

**KOLKATA METRO RAIL CORPORATION LIMITED
(A Government of India Undertaking)**

EAST WEST METRO PROJECT

Design, Construction of 365.646m Viaduct from (Ch. 8958.405m to 9324.051m) connecting Via-duct constructed on either side along the Elevated Section of East West Corridor of Kolkata Metro

CONTRACT NO: EWE-2[R]

TENDER DOCUMENTS

VOLUME 1

**NOTICE INVITING TENDER
INSTRUCTION TO TENDERERS
SPECIAL CONDITIONS OF CONTRACT
GENERAL CONDITIONS OF CONTRACT**

**KOLKATA METRO RAIL CORPORATION LTD
KMRCL Bhaban, 2nd & 3rd Floor,
MUNSI PREM CHAND SARANI,
KOLKATA – 700021**

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TENDER DOCUMENTS

VOLUME 1

PART-I

NOTICE INVITING TENDER

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NOTICE INVITING TENDER

NIT No: Civil/1 of 2013-14 Contract Package – EWE-2[R]

1.1 GENERAL

1.1.1 Kolkata Metro Rail Corporation Ltd. (KMRCL) invites sealed tenders in 2 (two) packet system from eligible tenderers for the following works –

Name of work: Design, Construction of 365.646m Viaduct from (Ch. 8958.405m to 9324.051m) connecting Via-duct constructed on either side along the Elevated Section of East West Corridor of Kolkata Metro

1.1.2 Background:

M/s. Gammon India Limited was awarded the contract for the design and Construction of 4.725 Km viaduct work from Subhas Sarovar to Salt Lake Sector V (P1 to P182) including the Depot entry viaduct for a length of around 1.048 Km in early 2009. Major part of the work virtually completed by M/s. Gammon. The portion of the original alignment between P37 and P51 could not be constructed due to the existence of Dattabad Settlement. Subsequently, KMRC developed an alternative alignment with increased span adopting balanced cantilever type superstructure with adjacent spans from P37 to P51 which will affect least number of hutments. The two major foundations of the balanced cantilever are proposed at two water bodies (Ponds) of the locality. Both piers P37 and P51 along with pier caps were already constructed. The finished track level at P-37 is 15.650 m. The finished track level at P-51 is 13.155m. The ground level excepting the pond locations is around 3.20m. Pier P50, was already constructed excepting the pier cap. The scope of work would include construction of civil works for foundations, sub-structure and superstructure along with appurtenances from chainage 8958.405 m to 9324.051m on a Design Built basis, including shifting and relocation of underground and over ground utilities, restoration of road/median or other facilities, affected due to construction. The Contractor has to include in his bid all the eventuality associated during construction in and around existing human settlement. The Contractor may adopt alternative methods for construction.

All spans should have similar cable duct and walkway arrangements as on the already constructed span.

Thus, the brief scope of work shall include detailed survey and soil Investigation of the alignment for the viaduct, fixing an optimized span configuration avoiding shifting of utilities to the extent possible and without affecting the human settlement along the proposed alignment. Design of all components of viaduct and related works as per detailed design requirement as mentioned above; and construction of following components of viaduct including related works:

- (i) Pile foundation for viaduct.

- (ii) Pile cap including leveling course.
- (ii) Pier and pier cap matching with the shape and finishes of already constructed pier and pier caps
- (iii) Crash barrier
- (iv) Bearings as per design including bearing pedestals, seismic devices
- (v) POT/PTFE bearings on continuous spans/special spans including vertical stoppers.
- (vi) Construction of main span of the superstructure by balanced cantilever construction method
- (vii) Construction of the side spans at both ends of the main span including stitching of the PSC adjacent span structures with the PSC structure.
- (viii) Precast parapets and railing.
- (ix) Precast cable ducts & covers. The top of duct cover should have proper neat cement finish.
- (x) Inserts for track plinth (Track plinth is not in the scope of this work)
- (xi) Expansion joint, sealant in the expansion joints of ramp walls.
- (xii) Man holes with manhole covers.
- (xiii) Earthing arrangement, drainage system (only GI Pipes of sufficient dia of medium class is to be provided for drainage purpose) at all locations, water collecting boxes at the pier location & its openable cover made up of mesh/jail, inserts for traction/signaling masts in parapets.
- (xiv) The work also includes the construction of pier and pier arm/cross girder at the start and end chainage of the each station area, if required. The Contractor will have to verify the structural stability of the common pier, already constructed
- (xv) Construction for ground water recharging/Rain harvesting.
- (xvi) Special spans arrangements as per site requirement.
- (xvii) Detailed survey of the alignment for execution of the work as shown in the tender drawings.
- (xviii) Provision for cutouts in the viaducts required for services in coordination with various system contractors
- (xix) Approved grooves on the parapet
- (xx) The design and drawing prepared by the DDC of the Contractor will be proof checked by GC. The Contractor will have to make their DDC available at Kolkata during review of the design and drawing by GC
- (xxi) The Contractor will have to install safety monitoring devices for continuous monitoring of deflection and torsion during the construction of the superstructure over inhabited settlement. They will have to continuously monitor the safety

aspect and carry out necessary rectification immediately on observation of any distress.

- (xxii) Final documents related to the negotiation with the inhabitants below the structure are to be submitted to the KMRCL for record after completing the Work.
- (xxiii) Shifting of all dry utilities like electricity, telephone as per shifting plan and policy approved by utility owning agency/department and shifting of all related structures.

1.1.3 Cost of Tender:

Tender documents for the above work can be purchased from the office of the Chief Engineer, Kolkata Metro Rail Corporation Limited at the address given below on payment of Rs. 25,000.00 in the form of a cross Demand Draft issued from an Indian Scheduled Bank excluding Co-operative Bank drawn in favour "**Kolkata Metro Rail Corporation Limited**", India for each document.

1.1.4. Eligibility Criteria

Each Tenderer shall satisfy the following Eligibility Criteria failing which his tendershall be rejected:

1) Experience

Must have proven experience of having successfully completed design and construction of elevated corridor for Rail/Road or Bridge Structure comprising at least 1200mm diameter RCC bored Piles with RCC balanced cantilever superstructure for at least 60m long main span during last 5 calendar years ending 31st December , 2012

- One similar work costing not less than Rs.27 Crores or
- Two similar works costing not less than 17 Crores each or
- Three similar works costing not less than 13.5 Crores each

2) Average Annual Financial Turnover

Average Annual Financial Turnover should be at least Rs.12.0 Crores during last three financial years ending 31st March, 2013.

The Contractor must submit the construction methodology to suit the existing site constrains and taking care of the safety of the inhabitants. The bid without the Construction methodology will be declared as informal. The proposed methodology of the formal bidder will be first examined. The price bid of those Contractors whose methodology are not acceptable to KMRCL, will not be opened and returned back in sealed condition

Late or delayed submittals will not be accepted under any circumstances

1.1.5. Key details:

Tender Security amount	Rs. 70 lakhs (Rupees Seventy lakhs only)
Completion period of the Work	15 months
Tender documents on sale	From 16.05.2013 to 31.05.13 (between 10.00 hrs to 1700 Hrs) on working days
Last date of seeking clarification	14/06/2013
Pre-bid Meeting	22/06/2013 at 1200 Hrs. Venue: KMRCL Conference Room
Last date of issuing addendum	28/06/13
Date & time of Submission of Tender	12/07/13 (between 1000 Hrs and 12.30 Hrs)
Date & time of opening of Tender	12/07.2013 at 15.00 hrs
Authority and place for purchase of tender documents, seeking clarifications and submission of completed tender documents	Chief Engineer(civil) Kolkata Metro Rail Corporation Limited KMRCL Bhawan, HRBC office Complex Munshi Prem Chand Sarani Kolkata-700021 India
Website, Email & Fax	KMRC website: www.kmrc.in Phone/Fax: 91 33 2213 4345/ 2213-4380

1.1.6 The Tender documents consist of:

Volume 1

- Notice Inviting Tender (NIT)
- Instructions to Tenderers (ITT)
- Special Conditions of Contract (SCC)
- General Conditions of Contract (GCC)

Volume 2

- Design Basis Report
- Structural Specifications
- Geo-technical Report
- Drawings

Volume 3

- Bill of Quantities (BOQ) & Schedule of Payment

Volume 4

- Safety, Health and Environment Manual (SHE)

All the documents listed above shall form integral part of Contract Agreement.

