses on labour.
  - d. Hire charges for plant and machinery, scaffolding, shuttering, forms, etc, required to be used at the site of the work. The tools used by various trades shall not be counted as plant and machinery for this purpose.
  - e. An amount of 20% of items (a), (b), (c) and (d) of above to allow for contractor overheads, taxes and profits. This percentage shall also apply to estimated cost of materials supplied free to the contractor.

If the rate of the proposed new item is derived from KPWD/NH/BWSSB/BESCOM SRs 2016-17/BOQ, the price variation will be applicable only up to the date of proposal of the new item. No further price variation will be granted. In case the rates are derived based on market rates, price variation will not be applicable.

#### **Notice by Contractor**

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.

Such a notice shall not, however, be necessary if the Engineer has already instructed in writing to take up such an item of work. To decide the rate, the Engineer may ask the Contractor to furnish detailed analysis of the new rates on the lines mentioned in Sub-clause 12.2.2 above and / or attend a meeting with him to settle the rate. The Contractor shall be bound to furnish the requisite details and / or attend the meeting.

**13. Sub-Clause 4.15  
Payment for  
Abnormal  
Consumption of  
Cutter Discs**

**13.1**

The Geotechnical data available with BMRCL will be shared along with the Tender Document. Immediately after award of work, the contractor shall calculate the expected/anticipated consumption of cutter disc (X) utilizing the above geotechnical data and based on internationally accepted guidelines or literatures, Refer to Appendix-48 for details. This calculation shall be done considering the expected variations in soil/rock profile based on the Geo tech report including anticipated faults, shear zones, discontinuities, silicification zones, dykes etc. and vertical profile provided along with the tender documents for verification and approval of BMRCL.

**13.2**

During execution of the tunneling work, 'Cutter Disc' consumption (Y) shall be recalculated utilizing the recorded geo-tech data of the

- encountered soil/rock profile and adopting the same method that was used for calculating the anticipated 'Cutter Disc' consumption (X). The actual consumption of cutter disc (Z) shall also be recorded.
- 13.3**
- Lower of the two i.e. X or Y will be used for calculation of compensation.
- 13.5**
- The Theoretical consumption of 'Cutter Discs' calculated (X) plus +25%, is deemed to be included in the amount quoted in the tender.
- 13.6**
- If the actual consumption of 'Cutter Disc' (Z) exceeds the theoretical consumption (X) plus 25% (X+25%), then the excess cutter disc consumed will be paid separately by BMRCL subject to the following:

- i) It should be validated by calculation of 'Cutter Disc' consumption based on the actual parameters met with during tunneling using the method followed during submission of tender. BMRCL's decision is final in accepting all the parameters and assumptions made in the calculations.
- ii) Payment for Abnormal Consumption of 'Cutter Discs' will be made as per the following method.

**a. Calculation for arriving at number of payable discs due to abnormal consumption:**

1. No. of cutter disc calculated as per geotechnical report attached with Tender = X
2. Theoretical 'Cutter Disc' likely to be consumed based on encountered geotechnical & Geological profile met during tunneling = Y
3. Actual no. of cutter discs consumed = Z
4. Lower of the two data i.e.: Y & Z will be used for calculation of compensation. (Say, if 'Y' is lower than 'Z' then 'Y' will be used and considered for compensation and vice versa)
5. No. of 'Cutter Disc' due for payment = (Y or Z) – 1.25X

**b. Calculation for arriving at payment towards consumption of excess cutter discs:**

1. Each cutter ring in the single disc assembly will be considered as one 'Cutter Disc'
2. Two rings in double disc assembly will be considered as one 'Cutter Disc'
3. Each full disc assembly (single disc assembly or double disc assembly) will be considered as three 'Cutter Discs'
4. Cost of each 'Cutter Disc' will be considered as Rs. 1,00,000.00 (Indian Rupees one lakh only)
5. Payment due towards abnormal consumption of 'Cutter Disc' = (No. of 'Cutter Disc' due for payment) X Rupees 1,00,000.00.
6. Total payment towards abnormal consumption of cutter discs will be restricted to 3.0% (Three percent) of the cost shown in schedule 'A' of **summary of payment schedule** adjusted with quoted premium.

**TECHNICAL PROPOSAL -Volume-1****SCHEDULES TO SPECIAL CONDITIONS OF CONTRACT: SECTION-G**

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**Note: - The Schedules as above may be modified as considered necessary at the time of finalization of the contract.**

**SCHEDULE-1****CONTRACT AGREEMENT**

**This Contract Agreement** (hereinafter called the "Contract") is made at Bangalore on .....day of .....by and between:

Bangalore Metro Rail Corporation Limited, a company incorporated under companies act 1956 represented by the Managing Director, with office located at III Floor, BMTC Complex, K.H.Road, Shantinagar, Bangalore 560 027, hereinafter referred to as the "BMRCL" or the "Employer", as the case may be, which expression shall unless excluded by or repugnant to the context or meaning thereof be deemed to include its successors and assigns of the one part, and;

..... [Note 1] comprising:

a) ..... , a company registered and existing under the laws of ..... , with head office located at ..... , represented by

Mr. ..... and Mr. ..... authorised to sign and bind the company, under the Power of Attorney dated..... and the Board Resolution dated..... [Note 5]

b) ..... , a company registered and existing under the laws of ..... , with head office located at ..... represented by Mr. ..... and Mr. ..... authorised to sign and bind the company, under the Power of Attorney dated..... and the Board Resolution dated..... [Note 5]

Mr. ..... and Mr. ..... authorised to sign and bind the company, under the Power of Attorney dated..... and the Board Resolution dated..... [Note 5]

[Note 2] who each of which shall be jointly and severally responsible to the Employer under the Contract for the Bangalore Metro Rail Project as per conditions agreed to by the Employer;

Hereinafter [Note 3] collectively referred to as the "Contractor" of the other part.

WHEREAS the Contractor has established a .....[Note 4] in accordance with Indian law and offered a tender for the construction of a rail based mass rapid transport system by execution and completion, and remedying any defects in the Works of: "**Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.**"

**BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018** and agrees to undertake performance of the Work under the terms and conditions set forth in this Contract.

WHEREAS the Employer agrees to hire and the Contractor agrees to be hired to implement the: "**Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.**"

**Ref: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018**

Under the terms and conditions specified in this Contract Agreement and the other Contract Documents.

Now THEREFORE the parties hereby agree as follows:

### **Clause 1 Words and Expression**

In this Contract all the words and expressions shall have the same meanings as are respectively assigned to them in the conditions of contract hereinafter referred to,

### **Clause 2 the Contract Documents,**

The following shall deem to form and be read and construed as a part of the agreement:

1. Contract Agreement.
2. Letter of Acceptance.
3. Clarifications, Addenda, Corrigenda Issued to Tender document.
4. Pricing Document
5. Special Conditions of Contract
6. Special Conditions of Contract – Schedules
7. General Conditions of Contract
8. Outline design specification
9. Outline construction specification
10. Employer's Requirement
11. Any other document forming part of the Contract

In case of any ambiguity within a particular document above, then the Engineer decision will be final and binding.

All of the foregoing documents, together with this Contract Agreement, referred to herein as the Contract. Also incorporated into the Contract, and made part hereof, are all Standard codes, specifications of MORTH/CPWD/KPWD/IRS as applicable, and similar requirements that are referred to therein. The 'priority of documents' will be as given in clause 1.5 of GCC.

### **Clause 3 Obligations of the Contractor:**

The mutual rights and Obligations of the Employer and the Contractor shall be as set forth in the contract and in particular:-

The Contractor agrees, subject to the terms and conditions of the Contract, to perform efficiently and faithfully all of the work of "**Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.**" Ref: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated **26-06-2018** and other facilities requisite for or incidental to the successful completion of the Works and in carrying out all duties and obligations imposed by the Contract.

The Contractor shall remedy, at no extra cost to the Employer, the defect or failure (fair wear and tear excluded) after any part of the Work are taken over by the Employer until the end of Defects Liability Period.

The Contractor shall also remedy, at no extra cost to the Employer, the defect or failure of equipment provided in the Works and any defects in materials supplied and workmanship up to end of warranty period.

### **Clause 4 Obligations of the Employer:**

The Employer agrees, subject to the terms and conditions of the Contract, to pay the Contractor the amount specified, and at the rates and terms and in the manner set forth in the Contract.

**Clause 5 Contract Price:**

Employer agrees to pay the Contractor total amount mentioned below (hereinafter called 'the Contract Price') and the Contractor agrees to accept the total amount mentioned below for the execution, completion, maintenance and guarantee for the works carried out by him as part of his obligations, responsibilities and liabilities under and according to the provisions and obligations imposed on him by the Contract.

(i) Indian Rupees.....(.....) Rs.) and GST as applicable

The contract price mentioned above will be increased or decreased during the period of performance of the contract as specifically provided, if any, in the General or Special Conditions of Contract and no additional amount for any other account whatsoever shall be payable to the Contractor.