- 1.1.7 All Tenderers are hereby cautioned that tenders containing any material deviation or reservations as described in Clause 24.0 of “Instructions to Tenderers” and/or minor deviation without quoting the cost of unconditional withdrawal shall be considered as non-responsive and shall liable to be rejected.
- 1.1.8 Late tenders (received after date and time of submission of bid) shall not be accepted under any circumstances**
- 1.1.9 Applicant must not have been blacklisted or deregistered by any govt. agencies or public sector undertaking during last 10 years. Also the applicant must not have resigned after award of contract.
- 1.1.10 Tenders shall be valid for a period of 150 days from the date of submission of Tenders and shall be accompanied with a Tender Security of the requisite amount as per form B in the form of a Bank Guarantee from Scheduled Commercial Bank in India.
- 2.0 Tender documents are available on payment of Rs.25,000.00 in the form of a cross Demand Draft issued from an Indian Scheduled Bank excluding Co-operative Bank drawn in favour “Kolkata Metro Rail Corporation Limited” payable at Kolkata from
- The Managing Director,
Kolkata Metro Rail Corporation Limited
KMRC Bhawan (2nd & 3rd Floor)
Munshi Premchand Sarani
Kolkata 700021
- 2.1 Tenderer may download tender documents from web site www.kmrc.in and submit the document duly filled in after taking print out through laser print only in A4 size paper. Master copy of Tender Document is available in KMRCL’s Office. In case, any discrepancy between Tender Document down loaded from the web site and the master copy, the latter shall prevail and binding on the Tenderers. The Tenderer shall submit a crossed Demand Draft from Nationalized or Schedule Bank in India in favour of “Kolkata Metro Rail Corporation Limited” payable at Kolkata along with tender document down loaded from web site without which the tender shall not be opened. The said Demand Draft shall be put into a separate envelop super scribing “Demand Draft for the cost of Tender Document” followed by the name of the Tender.

KMRCL reserves the right to accept or reject any or all proposals without assigning any reasons thereof, No tenderer shall have any cause of action or claim against the KMRCL for rejection of his proposal.

**Managing Director
Kolkata Metro Rail Corporation Ltd**

SCOPE OF WORK

2.0 GENERAL

Contract EWE-1 part Design & Construction of 365.646 M Viaduct from (Ch. 8958.405m to M 9324.051m) connecting Via-duct constructed on either side along the Elevated Section of East West Corridor of Kolkata Metro

2.1 WORK CONTENT

2.1.1 Brief Scope

M/s. Gammon India Limited was awarded the contract for the design and Construction of 4.725 Km viaduct work from Subhas Sarovar to Salt Lake Sector V (P1 to P182) including the Depot entry viaduct for a length of around 1.048 Km in early 2009. Major part of the work virtually completed by M/s. Gammon. The portion of the original alignment between P37 and P51 could not be constructed due to the existence of Dattabad Settlement. Subsequently, KMRC developed an alternative alignment with increased span adopting balanced cantilever type superstructure with adjacent spans from P37 to P51 which will affect least number of hutments. The two major foundations of the balanced cantilever are proposed at two water bodies (Ponds) of the locality. Both piers P37 and P51 along with pier caps were already constructed. The finished track level at P-37 is 15.650 m. The finished track level at P-51 is 13.155m. The ground level excepting the pond locations is around 3.20m. Pier P50, was already constructed excepting the pier cap. The scope of work would include construction of civil works for foundations, sub-structure and superstructure along with appurtenances from chainage 8958.405 m to 9324.051m on a Design Built basis, including shifting and relocation of underground and over ground utilities, restoration of road/median or other facilities, affected due to construction. The Contractor has to include in his bid all the eventuality associated during construction in and around existing human settlement. The Contractor may adopt alternative methods for construction.

All spans should have similar cable duct and walkway arrangements as on the already constructed span.

Thus, the brief scope of work shall include detailed survey and soil Investigation of the alignment for the viaduct, fixing an optimized span configuration avoiding shifting of utilities to the extent possible and without affecting the human settlement along the proposed alignment. Design of all components of viaduct and related works as per detailed design requirement as mentioned above; and construction of following components of viaduct including related works:

- (i) Pile foundation for viaduct.
- (ii) Pile cap including leveling course.
- (ii) Pier and pier cap matching with the shape and finishes of already constructed pier and pier caps
- (iii) Crash barrier
- (iv) Bearings as per design including bearing pedestals, seismic devices
- (v) POT/PTFE bearings on continuous spans/special spans including vertical stoppers.
- (vi) Construction of main span of the superstructure by balanced cantilever construction method
- (vii) Construction of the side spans at both ends of the main span including stitching of the PSC adjacent span structures with the PSC structure.

- (viii) Precast parapets and railing.
- (ix) Precast cable ducts & covers. The top of duct cover should have proper neat cement finish.
- (x) Inserts for track plinth (Track plinth is not in the scope of this work)
- (xi) Expansion joint, sealant in the expansion joints of ramp walls.
- (xii) Man holes with manhole covers.
- (xiii) Earthing arrangement, drainage system (only GI Pipes of sufficient dia of medium class is to be provided for drainage purpose) at all locations, water collecting boxes at the pier location & its openable cover made up of mesh/jail, inserts for traction/signaling masts in parapets.
- (xiv) The work also includes the construction of pier and pier arm/cross girder at the start and end chainage of the each station area, if required. The Contractor will have to verify the structural stability of the common pier, already constructed
- (xv) Construction for ground water recharging/Rain harvesting.
- (xvi) Special spans arrangements as per site requirement.
- (xvii) Detailed survey of the alignment for execution of the work as shown in the tender drawings.
- (xviii) Provision for cutouts in the viaducts required for services in coordination with various system contractors
- (xix) Approved grooves on the parapet
- (xx) The design and drawing prepared by the DDC of the Contractor will be proof checked by GC. The Contractor will have to make their DDC available at Kolkata during review of the design and drawing by GC
- (xxi) The Contractor will have to install safety monitoring devices for continuous monitoring of deflection and torsion during the construction of the superstructure over inhabited settlement. They will have to continuously monitor the safety aspect and carry out necessary rectification immediately on observation of any distress.
- (xxii) Final documents related to the negotiation with the inhabitants below the structure are to be submitted to the KMRCL for record after completing the Work.
- (xxiii) Shifting of all dry utilities like electricity, telephone as per shifting plan and policy approved by utility owning agency/department and shifting of all related structures.

2.1.2 There is possibility of some of the items not getting mentioned in the above list of works in Viaduct. Contractors are requested to go through the tender drawings also in details as the works mentioned above as well as indicated in the tender drawings would be considered inclusive in the scope of work. Employer decision shall be final in this regard in case of dispute. Some of the major utilities cannot be diverted. Contractor shall take into consideration the existence of these utilities and design the foundation at these locations accordingly.

2.1.3 Deleted

2.1.4 The scope of works shall include but not limited to the following:

- a. Alignment plans (both vertical and horizontal) is provided by the KMRCL to the Contractor. However, Contractor would be permitted to optimize the span configuration (only) based upon his calculations. Utility identification at foundation location will be done by the Contractor in advance and in case utility(s) is encountered or obligatory requirements are to be met out, the Contractor would modify the span configuration to save the utility(ies) or to meet the obligatory requirements within the accepted price. The shifting of the utility(ies) would be undertaken only in exceptional circumstances where in the opinion of the Engineer no other option is available.
- b. **Deleted.**
- c. Site clearance and dismantling of obstructions etc., before commencement of work as specified or as directed;
- d. Preparing detailed designs, general drawings and working drawings for various components of the works and obtaining approval in respect thereof from the Engineer, inclusive of incorporation of all modifications, alterations, changes, etc. that may be required to be carried as directed;
- e. True and proper setting out and layout of the Works, bench marks and provision of all necessary labour, instruments and appliances in connection therewith as specified or as directed;
- f. The Traction & signalling structures themselves are excluded from the scope of the tender, but civil works required for fixing the structures such as inserts are included, and shall be done in co-ordination with the Traction/ signalling Contractor/ Engineer. The necessary arrangements shall form part of the total work.
- g. Conducting load test on piles as per IS-2911- Part IV and girders as per IRC-SP-37;
- h. All aspects of quality assurance, including testing of materials and other components of the work, as specified or as directed;
- i. The Contractor has to ensure cleanliness of the roads and footpaths by deploying man power for the same. The Contractor shall have to ensure proper brooming, cleaning and washing of roads and footpaths on all the times through out the entire stretch till the currency of the contract including disposal of sweepage. Nothing extra shall be payable on this account;
- j. Day to day cleaning of worksite throughout the execution period.
- k. Clearing of site and handing over of all the Works, as specified or as directed;
- l. Maintenance of the completed Work during the period as specified;
- m. Submission of completion (i.e. 'As-Built') drawings and other related documents as specified;
- n. Barricading: The contractor shall have to provide barricading as per the drawing provided in the tender drawing. The payment of the same shall be made as per Schedule 'B'.
- o. Results of Geo Technical investigations conducted at project site are enclosed with the tender document. This information about the soil and sub-soil water conditions is being made available to the contractor in good faith and the contractor shall have to obtain the details of sub soil investigation independently. No claim whatsoever on account of any discrepancy between the sub surface conditions that may be actually encountered at the time of execution of the work and those given in these tender documents shall be admissible to the contractor under any circumstances.