**Clause 6 Completion Time:**

The Contractor shall complete whole of the Works within.....(.....) months from the Commencement Date (date of signing the 'Contract Agreement'). The Defect Liability Period is 12 months from the date mentioned in the Final Taking over Certificate for whole of the Works.

**Clause 7 Integration**

The Employer and the Contractor agree that this Contract Agreement, together with the other Contract Documents, expresses all of the agreements, understandings, promises, and covenants of the parties, and integrates, combines, and supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether written or oral and no modification or alteration of the Contract Documents shall be valid or binding on either party, unless expressed in writing and executed with the same formality as this Contract Agreement, except as may otherwise be specifically provided in the Contract Documents.

**Clause 8 Governing Law**

This Contract is enforceable and construed under the applicable laws of the Republic of India.

**Clause 9 Language**

This Contract Agreement and the other Contract Documents are made in the English language.

**Clause 10 Jurisdiction of Court**

The Court at **Bangalore** shall have the exclusive jurisdiction to all the disputes arising out of this Agreement between the parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written

BMRCL,

**The Employer**

Bangalore Metro Rail  
Corporation Limited

[Note 6].....,

**The Contractor**

(a)

(.....)

(.....)

(b) .....

WITNESS .....

( ) .....

(c) .....

( ) .....

( ) .....

WITNESS

( ) .....

Notes: (for preparation of but not for inclusion in the engrossment of the Contract Agreement)

1. If the Contractor comprises a partnership ,joint venture, liability will be joint and several, and each member thereof must be identified.
2. In the case that the Contractor comprises a single company, this line should be deleted entirely, as also should be paragraphs (b) and (c) above.
3. In the case that the Contractor comprises a single company, the word “collectively” should be deleted from this line.
4. Enter the appropriate nature of the Contractor; company, partnership, joint venture as the case may be.
5. Enter the date of the appropriate resolution.
6. If the Contractor comprises a partnership, joint venture, each member thereof must execute.
7. The required Stamp duty in accordance with Karnataka Stamp Act is to be borne by the contractor.

**SCHEDULE- 2A****BANK GUARANTEE FOR PERFORMANCE OF CONTRACT**

(To be submitted by **Sole Contractor** and to be stamped in accordance with the Stamp Act of the Country of Issuing Bank)

**To**

**BANGALORE METRO RAIL CORPORATION LIMITED (BMRCL)  
3RD FLOOR BMTC COMPLEX,  
K.H. ROAD, SHANTHINAGAR  
BENGALURU - 560027.  
KARNATAKA, INDIA.**

1. **WHEREAS** \_\_\_\_\_ (Name and Address of the Contractor hereinafter called the "Contractor") has undertaken for due performance of contract, in pursuance of contract No. \_\_\_\_\_ (description of the contract work of Bangalore Metro Rail Project to be specified) (hereinafter called "the Contract")
2. **AND WHEREAS** it has been stipulated in the concerned contract awarded by Bangalore Metro Rail Corporation Limited (BMRCL) hereinafter called the "Employer" which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, to the contractor that the contractor shall furnish to EMPLOYER(BMRCL) with a Bank Guarantee for due performance of Contract from an Indian scheduled Bank (excluding Cooperative Bank) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 r/w second schedule for, the sum specified herein below as security for compliance of the obligation and performance of the contractor, in accordance with the concerned contract.
3. **AND WHEREAS** we \_\_\_\_\_ (the name and full address of the Bank including Email address) having registered office at \_\_\_\_\_ (hereinafter referred to as the issuing Bank) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, do hereby agree to give the EMPLOYER (BMRCL) on behalf of the contractor such a Bank Guarantee, drawn and payable at Bengaluru\_\_\_\_\_ through our Bengaluru\_\_\_\_ Branch.
4. **NOW therefore**, we hereby affirm that we are the guarantor and responsible to EMPLOYER (BMRCL) and their successors, on behalf of the contractor up to a total sum of \_\_\_\_\_ (amount of Guarantee to be specified in figure and words), in the respective currency i.e., INR or/and Foreign currency (indicate currency amount in figures and words) such sum being payable in the respective currencies in which the contract price is payable. Further, we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil, or arguments any sum or sums within the limits of the sum specified in this Bank Guarantee as aforesaid without you being required to prove or to show grounds or reasons for your demand, by depositing/crediting to the Current A/c. of EMPLOYER (BMRCL), the sums specified.
5. This Bank Guarantee is encashable or extendable at our designated Branch in Bengaluru, Karnataka, India, as mentioned below:

Name of the Bank, Branch and contact details  
 Address  
 Telephone no: & Fax No:  
 E-mail Address  
 Branch manager name& mobile No:  
 Bank Zonal Office Address,  
 Telephone No: Fax Number,

**E-mail Address**

6. "This Bank Guarantee shall be encashed unless renewed by the contractor at the request of the Employer, before the due date".
7. BMRCL shall have rights to encash this Bank Guarantee at any time during the guarantee period and the contractor shall have no right or claim whatsoever in the matter of encashment of the Bank Guarantee amount by the Employer. The Bank will have their responsibility in terms of the guarantee and obligation, to make immediate payment to the EMPLOYER (BMRCL), without the consent of the contractor and without referring the matter to the contractor.
8. The Bank shall be liable to pay the EMPLOYER (BMRCL), any amount up to and inclusive of the aforementioned full amount upon written order from the EMPLOYER (BMRCL) to indemnify the BMRCL for any liability of damage resulting from any defects and/or shortcomings of the Contractor and/or the debts the contractor may have incurred, to EMPLOYER(BMRCL) and/or any parties involved in the Works under the Contract mentioned above, whether these defects and/or shortcomings and/or debts are actual and/or estimated and/or expected. The Bank will deliver the money required by the EMPLOYER (BMRCL) immediately on demand without delay without reference to the Contractor and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the liability or damages resulting from any defects or shortcomings or debts of the Contractor.
9. Courts at Bengaluru, Karnataka, India shall have exclusive jurisdiction for adjudicating the disputes arising out of encashment of the Guarantee, and we, the said Bank undertake not to revoke this Guarantee during its currency, except with the previous consent of the Employer in writing and agree that any change in the constitution of the Bank shall not discharge our liability hereunder.
10. This Bank Guarantee will not be discharged due to the change in the constitution of the contractor or change in the constitution of the issuing bank.
11. This Deed of guarantee is signed and executed by Shri \_\_\_\_\_ who is/are authorized by the Bank for issuing the guarantee in its behalf and his ID No. and Email address being-----.
12. The Bank's liability under this Guarantee shall not exceed the amount of INR/Foreign currency. \_\_\_\_\_ (to be specified in words and figures\_\_\_\_\_)
13. This guarantee shall be valid for (period to be specified) till \_\_\_\_\_ (Period to be mentioned).
14. The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.
15. It is hereby agreed that the liability of the Bank under this guarantee shall cease on the happening of any of the following events:
- a) Payment by the Bank of the Guaranteed sum in full to the Employer/BMRCL  
or
  - b) Issue of written communication by the Employer/BMRCL, to the issuing Bank, along with the Original Bank Guarantees discharging the Bank of its liability covered by this Bank Guarantee.

Date:

**SIGNATURE AND SEAL OF THE GUARANTOR**NAMEOFTHEBANK\_\_\_\_\_  
ADDRESS\_\_\_\_\_

**SCHEDULE- 2B****BANK GUARANTEE FOR PERFORMANCE OF CONTRACT**

(To be submitted by **each member (separately) of JV/Consortium** and to be stamped in accordance with the Stamp Act of the Country of Issuing Bank)

**To**

**BANGALORE METRO RAIL CORPORATION LIMITED (BMRCL)  
3RD FLOOR BMTC COMPLEX,  
K.H. ROAD, SHANTHINAGAR  
BENGALURU - 560027.  
KARNATAKA, INDIA.**

1. **WHEREAS** \_\_\_\_\_ (Name and Address of the JV/Consortium hereinafter called the "Contractor") has undertaken for due performance of contract, in pursuance of contract No. \_\_\_\_\_ (description of the contract work of Bangalore Metro Rail Project to be specified) (hereinafter called "the Contract")
2. **WHEREAS the constituents of the Contractor** \_\_\_\_\_ (Mention the Name and address of the JV/Consortium) are as follows:
  - (i) M/s ..... having its registered office at ..... as a member of the JV/Consortium  
AND
  - (ii) M/s ..... having its registered office at ..... as a member of the JV/Consortium  
AND
  - (iii) M/s ..... having its registered office at ..... as a member of the JV/Consortium
3. **Whereas** all the constituents of the \_\_\_\_\_ (Mention the Name and address of the JV/Consortium) have resolved their share and distribution of responsibilities in the performance of the contract and hereinafter collectively called as the "Contractor" have undertaken jointly and severally for due performance of contract, in pursuance of contract No. \_\_\_\_\_ (description of the contract work of Bangalore Metro Rail Project to be specified)
4. **WHEREAS** it has been stipulated in the concerned contract awarded by Bangalore Metro Rail Corporation Limited (BMRCL) hereinafter called the "Employer" which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, to the contractor that the contractor shall furnish to EMPLOYER(BMRCL) with a Bank Guarantee for due performance of Contract from an Indian scheduled Bank (excluding Cooperative Bank) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 r/w second schedule for, the sum specified herein below as security for compliance of the obligation and performance of the contractor, in accordance with the concerned contract.
5. **Whereas it has been further stipulated in the contract that** in the case of the

contractor being a JV/Consortium , each member of the JV/Consortium is required to furnish a Bank Guarantee in accordance with his/ it's share and distribution of responsibilities in the work for due performance of Contract from an Indian scheduled Bank (excluding Cooperative Bank) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 r/w second schedule as security for compliance of the obligation and performance of the concerned contract.

6. **AND WHEREAS** we \_\_\_\_\_ (the name and full address of the Bank including Email address) having registered office at \_\_\_\_\_ (hereinafter referred to as the issuing Bank) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, do hereby agree to give the EMPLOYER (BMRCL) on behalf of one of the constituent member of the JV/Consortium ----- (Mention the Name of JV/Consortium member in whose favour this BG is issued) such a Bank Guarantee, drawn and payable at Bengaluru\_\_\_\_\_ through our Bengaluru \_\_\_\_\_ Branch, for the sum specified below which is in accordance with the share and responsibilities of the ----- (Name of JV/Consortium member) as security for compliance of the obligation and performance of the concerned contract.
  
7. **NOW therefore**, we hereby affirm that we are the guarantor and responsible to EMPLOYER (BMRCL) and their successors, on behalf of the----- (Name of JV/Consortium member) up to a total sum of \_\_\_\_\_ (amount of Guarantee to be specified in figure and words), in the respective currency i.e., INR or/and Foreign currency (indicate currency amount in figures and words) such sum being payable in the respective currencies in which the contract price is payable. Further, we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil, or arguments any sum or sums within the limits of the sum specified in this Bank Guarantee as aforesaid without you being required to prove or to show grounds or reasons for your demand, by depositing/crediting to the Current A/c. of EMPLOYER (BMRCL), the sums specified.
  
8. This Bank Guarantee is encashable or extendable at our designated Branch in Bengaluru, Karnataka, India, as mentioned below:
  - Name of the Bank, Branch and contact details
  - Address
  - Telephone no: & Fax No:
  - E-mail Address
  - Branch manager name& mobile No:
  - Bank Zonal Office Address,
  - Telephone No: Fax Number,
  - E-mail Address
  
9. "This Bank Guarantee shall be encashed unless renewed by the ----- (Name of JV/Consortium member) at the request of the Employer, before the due date".
  
10. BMRCL shall have rights to encash this Bank Guarantee at any time during the guarantee period and the ----- (Name of JV/Consortium member) shall have no right or claim whatsoever in the matter of encashment of the Bank Guarantee amount by the Employer. The Bank will have their responsibility in terms of the guarantee and obligation, to make immediate payment to the EMPLOYER (BMRCL), without the consent of the ----- (Name of JV/Consortium member) and without referring the matter to the ----- (Name of JV/Consortium member).

11. The Bank shall be liable to pay the EMPLOYER (BMRCL), any amount up to and inclusive of the aforementioned full amount upon written order from the EMPLOYER (BMRCL) to indemnify the BMRCL for any liability of damage resulting from any defects and/or shortcomings of the -----(Name of JV/Consortium member) and/or the debts the ----- (Name of JV/Consortium member) may have incurred, to EMPLOYER(BMRCL) and/or any parties involved in the Works under the Contract mentioned above, whether these defects and/or shortcomings and/or debts are actual and/or estimated and/or expected. The Bank will deliver the money required by the EMPLOYER (BMRCL) immediately on demand without delay without reference to the ----- (Name of JV/Consortium member) and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the liability or damages resulting from any defects or shortcomings or debts of the ----- (Name of JV/Consortium member).
  
12. Courts at Bengaluru, Karnataka, India shall have exclusive jurisdiction for adjudicating the disputes arising out of encashment of the Guarantee, and we, the said Bank undertake not to revoke this Guarantee during its currency, except with the previous consent of the Employer in writing and agree that any change in the constitution of the Bank shall not discharge our liability hereunder.
  
13. This Bank Guarantee will not be discharged due to the change in the constitution of the JV/Consortium/Member of JV/Consortium/contractor or change in the constitution of the issuing bank.
  
14. This Deed of guarantee is signed and executed by Shri \_\_\_\_\_ who is/are authorized by the Bank for issuing the guarantee in its behalf and his ID No. and Email address being-----.
  
15. The Bank's liability under this Guarantee shall not exceed the amount of INR/Foreign currency. \_\_\_\_\_ (to be specified in words and figures\_\_\_\_\_).
  
16. This guarantee shall be valid for (period to be specified) till \_\_\_\_\_ (Period to be mentioned).
  
17. The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.
  
18. It is hereby agreed that the liability of the Bank under this guarantee shall cease on the happening of any of the following events:
  - a) Payment by the Bank of the Guaranteed sum in full to the Employer/BMRCL  
or
  - b) Issue of written communication by the Employer/BMRCL, to the issuing Bank, along with the Original Bank Guarantees discharging the Bank of its liability covered by this Bank Guarantee.

Date:

SIGNATURE AND SEAL OF THE GUARANTOR

NAMEOFTHEBANK\_\_\_\_\_  
ADDRESS\_\_\_\_\_

**SCHEDULE- 3****PARENT COMPANY UNDERTAKING**

**THIS UNDERTAKING** is made the              day of

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

TO

The BANGALORE METRO RAIL CORPORATION LIMITED together with its successors and assigns, "the Employer") of:

Third Floor,  
BMTC Complex,  
K.H.Road,  
Shantinagar,  
Bangalore - 560 027.

**WHEREAS**

By a work-contract: "**Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2."**

**Ref: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018.**

- (A) ("the Contract") made between (1) the Bangalore Metro Rail Corporation Limited ("the Employer") and (2) [ ] ("the Contractor") the Contractor has agreed to design, execute, complete and remedy any defects in the works ("the Works") upon the terms and conditions contained in the Contract.
- (B) Pursuant to the terms of the Contract, the Contractor has agreed to procure the provision of an undertaking in the terms hereof.
- (C) The Parent Company is the beneficial owner of [ ] % [see Note 1] of the issued share capital of [the Contractor] [see Note 2].
- (D) At the request of the Contractor, the Parent Company has agreed to provide this undertaking.

**NOW IT IS HEREBY UNDERTAKEN AND AGREED as follows:**

1. In consideration of the Employer entering into the Contract with the Contractor, the Parent Company hereby undertakes to the Employer that, without the written consent of the Employer, it will not [and will ensure that none of the companies referred to in Recital (C) will] [see Note 5]:-
  - (a) sell transfer assign or otherwise dispose of or deal with ownership of the whole or any part of EITHER [the share holding or other interest in the [Contractor] [see Note 3] OR [the share holdings or other interests] [see Note 4] referred to in Recital (C) in any way which will affect the beneficial ownership and control in [the Contractor] [see Note 3] of the Parent Company [and the other companies referred to in Recital (C)] [see Note 5]; and
  - (b) take any action which may result in the Contractor being unable to comply with his obligations or perform in any way his duties under the Contract [or take any action which may result in [the subsidiary forming part of the Contractor] [see Note 3] being unable to comply with his obligations or perform in any way his duties under the [joint venture /consortium or other relevant] agreement] [see Note 6]

until such time as the Works shall have been completed, all the Contractor's obligations under the Contract shall have been performed and the Maintenance and Defects Liability Period (as defined in the Contract) for the whole and every part of the Works shall have elapsed and further that it will ensure [that the subsidiary forming part of the Contractor will take all steps necessary to ensure [see

- Note 6] compliance by the Contractor with the provisions of the Contract.
2. The obligations of the Parent Company under this Undertaking shall remain in full force and effect and shall not be affected or discharged in any way and the Parent Company hereby waives notice of:-
    - (a) any suspension of the Works, variation or amendment to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Employer in respect of the Contractor's obligations [and/or the obligations of [ ] [see Note 7];
    - (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
    - (c) the termination of the Contract or of the employment of the Contractor [and/or [ ] [see Note 7] under the Contract for any reason;
    - (d) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor [and/or [ ] [see Note 7] or negligence by the Employer in enforcing any such right of action or remedy;
    - (e) any bond, undertaking, security or other guarantee held or obtained by the Employer for any of the obligations of the Contractor [and/or [ ] [see Note 7] under the Contract or any release or waiver thereof.  3. This Undertaking shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Employer and the Contractor [and/or [ ] [see Note 7] and for the avoidance of doubt the Parent Company hereby authorises the Employer and the Contractor [and/or [ ] [see Note 7] to make any such amendment, variation or supplemental agreement.
  4. All documents arising out of or in connection with this Undertaking shall be served:
    - (a) upon the Employer, at [ ] marked for the attention of [ ];
    - (b) upon the Parent Company, at [ ] India. [Note 8]  5. The Employer and the Parent Company may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.
  6. This Undertaking shall be governed by and construed according to the laws for the time being in force in India and the Parent Company agrees to submit to the jurisdiction of the courts of India.