2.1.5 Any other item of work as may be required to be carried out for completing the construction of elevated structure of specified length including all necessary interfaces works with station and system-wide Contractors in all respects in accordance with the provisions of the Contract and/or to ensure the structural stability and safety during and after construction.

The value of the work shall be on lump sum basis for Schedule 'A' and on item rate basis for Schedule 'B', WBSR (Roads & building) upto date items as per Schedule 'C' and schedule 'D' as accepted in letter of acceptance subject to such additions thereto or deductions there from as may be made under the provisions of the Contract.

2.2 Interface Works

- i. In addition the Contractor shall be required to carry out various miscellaneous works as per interfacing requirements. The contractor shall carry out necessary co-ordinations with various system contractors pertaining to traction power supply, signaling, telecommunication etc. for keeping provisions pertaining to cut outs, shafts, raceways, concealed conduits, other conduits, fixtures, inserts clearances etc. all complete for the scope of work.
- ii. Earthing and lighting protection wherever required
- iii. The track supporting structure will support ballast less track (long welded rail) which will be laid later by a separate contractor. Arrangements required for provision of such ballastless track will have to be incorporated in the deck, in consultation with the Engineer where the ballast less track concrete is to be laid on the top of the deck slab, as directed by the Engineer, for proper keying up further concrete layers and/or casting blocks which will form part of track work to be done by a separate contractor.

2.2.1 Deleted

2.2.2 Deleted

2.2.3 Deleted

2.2.4 Interface with Traction Power Supply Contractor

- i. Civil Contractor shall construct appropriate passages/ trenches, ducts, cable shaft and also keep provision of crossing of various cables wherever required in coordination with Power Supply Contractor.
- ii. Civil Contractor shall coordinate with Power Supply Contractor in order to maintain specific Static and Dynamic clearances.
- iii. Provide earthing arrangements in viaduct segments, Pier and pier caps, railing etc.

2.3 Structures

The construction of structures will have to be planned in such a manner that they do not obstruct or interfere with the existing roads/railways and other utilities. Where work is required to be carried out at locations adjacent to such roads/railways, utilities, structures, monuments etc. suitable safety and protection arrangements will have to be ensured for which nothing extra will be payable. It should be ensured that no damage is caused to any such element and Engineer/ Employer shall be indemnified against such damage at no extra cost.

2.4 Design criteria

Design criteria shall be as per **Design Basis Report** enclosed.

Results of the sub surface investigations conducted at the project site are enclosed with the tender document. The information about the soil and sub soil water conditions is being made available to the contractor in good faith and the contractor is advised to obtain results independently as may be considered necessary by him before quoting rates in the tender. The contractor shall carry out geotechnical investigation at the time of execution of work to ascertain the sub soil property which shall be submitted alongwith the foundation designed.

The designed methodology for foundation design shall be as per guidelines and provisions given in the Design Basic Report of contract.

No claims whatsoever on account of any discrepancy between the sub surface conditions that may be actually encountered at the time of execution of work and those given in these tender documents shall be admissible to the contractor under any circumstances whatsoever.

2.4.1 Reference to the Standard Codes of Practice

All Standards, Technical Specifications and Codes of practice referred to shall be latest editions including all applicable official amendments and revisions. The Contractor shall make available at site all relevant Indian Standard Codes of practice and IRSC & TRC Codes as applicable.

2.4.1.2 Wherever Indian Standards do not cover some particular aspects of design/ construction, relevant British/German Standards will be referred to. The Contractor shall make available at site such standard codes of practice.

2.4.1.3 In case of discrepancy among Standard codes of practice, Technical Specifications and provisions in sub clauses in this NIT, the order of precedence will be as below:

- i) Provision in NIT
- ii) Technical Specifications,
- iii) CPWD specifications
- iv) Standard Codes of Practice.

In case of discrepancy among Standard Codes of Practice, the order of precedence will be IRS, IRC, IS, BS, DIN.

2.4.2 Dimensions

2.4.2.1 As regards errors, omissions and discrepancies in Specifications and Drawings, relevant clause of Special Conditions of Contract will apply.

2.4.2.2 The levels, measurements and other information concerning the existing site as shown on the conceptual / layout drawings are believed to be correct, but the Contractor should verify them for himself and also examine the nature of the ground as no claim or allowance whatsoever will be entertained on account of any errors or omissions in the levels or strata turning out different from what is shown on the drawings.

2.5 Associated Works

Works to be performed shall also include all general works preparatory to the construction and works of any kind necessary for the due and satisfactory construction, completion and maintenance of the works to the intent and meaning of the drawings adopted and technical specifications, to best Engineering standards and orders that may be issued by the Engineer from time to time, compliance by the agency with all Conditions of Contract, supply of all materials, apparatus, plants, equipment, tools, fuel, water, strutting, timbering, transport, offices, stores, workshop, staff, labour and the provision of proper and sufficient protective works, diversion, temporary fencing, lighting and watching required for the safety of the public and protection of works on adjoining land; first –aid equipment, sanitary accommodation for the staff and workmen, effecting and maintenance of all insurances, the payment of all wages, salaries, fees, royalties, duties or the other charges arising out of the erection of works and the regular clearance of rubbish, clearing up, leaving the site perfect and tidy on completion.

2.6 CONSTRUCTION DEPOT

For casting yard, batching plant and other activities the land has to be arranged by the Contractor with his own cost. This land shall be made good for such offsite activities

as needed by the Contractor at no extra cost to the employer. A mechanical tyre washing plant shall have to be installed by the contractor for the vehicles leaving the depot to avoid the spillage on the connecting roads.

2.7 TIME SCHEDULE

The agency shall submit with the tender "Time Schedule" for completion of various portions of works. This schedule is to be within the overall completion period of 18 months. The detailed programme in the form of a quantified bar chart or CPM network shall include all activities starting from design to completion.

2.8 TRAFFIC MANAGEMENT

The Contractor shall make the detailed traffic diversion plans in consultation with Kolkata Traffic Police. The work is to be executed with proper liaison with Kolkata Traffic Police. Necessary assistance will be given by KMRCL. The scheme should be such that minimum of two lane of traffic on each direction of the road should be available for the smooth flow of traffic. The Contractor should inspect the site. **The construction barricading for execution of work will be restricted to 8m.** The Contractor shall also strengthen the road where the diversions are planned by widening, repairing to the road surface etc.

2.9 Scope of work under BOQ items

2.9.1 Deleted

2.9.2 Demolition of RCC framed structures, brick masonry buildings including basement etc as existing at site without making damage to adjacent structures, utilities and taking away all the debris and released materials etc.

2.9.3 Traffic barricade with blinker, reflective tapes and other necessary traffic signage should be provided wherever required as per detailed plan. Temporary traffic diversion for smooth flow of traffic will be provided during construction including necessary traffic signs, repairs to diverted route/services lanes if required. Traffic marshals shall be deployed for the period of diversion to guide the road users and to avoid traffic congestion. The traffic marshal should wear proper uniform and should have proper light/torch baton. Restoration of diverted route in original condition etc. shall be done by Contractor. Contractor shall be paid under relevant item under BOQ.

2.9.4 The shifting of the utility(s) would be undertaken only in exceptional circumstances where in the opinion of the Employer no other option is available. The utilities are to be diverted with proper liaison and approval of the utility owning agencies. For the utilities which are not to be diverted proper supporting shall be done to prevent any damage. Contractor shall be paid for diverting the wet utilities like water supply, sewerage, drainage etc under relevant Schedule 'D' items. No payment shall however be made for shifting of dry utility & supporting and protecting any of the dry/wet utilities during course of the work.