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

THE COMMON SEAL of )

[ ] )

was affixed hereto )

in the presence of:- )

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

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

5. If Note 1 applies, add this provision.
6. If Note 2 applies, add this provision.
7. If Note 2 applies, add this provision and insert the name of the subsidiary.
8. The address for service shall be in India.

R6 - UG-RT03 / TNL& STN / BMRCL

**SCHEDULE- 4**  
**PARENT COMPANY GUARANTEE**

THIS GUARANTEE is made the              day of

BY [ ] whose registered office is at [ ] and [ ] whose registered office is at [ ] ("the Guarantor").

TO The Bangalore Metro Rail Corporation Limited (together with its successors and assigns, "the Employer") of:  
Third Floor, BMTC Complex,  
K.H.Road, Shantinagar,  
Bangalore - 560 027.

**WHEREAS**

By a work-contract for Construction of: "**Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2."**"

Ref: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018.

- (A) dated [ ] ("the Contract") made between (1) the Bangalore Metro Rail Corporation Limited ("the Employer") and (2) [ ] ("the Contractor"), the Contractor has agreed to design, execute, complete and remedy any defects in the Works upon the terms and conditions contained in the Contract.
- (B) Pursuant to the terms of the Contract, the Contractor has agreed to procure the provision of a guarantee in the terms hereof. [See Note1].
- (C) At the request of the Contractor, the Guarantor has agreed to guarantee performance of the Contract by the [Contractor] [see Note 2] as set out herein.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. In consideration of the Employer entering into the Contract with the Contractor, the Guarantor irrevocably and unconditionally guarantees to the Employer as a primary obligation and not as a surety due performance by the [Contractor] [see Note 2] of all of its obligations and liabilities under and in accordance with the Contract save that nothing herein shall be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the [Contractor] [see Note 2] in the Contract.
  2. The obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by and the Guarantor hereby waives notice of:-
- (a) any suspension of the Works, variation to or amendment of the Contract (including without limitation extension of time for performance) or any concession or waiver by the Employer in respect of the Contractor's obligations [and/or the obligations of [ ] [see Note 3] under the Contract;
  - (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
  - (c) the termination of the Contract or of the engagement of the Contractor [ and / or [....]] [see Note 3] under the Contract for any reason;
  - (d) any forbearance or waiver of any right of action or remedy the Employer may have against the Contractor [ and / or [....]] [see Note 3] or negligence by the Employer in enforcing any such right of action or remedy;
- any bond, undertaking, security or other guarantee held or obtained by the Employer for any of the obligations of the Contractor [and / or [....]] [See Note 3] under the Contract or any release or waiver thereof.

3. This Guarantee shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Employer and the Contractor [and/or [ ] [see Note 3] and for the avoidance of doubt the Guarantor hereby authorises the Employer and the Contractor [and/or [ ] [see Note 3] to make any such amendment, variation or supplemental agreement.
4. This Guarantee is a continuing guarantee and accordingly shall cover all of the obligations and liabilities of the [Contractor] [see Note 2] under the Contract and remain in full force and effect until all the said obligations and liabilities of the Contractor shall have been carried out, completed and discharged in accordance with the Contract. This Guarantee is in addition to any other security which the Employer may at any time hold and may be enforced without first having recourse to any such security or taking any steps or proceedings against the Contractor.
5. Until expiry of the Maintenance and Defects Liability Period (as defined in the Contract) for the whole and every part of the Works, the Guarantor shall not on any ground whatsoever make any claim or threaten to make any claim whether by proceedings or otherwise against the Contractor [and/or [ ] [see Note 3] for the recovery of any sum paid by the Guarantor pursuant to this Guarantee. Any such claim shall be subordinate to any claims (contingent or otherwise) which the Employer may have against the Contractor [and/or [ ] [see Note 3] arising out of or in connection with the Contract until such time as such claims shall be satisfied by the Contractor [and/or [ ] [see Note 3] or the Guarantor as the case may be. To that intent the Guarantor shall not claim or have the benefit of any security which the Employer holds or may hold for any monies or liabilities due or incurred by the Contractor [and/or [ ] [see Note 3] to the Employer and, in case the Guarantor receives any sum from the Contractor [and/or [ ] [see Note 3] in respect of any payment by the Guarantor hereunder, the Guarantor shall hold such sum in trust for the Employer for so long as any sum is payable (contingently or otherwise) under this Guarantee.
6. The Employer shall be entitled to assign the benefit of this Guarantee at any time without the consent of the Guarantor or the [Contractor] [see Note 2] being required.
7. All documents arising out of or in connection with this Guarantee shall be served:
  - (a) upon the Employer, at [ ], marked for the attention of [ ];
  - (b) upon the Guarantor, at [ ] India [Note 4]
8. The Employer and the Guarantor may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.
9. This Guarantee shall be governed by and construed according to the laws for the time being in force in India and the Contractor agrees to submit to the jurisdiction of the courts of India.

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

THE COMMON SEAL of )  
 [ ] )  
 was affixed hereto in )  
 the presence of: - )

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

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

**SCHEDULE-5****CONTRACTOR'S WARRANTY**

THIS WARRANTY is made the                    day of

BY [ ] of [ ] [and [see Note 1]] ([jointly] "the Contractor")

TO [ ] [of]/ [whose registered office is at] [ ] (together with its successors and assigns, "the Employer")

**WHEREAS**

By a work-contract for "Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2."

Ref: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018.

- (A) dated [ ] ("the Contract") made between (1) the Bangalore Metro Rail Corporation Limited ("the Employer") and (2) the Contractor, the Contractor has agreed to design, execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defect in the Works upon the terms and conditions contained in the Contract.
- (B) [See Note 3].
- (C) At the request of the Employer and pursuant to the terms of the Contract the Contractor has agreed to provide this Warranty.

**NOW IT IS AGREED AS FOLLOWS:**

1. The Contractor hereby warrants and undertakes that:
  - (a) the Contractor will construct and complete the work and remedy any defect in the Works in accordance with the terms of the Contract; and
  - (b) the Contractor owes a duty of care to the Employer in relation to the performance of its duties under the Contract; and
  - (c) the Contractor will replace free of cost to the Employer any defect or failure of equipment provided in the Works for a period of -----months from the date of taking over of section of the Works; and
  - (d) the Contractor agrees that should any modification be required to any part of the construction - work as a consequence of failure analysis, the period of ... months shall re-commence from the date when the modified part is commissioned into service, and such modification shall be carried out free of cost to the Employer in all sections; and
  - (e) the Contractor shall maintain the whole workmanship and construction completed by him (including those of his Sub-Contractors/Vendors) for the materials supplied and good workmanship imparted in the Contract-work for at least 2 years from the date of Completion of the Contract; and
  - (f) the Contractor has exercised and will continue to exercise in the execution of the work all the skill and care to be expected of a professionally qualified and competent Constructor/Contractor experienced in work of similar nature and scope as the Works; and
  - (g) the Works will, when completed, comply in all respects with the Employer's Requirements, Technical Proposals, the Final Design Document and the intended use of the Works; and
  - (h) the Works has been or will be constructed and executed to the highest standards available using internationally proven up-to-date good practice; and
  - (i) the Works will, when completed, comply with enactments and regulations relevant to the

- Works; and
- (j) no Materials generally known to be deleterious or not in accordance with good engineering practice have been or will be specified or selected or incorporated in the Works by the Contractor.
  - (k) the execution of the Works and inclusive of manufacture of all members and structures have taken or will take full account of the effects of the intended manufacturing and installation methods, Temporary W
  - (l) Works and Contractor's Equipment.
2. The liability of [the companies comprising [see Note 3]] the Contractor under this Warranty [shall be joint and several and [see Note 3]] shall not be released, diminished or in any way affected by any independent inquiry or investigation into the Works or any matter related to the Contract whether carried out by or on behalf of the Employer or any liability or right of action which may arise out of such inquiry or investigation.
3. Insofar as the copyright or other intellectual property rights in any plans, calculations, drawings, documents, materials, plant, know-how and other information relating to the Works shall be vested in the Contractor, the Contractor grants to the Employer his successors and assigns a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works or the Bangalore Metro Rail Project including without limitation the design, manufacture, installation, completion, testing and commissioning (including Integrated Testing and Commissioning) reinstatement, extension and the remedy of any defect in the Works. To the extent that beneficial ownership of any such copyright or other intellectual property rights is vested in anyone other than the Contractor, the Contractor shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.
4. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Contractor, whether in tort or otherwise.
5. Nothing contained in this Warranty shall vary or affect the Contractor's rights and obligations under the Contract.
6. The address for service of all documents arising out of or in connection with this Warranty shall be:-
- (a) Upon the Employer: Bangalore Metro Rail Corporation Ltd; at 3<sup>rd</sup> Floor, BMTC Complex, K.H.Road, Shantinagar, Bangalore – 560 027, Karnataka State India.
  - (b) Upon the Contractor at [ ] India. [Note 4]
7. The Employer and the Contractor may change their respective nominated addresses to another address in India but only by prior written notice to each other. All notices must be in writing.
8. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
- 9 (1) Any dispute or difference of any kind whatsoever between the Employer and the Contractor arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the Conciliation and Arbitration rules set out in the General Conditions of Contract. "Dispute" as defined in the Contract shall be deemed to include any such dispute or difference between the Employer and Contractor.
- (2) In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under out of or in connection with the Contract ("the Contract Dispute") then provided that an arbitrator has not already been appointed pursuant to Clause 9(1), the Employer may by notice in writing to the Contractor require and the Contractor shall be deemed to have consented to the referral of such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.
- (3) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objections relating to the dispute.
- (4) Subject to the foregoing provisions of this clause 9, the Employer and the Contractor agree to submit to the jurisdiction of the Courts of India at Bangalore.