2.9.5 Road works, landscaping and other miscellaneous works except any work related to relocation/rehabilitation to be paid under PWD (WB) SOR. **Contractor has to maintain a minimum clearance of 5.5 m from road surface to bottom of pier cap in viaduct portion for which necessary cutting/filling and relaying of road, wherever required, shall be paid to contractor under PWD (WB) SOR (Schedule C) except where specified in the documents.**

2.9.6 Inserts/Fixtures/Supports/Hangers for System Contractor.

2.9.7 Deleted.

2.10 UTILITIES

Utility identification at foundation locations will be done by the contractor and in case utility(s) is encountered or obligatory requirement is to be met out, the contractor shall modify the span configuration to save the utility(ies) or to meet obligatory requirements within the accepted price. Shifting of utility(ies) would be done only in exceptional cases where the opinion of the Engineer no other optional is available. **The contractor has to check the utility at each pier location by actual trenching to the required depth, taking photographs of each utilities and propose the diversion plan with utility owning agencies .The trench is to be suitably barricaded and traffic control during identification. The identification of utilities is to be completed within 2 months of letter**

of acceptance. Contractor shall be paid for diverting the wet utilities only under relevant Schedule 'D' items. No payment shall however be made for supporting the utilities during course of work.

The utilities are to be diverted with proper liaison and approval of the utility owning agencies. The utilities which are not be diverted but require supporting, proper supporting be done so that they are not damaged along their branches. Precautions to be taken while handling the utilities are mentioned as under:

- (i) Utilities must not be damaged at any cost. If due to some or the other reason, mis-happening occurs, it should be rectified immediately by the Contractor at his own cost under intimation of KMRCL with proper liasoning of utilities owning agency.
- (ii) Till rectification of the damaged trunk sewers, the Contractor shall arrange substitute arrangement for sewer pumping and its disposal as per directions of Concerned agency The similar arrangement be done for other utility.
- (iii) The manholes of T/Sewers should not be covered under the foundation as these may create hindrances to the annual de-silting/cleaning of sewer lines.
- (iv) Sufficient distance of foundation from outer edge of T/ Sewers be kept in view of further maintenance/Safety of T/Sewers.
- (v) The covers of manholes be saved from heavy machinery movement to avoid any accident/Slippage of malba in manholes etc into the T/Sewers which may cause blockage of lines. In case of damage of manhole cover & frame the same shall be replaced immediately by the Contractor at his own cost.
- (vi) Manholes of the trunk sewer should be kept freely accessible for cleaning and removal of blockages and malba should not be dumped over these manholes.
- (vii) Branch sewer connections which are connected with the trunk sewers should also be taken care of. If the same are damaged, the same should be restored immediately on priority.

These are only indicative for one of the utility. Similarly, necessary precautions which are specified from time to time by the utility owning agencies shall also be followed. The Central verge/footpath furnishings which are to be dismantled be handed over to the concerned department in their stores. **Contractor should make his own survey for identification of underground/above ground utilities.**

- 2.11** The tender price as mentioned in Clause 10.0 of ITT shall include all the above listed items in the scope of the work (Clause 2.1 to 2.10).

SITE INFORMATION

3.1 Work Site

3.1.1 The project site is located in the Capital West Bengal. The location of the work and the general site particulars are shown in the General Arrangements Drawings enclosed in the tender documents.

3.1.2 The proposed Work falls on East West Corridor for of Kolkata Metro Rail Project.

3.1.3 The Contractor shall plan his works keeping in view restriction of approach and availability of space and time.

3.2 GENERAL CLIMATIC CONDITIONS

3.2.1 The recorded highest and lowest temperatures in the past 10 years are 38 degree Celsius and 10 degree Celsius respectively.

3.2.2 Summer season is from April to June and winter season is from November to March.

3.2.3 Mean average annual rainfall in the area over a five-year period is of the order of 1605 mm

3.3 SEISMIC ZONE

kolkata falls in Seismic Zone III.

KOLKATA METRO RAIL CORPORATION LIMITED
(A Government of India Undertaking)

EAST WEST METRO PROJECT

Design, Construction of 365.646m Viaduct from (Ch. M 8958.405m to 9324.051m) connecting Via-duct constructed on either side along the Elevated Section of East West Corridor of Kolkata Metro

CONTRACT NO: EWE-2[R]

TENDER DOCUMENTS

VOLUME 1

PART - II

INSTRUCTION TO TENDERERS

INSTRUCTION TO TENDERERS

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Design, Construction of 365.646 M Viaduct from (Ch. M 8958.405 to M 9324.051) connecting Via-duct constructed on either side along the Elevated Section of East West Corridor of Kolkata Metro

INSTRUCTIONS TO TENDERERS (ITT)

1 GENERAL

1.1 INTRODUCTION

Kolkata Metro Rail Corporation Limited (KMRCL) invites sealed tenders from eligible Tenderes for the work under Contract package EWE-1A for the above Work. .

The Tender documents consist of seven volumes, along with their Annexures, Appendices, and Addenda / Errata, if any as described in Clause 1.1.3 of Notice Inviting Tender (NIT).

Tenders shall be prepared and submitted in accordance with the instructions given herein.

1.2 Key Relevant information and address for purchase of documents, correspondence and submission of Tender are provided in NIT. More details are as follows:

- (a) Period for which the tender is to be kept valid (Clause 12.0) is 150 days from the date of submission of tender
- (b) Period of commencement of work (Form A) 15 days from the date of issue of "Letter of acceptance" or as indicated in the letter of acceptance.
- (c) "Defects Liability Period" (Form A) **12 months** from the date of issue of "Completion Certificate".
- (d) Period of completion (Form A) 15 **Months** from the date of issue of "Letter of acceptance".

2.0 ELIGIBILITY REQUIREMENTS

The Tenderer shall satisfy the Eligibility Criteria stated in NIT. The Tenderer may engage Detailed Design Consultant (DDC) for undertaking the design of the captioned Work. The DDC proposed to be appointed by the Tenderer must have carried out design of at least one similar completed works of value not less than Rs. 27.0 Crores during the last 5 years. Tenderer shall have to submit documentary evidence in support of DDC's proven experience in carrying out Design and Engineering of similar work as aforesaid. The name of the DDC shall be stated along with his Technical Package. On acceptance of the tender, the Tenderer shall have to enter into an Agreement with his DDC proposed in his Tender incorporating Terms and Conditions acceptable to the Employer. After award of Contract, Tenderer shall not change his DDC without prior approval of

the Employer. During execution of the Work, Tenderer shall not employ any other DDC to carryout part design work.

- 2.1. Each Tenderer shall submit only one tender either by himself or as a Partner in a joint venture or as a member of a consortium for the Work. If a Tenderer submits, or if any one of the partners in a Joint venture or any of the members in the consortium participates in more than one tender, all the Tenders in which he has participated shall be considered invalid. .
- 2.2 All tenders submitted shall include the following information:
- 2.2.1 In the case of tender by a joint venture of two or more firms or companies as partners or as members of a consortium as the case may be, joint venture data must be furnished in the format prescribed (Form T-1) along with the documents as mentioned therein. The following requirements shall also be complied with:
- a. the tender, and the Form of Agreement, shall be individually signed by all the members of the Joint Venture/Consortium/Partners so as to be legally binding on all partners/constituents as the case may be.
 - b. Nomination of one of the members of the partnership, consortium or joint venture to be in-charge, and this authorization shall be covered in Power of Attorney signed by the legally authorized signatories of all members of partnership, joint venture or consortium and the member In-charge or the person In-charge as aforesaid shall be authorized to incur liabilities and receive payments, instructions for and on behalf of any and all the partners of the joint venture or constituents of the consortium.
 - c. The Tenderer shall collectively meet the requirements stated under Eligibility Criteria stated in NIT of which the Lead Partner shall individually satisfy 75% and all other partners individually shall satisfy 25%, failing which the Tender shall be rejected.
 - d. Details of the intended percentage participation given by each member, with complete details of the proposed division of responsibilities and corporate relationships among the individual members shall be provided in case of a consortium/joint venture.
 - e all partners of the joint venture or constituents of the consortium shall be liable jointly and severally for the execution of the Contract In accordance with the terms and conditions of the Contract and a relevant statement to this effect shall be included in the authorization mentioned under b) above. In the event of default by any partner in the case of a joint venture and constituent in the case of a consortium in the execution of his part of the Contract, the partner/person In-charge 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.
 - g a copy of the MOU Agreement entered into by the joint venture/ consortium partners duly notarized shall be submitted along with the tender with details of Lead Member, details of percentage participation and responsibility of each member with an undertaking that all

members of Joint Venture /Consortium shall be Jointly and Severally liable for execution of the Contract..

2.2.2 To qualify for award of Contract, the Tenderers shall submit a written Power of Attorney authorizing the signatory of the tender to commit the Tenderer or each member of the partnership, consortium or joint venture..