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

hereof.

THE COMMON SEAL of )  
[ ] )

was affixed hereto )  
in the presence of:- )

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

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

**SCHEDULE- 6****SUB-CONTRACTOR / VENDOR'S WARRANTY**

THIS WARRANTY is made the                    day of

BY [ ] [whose registered office is at]/ [of] [ ] ("the Sub-contractor") and  
 TO The Bangalore Metro Rail Corporation Limited (together with its successors and assigns, "the Employer") of:  
 Third Floor,  
 BMTC Complex,  
 K.H.Road,  
 Shantinagar,  
 Bangalore - 560 027.

WHEREAS

(A) By a work-contract for "**Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.**"

Ref: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018.

dated [ ] ("the Contract") made between

(1) Bangalore Metro Rail Corporation Limited ("the Employer")

and

(2) [ ] ("the Contractor"), the Contractor has agreed to Construction of : "**Design & Construction of Underground structures (Tunnels & Stations) of length 2.884 Km (approx.) from Shivajinagar Station (excluding) to Tannery Road Station (excluding) (Chainage 13938.328 m to 16822.521 m) including allied works and 2 Nos of UG Metro Stations viz Cantonment and Pottery Town in Reach-6 line of Bangalore Metro Rail Project, Phase-2.**" Ref: BMRCL/Phase-2/Reach-6/UG/TNL&STN/(R6-CC-02)-RT03/2018/38 Dated 26-06-2018, and remedy any defects in works upon the terms and conditions contained in the Contract.

(B) The Sub-contractor / Vendor has had an opportunity of reading and noting the provisions of the Contract (other than details of the Contractor's prices and rates).

(C) Pursuant to the Contract, the Contractor wishes to enter into an agreement with the Sub-contractor / Vendor ("the Sub-contract") for the sub-contract ("the Sub-contract") to carry out and complete a part of the Works as more particularly described in the Sub-contract ("the Sub-contract Works").

(D) The Contract stipulates that the Contractor shall obtain the consent of the Engineer before entering into the Sub-contract, and that the Contractor shall procure that the Sub-contractor executes a warranty agreement in favour of the Employer.

**NOW IT IS HEREBY AGREED** as follows: -

1. In consideration of the Engineer consenting to the Contractor and the Sub-contractor / Vendor entering into the Sub-contract / Vendor, the Sub-contractor warrants and undertakes to the Employer that:
  - (a) he will execute and complete the Sub-contract Works/Supply, and will carry out each and all of the obligations, duties and undertakings of the Sub-contractor / Vendor / under the Sub-contract when and if such obligations, duties and undertakings shall become due and performable, in accordance

- with the terms of the Sub-contract (as the same may from time to time be varied or amended with the consent of the Employer); and
- b) he will supply to the Contractor and in specific cases wherever required to the Engineer with all information as may be required from time to time in relation to progress of the Sub-contract Works.
  - 2. The Sub-contractor / Vendor undertakes to indemnify the Employer against each and every liability which the Employer may have to any person whatsoever and against any claims, demands, proceedings, loss, damages, costs and expenses sustained, incurred or payable by the Employer provided that the Sub-contractor / Vendor shall have no greater liability to the Employer by virtue of this Warranty than the liability of the Contractor to the Employer under the Contract insofar as and to the extent that the same has arisen by reason of any breach by the Sub-contractor / Vendor of his obligations under the Sub-contract.
  - 3. No allowance of time by the Employer hereunder or by the Contractor under the Sub-contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning this Warranty or the Sub-contract on the part of the Employer or the Contractor, nor anything that the Employer or the Contractor may do or omit or neglect to do, shall in any way release the Sub-contractor / Vendor from any liability under this Warranty.
  - 4. The Sub-contractor / Vendor agrees that he will not without first giving the Employer not less than 21 day's prior notice in writing exercise any right he may have to terminate the Sub-contract or treat the same as having been repudiated by the Contractor or withhold performance of its obligations under the Sub-contract.
  - 5. (1) In the event that the Contract or the employment of the Contractor under the Contract is terminated for any reason whatsoever and if so requested by the Employer in writing within 21 days of such termination, the Sub-contractor / Vendor shall carry out and complete his obligations under this Warranty and shall enter into a novation agreement with the Employer and the Contractor in which the Sub-contractor will undertake inter alia to perform the Sub-contract and be bound by its terms and conditions as if the Employer had originally been named as a contracting party in place of the Contractor. The said novation agreement will be in such form as the Employer may reasonably require.
  - (2) In the event that the Employer does not require the Sub-contractor / Vendor to enter into a novation agreement as required by Sub-clause 5(1), the Sub-contractor shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with this Warranty.
  - 6. Insofar as the copyright or other intellectual property rights, in any plans, calculations, drawings, documents, materials, know-how and information relating to the Sub-contract Works shall be vested in the Sub-contractor / Vendor , the Sub-contractor / Vendor grants to the Employer, his successors and assignees a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works of the Bangalore Metro Rail Project, without limitation the design of enabling facilities, construction, installation, reconstruction, completion, reinstatement, extension, remedy of any defect of the Works. To the extent beneficial ownership of any such copyright or other intellectual property right is vested in anyone other than the Sub-contractor / Vendor, the Sub-contractor shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Sub-contractor / Vendor shall for any reason cease to be employed in connection with the Sub-contract Works.
  - 7. In the event of any ambiguity or conflict between the terms of the Sub-contract and this Warranty, the terms of this Warranty shall prevail.
  - 8. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Sub-contractor / Vendor whether in tort or otherwise.
  - 9. Nothing contained in this Warranty shall vary or affect the Sub-contractor's / Vendor's rights and obligations under the Sub-contract.
  - 10. The Employer shall be entitled to assign the benefit of this Warranty at any time without the consent

of the Sub-contractor / Vendor being required.

11. All documents arising out of or in connection with this Warranty shall be served:
  - (1) upon the Employer at [ ] , marked for the attention of [ ];
  - (2) upon the Sub-contractor / Vendor, at [ ] India.
12. The Employer and the Sub-contractor / Vendor may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.
13. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
14. (1) Any dispute or difference of any kind whatsoever between the Employer and the Sub-contractor / Vendor arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the Arbitration as described in the Contract.
  - (2) In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under out of or in connection with the Contract ("the Contract Dispute") then provided that an arbitrator has not already been appointed pursuant to Clause 14(1), the Employer may by notice in writing to the Sub-contractor / Vendor require and the Sub-contractor / Vendor shall be deemed to have consented to the referral of such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.
  - (3) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objection, assessment or valuation by the Engineer or the Contractor relating to the dispute or difference.

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

THE COMMON SEAL of )

[ ] )

was affixed hereto in )

the presence of:- )

**SCHEDULE- 7**

**BANK GUARANTEE FOR PAYMENT OF MOBILIZATION ADVANCE/  
PLANT AND MACHINERY ADVANCE**

(To be submitted by **Sole Contractor or each member (separately) of JV/Consortium** and to be stamped in accordance with the Stamp Act of the Country of Issuing Bank)

To

**BANGALORE METRO RAIL CORPORATION LIMITED (BMRCL)  
3RD FLOOR BMTC COMPLEX,  
K.H. ROAD, SHANTHINAGAR  
BANGALORE - 560027.**

1. **WHEREAS** \_\_\_\_\_ (Name and Address of the Contractor hereinafter called the "Contractor") has undertaken for due performance of contract, in pursuance of contract No. \_\_\_\_\_ (description of the contract work of Bangalore Metro Rail Project to be specified) (hereinafter called "the Contract"). The said contract was awarded by Bangalore Metro Rail Corporation Ltd (hereinafter called the 'Employer' which term shall include its successors, administrators, executors and assigns).
2. **AND WHEREAS** according to the conditions of the contract an advance payment Viz "Mobilization Advance" shall be payable to the contractor by the Employer (BMRCL) against a Bank Guarantee acceptable to the Employer (BMRCL).
3. **AND WHEREAS** it has been stipulated by Bangalore Metro Rail Corporation Limited (BMRCL) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees hereinafter called the Employer in the concerned contract awarded to the contractor that the contractor shall furnish to the Employer/BMRCL with a Bank Guarantee from an Indian scheduled Bank (excluding Cooperative Bank) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 r/w second schedule for the sum specified herein as security for Mobilization advance amount as per the contract conditions.
4. At the request of the contractor, we (Name of the Bank, address, Headquarters, Branch etc) (Hereinafter called the BANK) have agreed to give the said guarantee to the EMPLOYER (BMRCL) on behalf of the Contractor.
5. This Bank Guarantee is encashable or extendable at our designated Branch in Bengaluru (Bangalore) Karnataka, India, as mentioned below:
 

Name of the Bank, Branch and contact details  
 Address  
 Telephone no: & Fax No:  
 E-mail Address  
 Branch manager name& mobile No:  
 Bank Zonal Office Address, Telephone No: Fax Number,  
 E-mail Address
6. "This Bank Guarantee shall be encashed unless renewed by the contractor at the request of the Employer, before the due date".
7. **AND WHEREAS** we \_\_\_\_\_ (the name and full address of the Bank including Email address) having registered office at \_\_\_\_\_ (hereinafter referred to as the issuing Bank) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, do hereby agree to give such a Bank Guarantee, drawn and payable at Bangalore \_\_\_\_\_ through our Bangalore \_\_\_\_\_ Branch.

8. BMRCL shall have full rights to encash this bank guarantee at any time during the guarantee period and the contractor shall have no right or claim whatsoever in the matter of encashment of the Bank guarantee amount by the Employer. The Bank will be fully responsible in terms of the guarantee and obligation, to make immediate payment to EMPLOYER/BMRCL, without the consent of the contractor and without referring the matter to the contractor.

9. The Bank will deliver the money required by the BMRCL immediately on demand without delay without reference to the Contractor and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the liability or damages resulting from any defects or shortcomings or debts of the Contractor.

10. **NOW therefore**, we hereby affirm that we are the guarantor and responsible to EMPLOYER (BMRCL) and their successors, on behalf of the contractor up to a total sum of \_\_\_\_\_ (amount of Guarantee to be specified in figure and words), in the respective currency i.e., INR or Foreign currency (indicate currency amount in figures and words) such sum being payable in the respective currencies in which the contract price is payable. Further, we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil, or arguments any sum or sums within the limits of the sum specified in this Bank Guarantee as aforesaid without you being required to prove or to show grounds or reasons for your demand, by depositing/crediting to the Current A/c. of BMRCL, the sums specified therein.

11. Courts at Bangalore, Karnataka, India shall have exclusive jurisdiction for adjudicating the disputes arising out of encashment of the Guarantee, and we, the said Bank undertake not to revoke this Guarantee during its currency, except with the previous consent of the Employer in writing and agree that any change in the constitution of the Bank shall not discharge our liability hereunder.

12. This Bank Guarantee will not be discharged due to the change in the constitution of the contractor or change in the constitution of the issuing bank.

13. This guarantee is issued by Shri \_\_\_\_\_ who is/are authorized by the Bank for issuing the guarantee in its behalf and his ID No. and Email address being-----.

14. The Banks liability under this Guarantee shall not exceed the amount of INR/Foreign currency. \_\_\_\_\_ (to be specified in words and figures\_\_\_\_\_)

15. This guarantee shall be valid for (period to be specified) till \_\_\_\_\_ (Period to be mentioned).

16. The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.

17. It is hereby agreed that the liability of the Bank under this guarantee shall cease on whichever of the following events first occurs.

a) Payment by the Bank of the guaranteed sum in full to the Employer / BMRCL

Or

b) Receipt of written communication from the Employer/BMRCL, to the issuing Bank along with the Original Bank Guarantees discharging the Bank of its liability covered by this Bank Guarantee.

Date

SIGNATURE AND SEAL OF THE GUARANTOR

NAME OF THE BANK \_\_\_\_\_  
ADDRESS \_\_\_\_\_

**Note:** Draft copy to be approved by the Employer and Employer shall modify the same to make compliance with the tender conditions.

**SCHEDULE- 8****BANK GUARANTEE FOR PAYMENT OF RETENTION MONEY**

(To be submitted by **Sole Contractor or each member (separately) of JV/Consortium** and to be stamped in accordance with the Stamp Act of the Country of Issuing Bank)

To

**BANGALORE METRO RAIL CORPORATION LIMITED (BMRCL)  
3RD FLOOR BMTC COMPLEX,  
K.H. ROAD, SHANTHINAGAR  
BANGALORE-560027.**

1. **WHEREAS** \_\_\_\_\_ (Name and Address of the Contractor hereinafter called the "Contractor") has undertaken for due performance of contract, in pursuance of contract No. \_\_\_\_\_ (description of the contract work of Bangalore Metro Rail Project to be specified) (hereinafter called "the Contract"). The said contract was awarded by Bangalore Metro Rail Corporation Limited/BMRCL which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, (Hereinafter called the Employer) to the Contractor.

2. **AND WHEREAS** as per the conditions of the contract, Retention Money equal to 10% of the amount due to the contractor in running bills will be retained by the Employer so as to maintain a reserve in the hands of the Employer equal to 5% of the Contract Price. The contract also provides that the contractor may alternatively submit a Bank Guarantee in an acceptable form to the Employer, equal to 5% of the contract price in lieu of the Retention Money.

3. **AND WHEREAS**, it has been stipulated in the contract awarded to the contractor that the contractor shall furnish to Employer/BMRCL with a Bank Guarantee in lieu of Retention Money from an Indian scheduled Bank (excluding Cooperative Bank) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 r/w second schedule, for the sum specified herein as security for payment of retention money.

**AND WHEREAS**, it has been further stipulated that the employer agrees to exchange the retention money held by the EMPLOYER/BMRCL on furnishing by the contractor, Bank Guarantee to be issued by Indian Scheduled Bank (excluding cooperative Bank) or by a schedule Foreign Bank as defined in section 2(e) of RBI Act 1934 r/w second schedule.

4. At the request of the contractor, we (Name of the Bank, address, Headquarters, Branch etc) (Hereinafter called the BANK) have agreed to give such guarantee.

5. **AND WHEREAS** we \_\_\_\_\_ (the name and full address of the Bank including Email address) having registered office at \_\_\_\_\_ (hereinafter referred to as the issuing Bank) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, do hereby agree to give the EMPLOYER (BMRCL) on behalf of the contractor such a Bank Guarantee, drawn and payable at Bangalore \_\_\_\_\_ through our Bangalore \_\_\_\_\_ Branch.

6. This Bank Guarantee is encashable or extendable at our designated Branch in Bengaluru

(Bangalore) Karnataka, India, as mentioned below:

Name of the Bank, Branch and contact details

Address

Telephone no: & Fax No:

E-mail Address

Branch manager name& mobile No:

Bank Zonal Office Address, Telephone No:, Fax Number,

E-mail Address

7. "This Bank Guarantee shall be encashed unless renewed by the contractor at the request of the Employer, before the due date".

8. **NOW therefore**, we hereby affirm that we are the guarantor and responsible to EMPLOYER (BMRCL) and their successors, on behalf of the contractor up to a total sum of \_\_\_\_\_ (amount of Guarantee to be specified in figure and words), in the respective currency i.e., INR or Foreign currency (indicate currency amount in figures and words) such sum being payable in the respective currencies in which the contract price is payable. Further, we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil, or arguments any sum or sums within the limits of the sum specified in this Bank Guarantee as aforesaid without you needing to prove or to show grounds or reasons for your demand, by depositing/crediting to the Current A/c. of BMRCL, the sums specified therein.

9. The Bank will pay the money required by EMPLOYER (BMRCL) immediately on demand without delay without reference to the Contractor and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the liability or damages resulting from any defects or shortcomings or debts of the Contractor.

10. BMRCL shall have full rights to encash this bank guarantee at any time during the guarantee and the contractor shall have no right or claim whatsoever in the matter of encashment of the Bank guarantee amount by the Employer (BMRCL). The Bank will be having full responsibility in terms of the guarantee and obligation, to make immediate payment to you (EMPLOYER/BMRCL), without the consent of the contractor and without referring the matter to the contractor.

11. Courts at Bangalore, Karnataka, India shall have exclusive jurisdiction for adjudicating the disputes arising out of encashment of the Guarantee, and we the said Bank undertakes not to revoke this Guarantee during its currency, 3 except with the previous consent of the Employer in writing and agree that any change in the constitution of the Bank shall not discharge our liability hereunder.

12. This Bank Guarantee will not be discharged due to the change in the constitution of the contractor or change in the constitution of the issuing bank.