2.3 Each page of tender shall be signed by the authorized signatory.

2.4 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

2.5 Each Tenderer, or any associate will be required to confirm and declare in the tender submittal they have not engaged in any fraudulent and corrupt practice as defined in Clause 5.0 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.

3.0 **COST OF TENDERING**

3.1 The Tenderer shall bear all costs associated with the preparation and submission of his tender.

4.0 **SITE VISIT**

4.1 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.

4.2 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.

4.3 Geotechnical Data in Volume 2 (Part III) of tender are based on the surveys conducted by KMRCL and for reference only. This being a Part Design and Built Contract, tenderer is expected to satisfy himself with data furnished and if required carry out investigations independently for submitting his offer. Any change in design or construction methodology later during execution on account of change will be borne by the Contractor.

5.0 **TENDER DOCUMENTS**

5.1 **CONTENTS OF TENDER DOCUMENTS**

The Tenderer is expected to examine carefully all the contents of the tender documents from Volume 1 to Volume 4 including instructions, conditions, forms, terms,

specifications and drawings and take them fully into account before submitting his offer. 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, shall be rejected.

6 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 the scheduled period. 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 for any reason whatsoever, including any error or mismatch in the NIT and tender documents, may seek clarification from the Employer not later than the last date of seeking clarifications given in Key Details in NIT. Any such clarification, together with all details on which clarifications have been sought, will be copied to all tenderers without disclosing the identity of tenderer seeking clarification. All communications between the tenderer and the Employer shall be conducted in writing.

7.0 AMENDMENT TO TENDER DOCUMENTS

7.1 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 issued to all prospective Tenderers who have purchased the tender document in the tender period.

7.2 Without prejudice to the order of preference as specified in Clause 1.4.2 of General Conditions of Contract, the provisions in such Addenda shall take priority over the Invitation to Tender and Tender Documents issued previously. Tenderers should acknowledge receipt of such Addenda and list them in the tender submittal.

7.3 In order to afford prospective 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 18.1.

7.4 Except for any such written clarification by the Employer which is expressly stated to be by way of Addendum to the documents referred to paragraph 7.2 above and/or for any other document issued by the Employer, which is similarly described, other written clarifications or verbal communication, representation or explanation by the Employer or General Consultant shall not form part of the Contract and shall not be incorporated in the Contract Agreement.

PREPARATION OF TENDERS

8.0 LANGUAGE OF TENDER

8.1 All documents shall be in English Language.

9.0 DOCUMENTS COMPRISING THE TENDER

9.1 TECHNICAL PACKAGE

9.1.1 The technical package, clearly labeled as “TECHNICAL PACKAGE”, shall comprise the followings:

- (a) Tender Security in original in a separate sealed envelope,
- (b) Attested Copy of Power of Attorney (in favour of the Authorized Signatory of the Tenderer)
- (c) Power of Attorney from each member in case of group,
- (d) The Memorandum of Understanding (MOU) for the consortium or joint venture.
- (e) Financial Data

(i) Total value Construction work done for the last seven - financial years (Form T-VI)

(ii) All financial data including Annual Turn Over in the prescribed format shall be certified by Chartered Accountant along with his signature and seal.

(iii) No information relating to financial terms of service should be included in the technical package

(f) All the Tenderers must submit attested copy of the

i) latest Income Tax and Sales Tax clearance Certificate

ii) Registration and clearance certificate under W.B. VAT Tax Act, 2003.

In case of Joint ventures/consortia, the above is required to be submitted by all partners of the same.

If a tenderer is from outside West Bengal he must give an undertaking to the fact that he will get himself registered with W.B. VAT authorities, in the event of issue of Letter of acceptance to the tenderer and shall submit attested copy of Registration Certificate before claiming any payment whatsoever.. In the absence of registration detail with W.B. VAT Department, EPF authority, first payment shall not be released.

9.1.2 In addition to above, Technical Package shall contain:

- (a) An organization chart with assignment of each key staff member (identified by name), duration & timing together with clear description of the responsibilities of each key staff member within the overall work programme. The minimum level of supervision and qualification/ experience of site-staff is given under Annexure– D.

- (b) The name, background and professional experience of each key staff member to be assigned to the project, with particular reference to his experience of a nature similar to that of the proposed assignment. The majority of the key staff shall be regular members of the firm for at least six months (Form T-III and T-IV).
- (c) Names and addresses of Sub-contractors who are proposed to be engaged for execution of different types of works as well as the details of the experience and past performance of such Sub-contractors will be required to be furnished in accordance with Clause 4.8 of GCC in the format prescribed (Form T-II). This information shall be given for all critical items of works on/off site irrespective of the status of the Sub-contractors in the Tender. The total sub-contracting shall not exceed 50% of the value of work. In case of sub-contractors the complete details as per the format prescribed (Form T-II) will be furnished.
- (d) Details of Plant & Equipment assessed as required for the Tendered Work as well as those available as on date in the format prescribed (Form T-V). Major Plant & Equipments are to be provided as per the minimum scale indicated in For T-V. Any proposal with major Plant & Equipment lesser than specified will not be acceptable.
- (e) Tender documents from Volume 1, Volume 2, Volume 3, Volume 4, Volume 6 and Volume 7 (as listed in NIT) with true copy of Volume 5 (BOQ) without Price duly signed each page and stamped. The Tenderer shall confirm that his Pried offer is without any conditions, deviations, qualifications or remarks, and if any, has been priced for unconditional withdrawal.
- (f) **Technical Proposal**

The proposal should cover in detail the following:

 - i. Understanding and comprehension of the work involved.
 - ii. The general approach and methodology proposed for carrying out the services covered in the Scope of Work, including such detailed information as deemed relevant.
 - iii. Tender Work Schedule

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.

iv. Statement of deviations from tender documents (Form -C)

Tenderer's Technical proposal shall be used for the purpose of evaluating and analyzing his Tender but shall no form a part of the Contract unless the same has been expressly incorporated into the Contract in accordance with Para 7.2 above.

(g) QUALITY ASSURANCE PLAN

- i. The Tenderers shall submit their corporate quality policy document duly signed by the corporate head or authorized person.
- ii. The Tenderers shall submit an OUTLINE Quality Plan, illustrating the intended means of compliance as per KMRCL stringent quality requirements as and setting out in summary form an adequate basis for the development of the more detailed document. The Outline Quality Plan shall contain sufficient information to demonstrate clearly the proposed method of achieving the Tenderer's Quality objectives with regard to the requirements of the contract and shall, as a minimum, address the quality system elements as required by ISO 9001 – 1994 – “Model for Quality Assurance in Design, Development Procurement, Installation and Servicing”.

Details of the quality assurance system and organization to enforce the same (Tenderer may furnish the details in a narrative form).

- iii. The contractor shall also associate for the checks conducted by KMRCL / nominated agencies for the QA and take necessary steps for improvement/ confirmation.

(h) SAFETY, HEALTH AND ENVIRONMENTAL PLAN

- i. The tender shall submit as part of his tender on Outline Safety, Health and Environmental Plan separately illustrating the intended means of compliance with Clause 5.0 of Special Conditions of Contract and as per Safety, Health and Environment Manual (SHE Manual) of the Employer, setting out in summary form an adequate basis for the development of the more detailed document to be submitted under sub clause (iv) of this clause. The Outline Safety, Health and Environmental Plan shall contain sufficient information to demonstrate clearly the proposed method of achieving the Tenderer's Safety, Health and environmental objectives with regard to the requirement of the contract.

- ii. 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 corporate head or authorized representative. The Outline Safety, Health and Environmental Plan shall include the methods and procedures for ensuring Safety, Health and Environment Impact monitoring of works under the contract.
- iii. The Site Safety, Health and Environmental Plan shall include detailed policies and procedures which when implemented, will ensure compliance with Clause 5.0 of Special Conditions on Contract and SHE Manual of the Employer.
- iv. The contractor should associate themselves with any Safety checks undertaken by the Employer or any agency nominated by it for Safety and take necessary steps for improvement / confirmation.

9.2 FINANCIAL PACKAGE

- 9.2.1 The financial package, clearly labeled as “ FINANCIAL PACKAGE” will contain the following:
 - i. Form of tender and Appendix thereof (Form A).
 - ii. Priced Bill of Quantities
- 9.2.2 The financial proposal should be separately completed, each page duly signed and stamped and submitted in a separate sealed envelope. The prices shall be entered at the prescribed place in the Form of Tender and the BOQ enclosed. These prices should include all costs associated with the contract including taxes, duties, VAT, Works Contract Tax, octroi and any other charges payable to any authorities for execution and completion of Works as per Contract. .
- 9.3 Documents to be submitted by the Tenderer under technical and financial packages have been described under the respective Clauses 9.1 and 9.2. This list of documents 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.
- 9.5 In the case of a joint venture/consortium, information as required under Clause 2.2, in respect of each partner/company including Forms T-II to T-VI will be required to be furnished. Additional sheets may be used where necessary.
- 9.6 The contractor shall effect and maintain Professional Indemnity Insurance (PII) for the amount in Indian rupees **equal to 3% of** the contract value against Schedule “A” of BOQ in respect of “design and construct” to be carried out by or on behalf of them. The contractor shall produce evidence of coverage of the PII before any payment is released to them. The insurance which shall ensure the contractor’s liability by reason

of professional negligence and errors in design and construction of works shall be valid **from a date which is within four weeks of issue of Letter of Acceptance** until two years after commissioning of work.

10.0 TENDER PRICE

The Contract shall be for the whole works as described in scope of work. The Tenderer shall fill in rates and prices for all items of Works described in the Bills of Quantities. Corrections if any shall be made by crossing out, initialing, dating and rewriting. The Tender prices shall be governed by Clause 15.1 of General Conditions of Contract and shall be subject to limitations of Special Conditions of Contract and nothing extra which is not included in the contract price shall be payable.

10.1 The Tenderer is required to quote for all the items as per General Conditions of Contract and relevant Clauses of Special Conditions of Contract.

10.2 The rate for each item shall be reasonable and not unbalanced. Should the Engineer/ Employer come across any unbalanced rates, he may require the Tenderer to furnish detailed analysis to justify the same. If after its examination, the Engineer/ Employer still feels the rates to be unbalanced, he may ask the Tenderer for additional Performance Security or other safeguards to protect Employer's interest against financial loss failing which by the Tenderer, his tender shall be liable to be rejected by the Employer, and the Contract may be awarded to any other Tenderer.

10.3 The Tenderer shall keep the contents of his tender and rates quoted by him confidential.

10.4 The Tenderer shall utilize Indian labour, staff and materials to the maximum extent possible in execution of Works.

10.5 The Tenderer should quote his rates inclusive of all taxes, duties, royalties. As stated in 9.2.2 above.

10.6 Deleted

11.0 CURRENCIES OF THE TENDER

11.1 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 150 days from the Last date of submission of tender as indicated in NIT.

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 or by Tele-fax. 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

The Tenderer shall furnish with his tender a Tender Security in the Form B attached to Volume 1 an irrevocable Bank Guarantee issued by a Scheduled Commercial Bank based in India for the amount mentioned in Notice Inviting Tender.. **In case of joint venture/consortia tender security shall be in the name of joint venture/consortia.**

The Tender Security shall remain valid for 30 days beyond the validity period of the tender.

13.2 The Tender Security shall be submitted in a separate envelope super scribed “Tender security for ---- (Name of Work as mentioned under Clause 1.1.1 of NIT) ”.

13.3 Any tender not accompanied by an acceptable tender security will be summarily rejected.

13.4 The tender securities of unsuccessful Tenderers shall be discharged/returned by the Employer as promptly **as possible as but not later than 30 days after the expiration of the period of tender validity.**

13.5 The tender security of the successful Tenderer shall be returned upon the Tenderer executing the Contract Agreement after furnishing the required Performance Guarantee for performance, as per the Contract.

13.6 The tender security shall be forfeited:

- a. if a Tenderer withdraws his tender during the period of tender validity, or
- b. if the tenderer does not accept the correction of his tendered price in terms of Clause 26.0, or
- c. in the case of a successful Tenderer, if he fails to :
 - i. Furnish the necessary performance guarantee before expiry of Bank Guarantee for Tender Security..
 - ii. Enter into the Contract within the time limit specified.

13.7 No interest will be payable by the Employer on the tender security amount cited above.

14.0 Pricing of Conditions, Qualifications, and Deviations etc.

The Financial Proposal shall contain no qualifications, conditions, deviations or remarks,as these shall not be considered as part of Financial Proposal. If the Tenderer inserts any qualifications, deviations, conditions or remarks these must be priced to enable unconditional withdrawal. Minor deviations, if any, shall be in the form of Form C.

15.0 PRE-TENDER MEETING

Pre-Tender meeting will be held on **22/06/2013** at 12.00 Hrs in KMRCL office.

16.0 FORMAT AND SIGNING OF TENDERS

- 16.1.1 If the tender is submitted by a proprietary firm it shall be signed by the proprietor above his full name and the full name of his firm with its current address.
- 16.1.2 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.
- 16.1.3 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.
- 16.1.4 If a tender is submitted by a joint venture or consortium of two or more firms, it shall submit complete information pertaining to each firm in the joint venture or consortium 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 firm on behalf of the joint venture or consortium for tendering, completion and due performance of the Contract All members shall be jointly and severally responsible for all aspects of the Tender and the consequent Contract
- 16.2 All amendments/corrections/ overwriting shall be initialled by the person or persons signing the tender.
- 16.3 All witnesses and sureties shall be persons of status and probity and their full names, occupations and addresses shall be written below their signatures.

SEALING AND SUBMISSION OF TENDERS

17.0 SEALING AND MARKING OF TENDERS

- 17.1 The Tenderer shall submit his tender in two sets one marked “Original” and the other marked “Copy” (Copy should be photocopy of ‘original’). Each set containing the two packages, **TECHNICAL PACKAGE** and **FINANCIAL PACKAGE** shall be sealed in two separate envelopes clearly marked as “Original” and “Copy’. The two envelopes, shall be wrapped in an outer envelope addressed to CHIEF ENGINEER, KMRCL duly super scribing on top, tender number, name of work, time and date for submission and time and date for opening. The envelope should also bear the name and address of the Tenderer.

The contents of Technical Package and Financial Package shall be as detailed under Clauses 9.1 and 9.2 herein.

- 17.2 No responsibility will be accepted by the Employer/Engineer for the misplacement or premature opening of a tender, not sealed or marked as per aforesaid instructions.

18.0 SUBMISSION OF TENDERS

- 18.1 Tenders should be submitted at the following address:

Chief Engineer, KMRCL, HRBC House, 4th floor , Munsii Prem Chand Sarani, Kolkata-700021 before scheduled time and last date for submission.

The Employer/Engineer 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 Office of CHIEF ENGINEER, KMRCL. The Employer cannot take any cognizance and shall not be responsible for delay in transit.

18.3 Tenderers shall ensure submission of the necessary documents as mentioned in the checklist (Appendix I) and fill the Appendix-I form properly.

19.0 **LATE TENDERS**

19.1 Any tender received in Office of CHIEF ENGINEER, KMRCL after the deadline prescribed for submission of tenders will be returned unopened to the Tenderer.

20.0 **MODIFICATION, SUBSTITUTION 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 accordance with the clause 18.1 of this Instruction to Tenderers, with the outer and inner envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as the case may be.

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 Guarantee.

TENDER OPENING AND EVALUATION

21.0 **TENDER OPENING**

21.1 The Employer/ Engineer will open the Technical Package, in the presence of Tenderers or their representatives who choose to attend on date & time as mentioned in the NIT in the office of CHIEF ENGINEER, KMRCL. 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 Technical Package. The Tender

of any Tenderer who has not complied with one or more of the foregoing instructions may not be considered.

- 21.2 On opening of the main Tender envelopes, it will be checked if they contain Technical & Financial Packages.
- 21.3 Technical Package of the Tender will thereafter be opened and examined to see if they are complete, whether the requisite Tender security has been furnished, whether the documents are in order. If the documents do not meet the requirements of the Employer, a note will be recorded accordingly by the Tender Opening Authority and the said Tenderer's Financial Package will not be considered for further processing.
- 21.4 The Tenderers name, the presence or absence of the requisite tender security and such other details as the Employer or his authorized representative, at his discretion, may consider appropriate will be announced at the time of tender opening.
- 21.5 The sealed financial package will be kept in the safe custody of the Employer and will be opened on a subsequent date after evaluation of technical packages. Financial packages of all technically found suitable offer will be opened and the date for opening of financial package shall be informed separately.

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/Engineer 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 packages submitted by Tenderers shall be undertaken based on details submitted in the technical package only. No clarification/additional information in this regard will be sought from Tenderers. Employer reserve the right to ask any clarification from Tenderers for details submitted with technical package if it so desires during the technical evaluation.
- 23.2 To assist in the examination, evaluation and comparison of Financial Package, the Engineer/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 Engineer during the evaluation of tenders in accordance with Clause 25.0 herein.