13. This guarantee is executed and issued by Shri \_\_\_\_\_ who is/are authorized by the Bank for issuing the guarantee in its behalf and his ID No. and Email address being-----.

14. The Banks liability under this Guarantee shall not exceed the amount of INR/Foreign currency.\_\_\_\_\_(to be specified in words and figures\_\_\_\_\_.).

15. This guarantee shall be valid for (period to be specified) till \_\_\_\_\_ (Period to be mentioned).

16. The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.

17. It is hereby agreed that the liability of the Bank under this guarantee shall cease on whichever of the following events first occurs.

a) Payment by the Bank of the Guaranteed sum in full to the Employer/BMRCL

or

b) Receipt of written communication from the Employer/BMRCL, to the issuing Bank, along with the Original Bank Guarantees discharging the Bank of its liability covered by this Bank Guarantee.

Date

SIGNATURE AND SEAL OF THE GUARANTOR

NAME OF THE BANK\_\_\_\_\_

ADDRESS\_\_\_\_\_

**Note:** Draft copy to be approved by the Employer and Employer shall modify the same to make compliance with the tender conditions.

**SCHEDULE- 9**

**BANK GUARANTEE FOR SAFE CUSTODY OF  
MATERIALS SUPPLIED BY EMPLOYER TO THE CONTRACTOR**

(To be submitted by **Sole Contractor or each member (separately) of JV/Consortium** and to be stamped in accordance with the Stamp Act of the Country of Issuing Bank)

To

**BANGALORE METRO RAIL CORPORATION LIMITED (BMRCL)  
3RD FLOOR BMTC COMPLEX,  
K.H.ROAD, SHANTHINAGAR  
BANGALORE-560027.**

1. **WHEREAS** \_\_\_\_\_ (Name and Address of the Contractor hereinafter called the "Contractor") has undertaken for due performance of contract, in pursuance of contract No. \_\_\_\_\_ (description of the contract work of Bangalore Metro Rail Project to be specified) (hereinafter called "the Contract"). The said contract was awarded by Bangalore Metro Rail Corporation Limited (BMRCL) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, (Hereinafter called the Employer) to the contractor.

2. **AND WHEREAS** according to the conditions of the contact, the Employer at their discretion may provide certain materials to the contractor or has to make payment for the material procured by the contractor for the work specified in the contract, against a Bank Guarantee acceptable to the Employer.

3. **AND WHEREAS** we \_\_\_\_\_ (the name and full address of the Bank including Email address) having registered office at \_\_\_\_\_ (hereinafter referred to as the issuing Bank) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, do hereby agree to give the EMPLOYER (BMRCL) on behalf of the contractor such a Bank Guarantee, drawn and payable at Bangalore \_\_\_\_\_ through our Bangalore \_\_\_\_\_ Branch.

4. This Bank Guarantee is encashable or extendable at our designated Branch in Bengaluru (Bangalore) Karnataka, India, as mentioned below:

Name of the Bank, Branch and contact details

Address

Telephone no: & Fax No:

E-mail Address

Branch manager name& mobile No:

Bank Zonal Office Address,

Telephone No:, Fax Number,

E-mail Address

5. "This Bank Guarantee shall be encashed unless renewed by the contractor at the request of the Employer, before the due date".

6. NOW therefore, we hereby affirm that we are the guarantor and responsible to EMPLOYER (BMRCL) and their successor, on behalf of the contractor up to a total sum of \_\_\_\_\_ (amount of Guarantee to be specified in figure and words), in the respective currency i.e., INR or Foreign currency (indicate currency amount in figures and words) such sum being payable in the respective currencies in which the contract price is payable. Further, we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil, or arguments any sum or sums within the limits of the sum specified in this Bank Guarantee as aforesaid without you needing to prove or to show grounds or reasons for your demand, by depositing/crediting to the Current A/c. of BMRCL, the sums specified therein.

7. The Bank will pay the guaranteed money required by EMPLOYER (BMRCL) immediately on demand without delay without reference to the Contractor and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the liability or damages resulting from any defects or shortcomings or debts of the Contractor.
8. BMRCL shall have full rights to encash this bank guarantee at any time during the guarantee period and the contractor shall have no right or claim whatsoever in the matter of encashment of the Bank guarantee amount by the Employer (BMRCL). The Bank will be having full responsibility in terms of the guarantee and obligation, to make immediate payment to the EMPLOYER/BMRCL, without the consent of the contractor and without referring the matter to the contractor.
9. Courts at Bangalore, Karnataka, India shall have exclusive jurisdiction for adjudicating the disputes arising out of encashment of the Guarantee, and we the said Bank undertakes not to revoke this Guarantee during its currency, except with the previous consent of the Employer in writing and agree that any change in the constitution of the Bank shall not discharge our liability hereunder.
10. This Bank Guarantee will not be discharged due to the change in the constitution of the contractor or change in the constitution of the issuing bank
11. This guarantee is issued by Shri \_\_\_\_\_ who is/are authorized by the Bank for issuing the guarantee in its behalf and his ID No. and Email address being-----.
12. The Banks liability under this Guarantee shall not exceed the amount of INR/Foreign currency. \_\_\_\_\_ (to be specified in words and figures \_\_\_\_).
13. This guarantee shall be valid for (period to be specified) till \_\_\_\_\_ (Period to be mentioned).
14. The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.
15. It is hereby agreed that the liability of the Bank under this guarantee shall cease on whichever of the following events first occurs.
- a) Payment by the Bank of the Guaranteed sum in full to the Employer/BMRCL  
or
  - b) Receipt of written communication from the Employer/BMRCL, to the issuing Bank, along with the Original Bank Guarantees discharging the Bank of its liability covered by this Bank Guarantee.

Date

SIGNATURE AND SEAL OF THE GUARANTOR

NAME OF THE BANK\_\_\_\_\_

ADDRESS\_\_\_\_\_

**Note:** Draft copy to be approved by the Employer and Employer shall modify the same to make compliance with the tender conditions.

**SCHEDULE-10****SPECIAL ADVANCE BANK GUARANTEE**

(To be submitted by **Sole Contractor or each member (separately) of JV/Consortium** and to be stamped in accordance with the Stamp Act of the Country of Issuing Bank)

**To**

**BANGALORE METRO RAIL CORPORATION LIMITED (BMRCL)  
3RD FLOOR, BMTC COMPLEX,  
K.H.ROAD, SHANTHINAGAR  
BANGALORE- 560027.**

1. **WHEREAS** \_\_\_\_\_ (Name and Address of the Contractor hereinafter called the "Contractor") has undertaken for due performance of contract, in pursuance of contract No. \_\_\_\_\_ (description of the contract work of Bangalore Metro Rail Project to be specified) (hereinafter called "the Contract"). The said contract was awarded by Bangalore Metro Rail Corporation Limited (BMRCL) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, Hereinafter called the Employer) to the Contractor.
2. **AND WHEREAS** as per the conditions of the contract the Employer may consider provision of the Special Advance to the contractor in the interest of expecting progress/completion of the project against a Bank Guarantee for an amount of the advance sanctioned as specified in the contract and in the form acceptable to the Employer (BMRCL).
3. **AND WHEREAS** it has been stipulated in the concerned contract awarded to the contractor that the contractor shall furnish to BMRCL with a Bank Guarantee from an Indian Scheduled Bank (excluding Cooperative Bank) or from a schedule Foreign Bank as defined in Section 2(e) of RBI Act 1934 r/w second schedule for the sum specified herein as security for Special Advance of cash amount. AND WHEREAS it has been further stipulated that the employer agrees to provide Special Advance money to the Contractor on furnishing Bank Guarantee issued by Indian Scheduled Bank (excluding cooperative Bank) or by a schedule Foreign Bank as defined in section 2(e) of RBI Act 1934 r/w second schedule).
4. At the request of the contractor, we (Name of the Bank, address, Headquarters, Branch etc) (Hereinafter called the BANK) have agreed to give such guarantee.
5. **AND WHEREAS**, we \_\_\_\_\_ (the name and full address of the Bank including Email address) having registered office at \_\_\_\_\_ (hereinafter referred to as the issuing Bank) which expression shall unless repugnant to the context or the meaning thereof, include its successors, administrators, executors and assignees, do hereby agree to give the EMPLOYER (BMRCL) on behalf of the contractor such a Bank Guarantee, drawn and payable at Bangalore \_\_\_\_\_ through our Bangalore \_\_\_\_\_ Branch.
6. This Bank Guarantee is encashable or extendable at our designated Branch in Bengaluru (Bangalore) Karnataka, India, as mentioned below:  
Name of the Bank, Branch and contact details Address Telephone no: & Fax No: E-mail Address Branch manager name& mobile No: Bank Zonal Office Address, Telephone No, Fax Number, E-mail Address:
7. "This Bank Guarantee shall be encashed unless renewed by the contractor at the request of the Employer, before the due date".
8. **NOW therefore**, we hereby affirm that we are the guarantor and responsible to EMPLOYER

(BMRCL) and their successors, on behalf of the contractor up to a total sum of \_\_\_\_\_ (amount of Guarantee to be specified in figure and words), in the respective currency i.e., INR or Foreign currency (indicate currency amount in figures and words) such sum being payable in the respective currencies in which the contract price is payable. Further, we hereby unconditionally, irrevocably and without demur undertake to immediately pay you, upon your first written demand and without cavil, or arguments any sum or sums within the limits of the sum specified in this Bank Guarantee as aforesaid without you being required to prove or to show grounds or reasons for your demand, by depositing/crediting to the Current A/c. of BMRCL, the sums specified therein.