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 of 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 Form -C.
- 24.3 If a tender is not substantially responsive to the requirements of the 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 package 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.

25.0 EVALUATION OF TENDER

- 25.1 The Employer will, keeping in view the contents of Clause 9.1, carry out technical evaluation of submitted technical proposals to determine that the Tenderer has a full comprehension of the work of the contract. Where a Tenderers technical submission is found non-compliant with the requirement of work, it may be rejected.
- 25.2 All technically acceptable tenders will be eligible for opening of their financial proposals. The Employer shall notify all technically qualified Tenderers to attend the opening of the financial proposal. The financial proposal will then be opened in front of attending Tenderers.
- 25.3 The evaluation of financial proposals by the Employer will take into account, in addition to the tender amounts, the following factors:
- a. Arithmetical errors corrected by the Employer
 - b. Such other factors of administrative nature as the Employer may consider to have a potentially significant impact on contract execution, price and payments, including the effect of items or unit rates that are unbalanced or unrealistically priced.25.4Offers, 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.

25.5 Price adjustment provisions applicable during the period of execution of the contract shall not be taken into account in tender evaluation.

25.6 Evaluation of financial offer will be based on quantities in Bill of quantities (BOQ) and rates quoted .Any alteration in BOQ after submission of Tender will not be given any cognizance.

25.7 Deleted

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 amounts in figures and in words, the amount in words will govern; and
- b. Where there is a discrepancy between the unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will normally govern unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit price, in which event, the total amount as quoted will govern.

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.

AWARD OF CONTRACT

27.0 **AWARD CRITERIA**

27.1 Subject to Clause 25.0, the Employer will award, the Contract to the Tenderer, whose tender is 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**

28.1.1 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, or to divide the Contract between/amongst Tenderers 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 the 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 by telegram or Tele-fax, to be confirmed in writing by registered letter, that his tender has been accepted. This letter (hereinafter and in the Conditions of Contract called 'the Letter of Acceptance') shall name the sum

which the Employer will pay to the Contractor in consideration of the execution, completion, maintenance and guarantee of the works by the Contractor as prescribed by the Contract (hereinafter and in the 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 as a token of unqualified acceptance within one week of receipt of the same by him. No correspondence will be entertained by the Employer from the unsuccessful Tenderers.

29.2 The Letter of Acceptance will constitute a part of the contract.

29.3 Upon "Letter of acceptance" being signed and returned by the successful Tenderer as per Clause 29.1, the employer will promptly notify the unsuccessful Tenderers and discharge / return their tender securities.

30.0 SIGNING OF AGREEMENT

30.1.1 The Employer shall prepare the Agreement in the Proforma (Form E) included in this Document, duly incorporating all the terms of agreement between the two parties. Within 2 weeks of receipt of the documents as mentioned in clause 30.2, the successful tenderer will be required to execute the Contract agreement. One copy of the Agreement duly signed by the Employer and the Contractor through their authorized signatories, will be supplied by the Employer to the Contractor.

30.2 The successful tenderer shall submit the following documents within 28 days from the date of issue of the Letter of Acceptance:

- a. Performance Guarantee
- b. Power of Attorney(s) and Board Resolution (In case of Foreign Partners, to be duly notarised by notary public and stamped by the Indian Embassy/High Commission) in case of any change than submitted along with tender submittals.
- c. Detailed Consortium or Joint Venture Agreement (duly signed and executed) incorporating in case of any change than submitted along with tender submittals:
 - i. Percentage Participation of each member/partner.
 - ii. Joint and several liability of the partners.

31.0 PERFORMANCE GUARANTEE

31.1 The successful Tenderer shall furnish to the Employer a performance guarantee in accordance with sub clause 4.6.2 of the General Conditions of Contract. The Form of Performance Guarantee (Form-D) provided in this Volume shall be used. The Performance Guarantee shall be valid up to 180 days after completion of Defects Liability Period.

APPENDIX I

**CHECK LIST OF DOCUMENTS TO BE SUBMITTED WITH THE TENDER
COMPILED FROM THE PROVISIONS IN THIS VOLUME**

Sl. No	Document	No. of sets to Be submitted	Reference to Clause No. of "Instructions to Tenderers"	Tick (√) if the tenderer have included the items in their offer
SEPARTE SEALED ENVELOPE				
1.	Tender security (Form B)	(Original & Copy)	13.0	
TECHNICAL PACKAGE COMPRISING OF:				
1.	Tender documents	(Original)	9.1.2 (e)	
2.	Power of attorney for individuals signing on behalf of Company/Firm Or Power of attorney in favour of the leading member of Joint Venture/ Consortium	(Original & Copy) (Original & Copy)	2.2.2 & 16.0 2.2.2 & 16.0	
3.	The Memorandum of Understanding (MOU) of the consortium or joint venture in case of more than one member,	(Original & Copy)	9.1.1(d)	
4.	Financial Data (Form T-VI)	(Original & Copy)	9.1.1(e)	
5.	WB Value Added Tax Clearance/ Registration Certificate	(Original & Copy)	9.1.1 (f)	
7.	Technical Package	(Original & Copy)	9.1.1 & 9.1.2	
8.	Statement of deviations from Tender Documents (Form - C)	(Original & Copy)	24.2	
FINANCIAL PACKAGE COMPRISING OF:				
1	Form of Tender and Appendix thereof (Form-A)	(Original & Copy)	9.2	
2	Bill of Quantities	(Original & Copy)	9.2	

Note: Each tenderer have to check and fill the (√) column in the Technical Submission and submit on the top page of their submission

**INDEX ON
PROFORMA OF FORMS**

1. PROFORMA OF FORMS – GENERAL

(Items (iv) & (v) applicable only for successful Tenderers)

Descriptions	FORM
I. Form of Tender with Appendix	A
ii. Form of Bank Guarantee for Tender Security	B
iii. Proforma for Statement of Deviations	C
iv. Form of Performance Security (Guarantee) by Bank	D
v. Form of Contract Agreement	E

2. PROFORMA OF FORMS – QUALIFICATION PARTICULARS

Descriptions	FORM
i. General Information & Joint Venture Data	T-I
ii. Experience Record of Sub-contractors	T-II
iii. Resources Proposed for the Project-Personnel	T-III
iv. Proposed Site Organization	T-IV
v. Resources Proposed for the Project-Plant & Equipment	T-V
vi. Financial Data	T-VI
vii. Technical Proposal	T-VII
viii. DESIRED SITE ORGANISATION STRUCTURE	Annexure -D

FORM OF TENDER

- Note: i. The Appendix forms part of the Tender
- ii. Tenderers are required to fill up all the blank spaces in this form of Tender and Appendix.

Name of Work: As per annexure 1 of NIT. Design, Construction of 365.646 M Viaduct from (Ch. M 8958.405 to M 9324.051) connecting Via-duct constructed on either side along the Elevated Section of East West Corridor of Kolkata Metro

To,
Managing Director,
Kolkata Metro Corporation Limited
HRBC House, 4th Floor
Munsi Prem Chand Sarani
Kolkata-700021

1. Having visited the site and examined the General as well as Special conditions of contract, CPWD specifications 1996 with updated correction slip, Special Specifications, Instructions to Tenderers, Preliminary Drawings and Addenda for the execution of above named works, we the undersigned, offer to execute and complete such works and remedy defects therein in conformity with the said Conditions of Contract, Specifications, Tender Drawings and Addenda for the sum of _____

_____ (Amount in figures and words) for Contract EWE-2[R] **Design, Construction of 365.646 M Viaduct from (Ch. M 8958.405 to M 9324.051) connecting Via-duct constructed on either side along the Elevated Section of East West Corridor of Kolkata Metro** may be ascertained in accordance with the said conditions.
2. We acknowledge that the Appendix forms an integral part of the Tender.
3. We undertake, if our Tender is accepted, to commence the works within 15 days of issue of the Engineer's order to commence and to complete the whole of the Works comprised in the Contract within **months** calculated from the date of issue of the Letter of Acceptance, as indicated in the Appendix.
4. If our Tender is accepted, we will furnish a Bank Guarantee for Performance as security for the due performance of the Contract. The amount and form of such guarantee or bond will be in accordance with Clause 4.6.2 of the General Conditions of the Contract and as indicated in the Appendix.