9. The Bank will pay the money required by EMPLOYER (BMRCL) immediately on demand without delay without reference to the Contractor and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the liability or damages resulting from any defects or shortcomings or debts of the Contractor.

10. EMPLOYER (BMRCL) shall have full rights to encash this bank guarantee at any time during the guarantee and the contractor shall have no right or claim whatsoever in the matter of encashment of the Bank guarantee amount by the Employer (BMRCL). The Bank will be having full responsibility in terms of the guarantee and obligation, to make immediate payment to the EMPLOYER (BMRCL), without the consent of the contractor and without referring the matter to the contractor.

11. Courts at Bangalore, Karnataka, India shall have exclusive jurisdiction to adjudicate the disputes arising out of encashment of the Guarantee, and we, the said Bank undertake not to revoke this Guarantee during its currency, 2 except with the previous consent of the Employer in writing and agree that any change in the constitution of the issuing Bank shall not discharge our liability hereunder.

12. This Bank Guarantee will not be discharged due to the change in the constitution of the contractor or change in the constitution of the issuing bank

13. This guarantee is executed and issued by Shri \_\_\_\_\_ who is/are authorized by the Bank for issuing the guarantee in its behalf and his ID No. and Email address being-----.

14. The Bank's liability under this Guarantee shall not exceed the amount of INR/Foreign currency. \_\_\_\_\_(to be specified in words and figures\_\_\_\_).

15. This guarantee shall be valid for (period to be specified) till \_\_\_\_\_ (Period to be mentioned).

16. The pendency of any dispute or arbitration or other proceedings shall not affect this guarantee in any manner.

17. It is hereby agreed that the liability of the Bank under this guarantee shall cease on the first occurrence of either of the following events:

a) Payment by the Bank of the Guaranteed sum in full to the Employer/BMRCL

or

b) Receipt of written communication from the Employer/BMRCL, to the issuing Bank, along with the Original Bank Guarantees discharging the Bank of its liability covered by this Bank Guarantee.

Date

SIGNATURE AND SEAL OF THE GUARANTOR

NAME OF THE BANK\_\_\_\_\_

ADDRESS\_\_\_\_\_

**Note:** Draft copy to be approved by the Employer and Employer shall modify the same to make compliance with the tender conditions.

**SCHEDULE-11**

**DELETED**

**SCHEDULE-12****DRAFT FORMAT FOR JOINT VENTURE /CONSORTIUM AGREEMENT**

among

M/s ..... having its registered office at ..... (hereinafter referred to as ..... ) acting as the Lead Partner of the first part,

and

M/s ..... having its registered office at ..... (hereinafter referred to as '.....') in the capacity of a Joint /consortium Partner of the second part.

and

M/s ..... having its registered office at ..... (hereinafter referred to as '.....') in the capacity of a Joint /consortium Partner of the third part.

The expressions of ....., ..... and ..... shall wherever the context admit, mean and include their respective legal representatives, successors-in-interest and assigns and shall collectively be referred to as "the Parties" and individually as "the Party"

**WHEREAS:**

Bangalore Metro Rail Corporation Limited (BMRCL) [hereinafter referred to as "Employer"] has invited tenders for ... .... "[Insert name of work]....." /Vide LOA No.....awarded contract. (Strike out as applicable)

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. The following documents shall be deemed to form and be read and construed as an integral part of this AGREEMENT.
  - i) Notice Inviting Tender, and
  - ii) Tender document
  - iii) Any Addendum/Corrigendum issued by Bangalore Metro Rail Corporation Limited
  - iv) The Tender submitted by us and on our behalf jointly by the Lead Partner.
  - v) Letter of Acceptance issued by Bangalore Metro Rail Corporation Limited.
2. The 'Parties' have studied the documents / documents and LOA issued to enter into Joint Venture/consortium as under and have agreed to participate.

1. M/s .....shall be the lead member of the JV/consortium for all intents and purpose and shall represent the Joint Venture/consortium in its dealing with the Employer. For the purpose of execution, the parties agree to nominate ..... as the leader duly authorized to sign and submit all documents and enter into correspondence with the Employer.

2. The 'Parties' have resolved that the distribution of share and responsibilities between JV/consortium partners (Tenderer shall ensure that the assigned responsibilities are commensurate with the Qualification Criteria) is as under:

(A) Lead Partner M/S----- (insert name) SHARE .....%;

**RESPONSIBILITIES**

(I) .....

(II) .....

- (B) Joint Partner M/S ----- (insert name) SHARE .....%;  
**RESPONSIBILITIES**  
(I) .....  
(II) .....
- (C) Joint Partner M/S ----- (insert name) SHARE .....%;  
**RESPONSIBILITIES**  
(I) .....  
(II) .....

### 3. JOINT AND SEVERAL RESPONSIBILITIES

The Parties undertake that they shall be jointly and severally liable to the Employer in the discharge of all the obligations and liabilities as per the contract with the Employer and for the performance of contract awarded to their JV/consortium.

### 4. ASSIGNMENT AND THIRD PARTIES

The parties shall co-operate throughout the entire period of this agreement on the basis of exclusivity and neither of the parties shall make arrangement or enter into agreement either directly or indirectly with any other party or group of parties on matters relating to the project except with prior written consent of the other party and the employer

### 5. EXECUTIVE AUTHORITY

The said Joint Venture/consortium through its authorized representative (Lead member) shall receive instructions, payments from the Employer. The management structure for the project shall be prepared by mutual consultations to enable completion of project to quality requirements within permitted cost and time.

### 6. GUARANTEES AND BONDS

(i) **The Tender Security:** Tender security can be furnished by any one of the members of the joint venture/consortium or each member of JV in proportion to their percentage of participation. The JV/consortium member M/s-----, M/s-----, M/s----- (Insert Name of the JV/consortium member(s)) has furnished the Tender Security for the tender (*applicable to parties entered into agreement prior to submission of tender*)

(II) **PERFORMANCE SECURITY:** If contract is awarded, each member of the JV/consortium shall submit the performance security in proportion to their participation.

### 7. TENDER SUBMISSION

Each party shall bear its own cost and expenses for preparation and submission of the tender and all costs until conclusion of a contract with the employer for the project. Common expenses shall be shared by both the parties in the ratio of their actual participation.

### 8. INDEMNITY

Each party hereto agrees to indemnify the other party against its respective parts in case of breach/default of the respective party of the contract works of any liabilities sustained by the joint venture/consortium.

9. For the execution of the respective portions of works, the parties shall make their own arrangements to bring the required finance, plants and equipment, materials, manpower and other resources.

**10. DOCUMENTS & CONFIDENTIALITY**

Each Party shall maintain in confidence and not use for any purpose related to the Project all commercial and technical information received or generated in the course of preparation and submission of the tender and in future as per the submission of declaration and undertaking for the said project.

**11. ARBITRATION**

Any dispute, controversy or claim arising out of or relating to this agreement shall be settled in the first instance amicably between the parties. If an amicable settlement cannot be reached as above, it will be settled by arbitration in accordance with the Indian arbitration and conciliation act 1996 or any amendments thereof. The venue of the arbitration shall be Bangalore.

**12. VALIDITY**

This agreement shall remain in force till the end of Final Defect Liability Period is over and the securities are released.

13. This **AGREEMENT** is drawn in **FOUR** number of copies with equal legal strength and status. One copy is held by M/s ..... and the other by M/s. & .....M/s ..... and a copy submitted to the Employer (BMRCL) with the tender / as a part of the fulfilment of tender condition after the award of work.

14. This **AGREEMENT** shall be construed under the laws of India.

**15. NOTICES BETWEEN JV/consortium PARTNERS**

Notices shall be given in writing by fax confirmed by registered mail or commercial courier to the following fax numbers and addresses:

Lead Partner (First Part)	JV/consortium member (Second Part)	JV/consortium member (Second Part)
.....	.....	.....
.....	.....	.....
(Name & Address)	(Name & Address)	(Name & Address)

IN WITNESS WHEREOF THE PARTIES, have executed this AGREEMENT the day, month and year first before written.

M/s.....  ..... (Signature) (Seal)	M/s.....  ..... (Signature) (Seal)	M/s.....  ..... (Signature) (Seal)
--	--	--

Witness

1..... (Name & Address)

2..... (Name & Address)

3..... (Name & Address)

R6 - UG-RT03 / TNL& STN / BMRCL