FORM A

PAGE 2 OF 3

5. We have independently considered the amount shown Clause 10.8.2 of the General Conditions of Contract as liquidated damages and agree that they represent a fair estimate of the damages likely to be suffered by you in the event of the work not being completed in time.
6. We agree to abide by this Tender for a minimum period of 120 days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiry of that period or any extended period mutually agreed to.
7. Unless and until a formal Agreement is prepared and executed, this Tender, together with your written acceptance thereof, shall constitute a binding contract between us.
8. 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 and that we have not breached or will be breaching the Clause 5.0 of General Conditions of Contract. 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.
9. We understand that you are not bound to accept the lowest or any tender you may receive.
10. If our Tender is accepted we understand that we are to be held solely responsible for the due performance of the Contract.

Dated this.....day of.....**2013**

Signature Name.....in
the capacity of duly authorized to sign Tenders for and on behalf
of.....

Address.....

Witness – Signature

Name

Address

Occupation

FORM A

PAGE 3 OF 3

APPENDIX TO THE FORM OF TENDER

	Condition of Contract	Clause No.	
i.	Amount of Bank Guarantee as Performance Security	4.6.2 of General Conditions	10 percent of the Total Contract Price.
ii.	Minimum amount of Third Party Insurance		Rs.0.50 Million for any one incident, with no. of incidents unlimited.
iii	Period for commencement of work from the date of issue of letter of acceptance (LOA)	10.1 of General Conditions of Contact	15 days
iv	Time for completion from the date of issue of the Letter of Acceptance	10.1 of General Conditions	15 months
v.	Amount of liquidated damages in case of extension of completion date due to delays by the Contractor	10.8.2 of General Conditions	0.5% of Contract value of works for each week or part of week. Contractor is in default, subject to maximum of 10% of Contract value
vi	Period of maintenance from the date of issue of "Completion certificate"	17.3.1 of General Conditions of Contract and 21 of Special Conditions of Contract	12 months
	Signature of authorized signatory on behalf of Tenderer		

Date

Name

.Place

Address

FORM B

PAGE 1 OF 2

FORM OF BANK GUARANTEE FOR TENDER SECURITY

1. KNOW ALL MEN by these presents that we (Name of Bank) having our registered office at (Name of country) (hereinafter called “the Bank”) are bound unto Kolkata Metro Rail Corporation Limited (hereinafter called “the Employer”) in the sum of **Rs.** _____ for which payment will and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents.

2. WHEREAS.....(Name of Tenderer) (hereinafter called “the Tenderer”) has submitted its tender dated_____for (Name of the work as per annexure 1.0 of NIT) hereinafter called the tender.

AND WHEREAS the Tenderer is required to furnish a Bank Guarantee for the sum of **Rs** _____ as Tender Security against the Tenderer’s offer as aforesaid.

AND WHEREAS _____(Name of Bank) have, at the request of the Tenderer, agreed to give this guarantee as hereinafter contained.

3. We further agree as follows:
 - a. That the Employer may without affecting this guarantee grant time or other indulgence to or negotiate further with the Tenderer in regard to the conditions contained in the said tender and thereby modify these conditions or add thereto any further conditions as may be mutually agreed upon between the Employer and the Tenderer.
 - b. That the guarantee hereinbefore contained shall not be affected by any change in the constitution of our Bank or in the constitution of the Tenderer.
 - c. That any account settled between the Employer and the Tenderer shall be conclusive evidence against us of the amount due hereunder and shall not be questioned by us.
 - d. That this Guarantee commences from the date hereof and shall remain in force till _____(date to be filled up) (up to 150 days from the date of tender).
 - e. That the expression ‘the Tenderer’ and ‘the Bank’ herein used shall, unless such an interpretation is repugnant to the subject or context, include their respective successors and assigns.

FORM B

PAGE 2 OF 2

4. THE CONDITIONS OF THIS OBLIGATION ARE:

- a. if the Tenderer withdraws his Tender during the period of Tender validity specified in the Form of Tender, or
- b. if the Tenderer does not accept the correction of his tender price in terms of Clause 26.0 of the “Instructions to Tenderers”.
- c. if the Tenderer having been notified of the acceptance of his tender by the Employer during the period of tender validity :
 - i. fails or refuses to furnish the Performance Security in accordance with Clause 31.0 of the “Instructions to Tenderers” and/or
 - ii. fails or refuses to enter into a Contract within the time limit specified in Clause 30.0 of the “Instructions to Tenderers”.

We undertake to pay to the Employer mere on demand without demur upto the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand provided that in his demand the Employer will note that the amount claimed by him is due to him owing to the occurrence of any one or more of the conditions (a), (b), (c) mentioned above, specifying the occurred condition or conditions.

Signature of
Authorized Official of the Bank

Signature of the witness
.....

Name of Official
Designation

Name of the Witness
.....

Stamp/Seal
of the Bank

Address of the Witness
.....

PROFORMA FOR STATEMENT OF DEVIATIONS

(Refer Clause 24.0)

1. The following are the particulars of deviations from the requirements of the Tender Specifications:

Sr.No	Clause	Deviations	Remarks (including justification)	Price adjustments for withdrawal of each deviation/s

2. The following are the particulars of deviations from the requirements of the “Instructions to Tenderers”, “General Conditions of Contract” and “Special Conditions of Contract”:

Sr.No	Clause	Deviations	Remarks (including justification)	Price adjustments for withdrawal of each deviation/s

Signature of Tenderer

Note

1. Where there is no deviation, the statement should be returned duly signed with an endorsement indicating ‘No Deviations’.
2. The Tenderer shall indicate price adjustment against each deviation, which he shall like to add to the tender price for withdrawing his deviations if the same are unacceptable to the Employer.

FORM OF PERFORMANCE SECURITY (GUARANTEE) BY BANK

(Refer Clause 31.0 of “Instructions to Tenderers”)

1. This deed of Guarantee made this day of _____ between Bank of _____ (hereinafter called the “Bank”) of the one part, and Kolkata Metro Rail Corporation Limited (hereinafter called “the Employer”) of the other part.
2. Whereas Kolkata Metro Rail Corporation Limited has awarded the contract for ----- (Name of work as per annexure 1 of NIT) (hereinafter called the contract) to _____ (hereinafter called the Contractor).
(Name of the Contractor)
3. AND WHEREAS the Contractor is bound by the said Contract to submit to the Employer a Performance Security for a total amount of Rs. _____ (Amount in figures and words).
4. Now we the Undersigned _____ (Name of the Bank) being fully authorized to sign and to incur obligations for and on behalf of and in the name of _____ (Full name of Bank), hereby declare that the said Bank will guarantee the Employer the full amount of Rs. _____ (Amount in figures and Words) as stated above.
5. After the Contractor has signed the aforementioned Contract with the Employer, the Bank is engaged to pay the Employer, any amount up to and inclusive of the aforementioned full amount upon written order from the Employer to indemnify the Employer for any liability of damage resulting from any defects or shortcomings of the Contractor or the debts he may have incurred to any parties involved in the Works under the Contract mentioned above, whether these defects or shortcomings or debts are actual or estimated or expected. The Bank will deliver the money required by the Employer immediately on demand without delay and demur and 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. The Bank shall pay to the Employer any money so demanded notwithstanding any dispute/disputes raised by the Contractor in any suit or proceedings pending before any Court, Tribunal or Arbitrator/s relating thereto and the liability under this guarantee shall be absolute and unequivocal.
6. This Guarantee is valid till (The initial period for which this Guarantee will be valid must be for at least 6-months (six months) longer than the anticipated expiry date of defect liability period as stated in Clause 17.3.1 of the “General Conditions of Contract”).
7. At any time during the period in which this Guarantee is still valid, if the Employer agrees to grant a time extension to the Contractor or if the Contractor fails to complete the Works within the time of completion as stated in the Contract, or fails to discharge himself of the liability or damages or debts as stated under Para 5, above, it is understood that the Bank will extend this Guarantee under the same conditions for the required time on demand by the Employer and at the cost of the Contractor.

FORM- D

PAGE 2 OF 2

- 8. The Guarantee hereinbefore contained shall not be affected by any change in the Constitution of the Bank or of the Contractor.
- 9. The neglect or forbearance of the Employer in enforcement of payment of any moneys, the payment whereof is intended to be hereby secured or the giving of time by the Employer for the payment hereof shall in no way relieve the bank of their liability under this deed.
- 10. The expressions "the Employer", "the Bank" and "the Contractor" hereinbefore used shall include their respective successors and assigns.
- 11. Notwithstanding anything contained herein:
 - a) Our liability under this Bank Guarantee shall not exceed Rs.....(Rupees.....)
 - b) This Bank Guarantee shall be valid upto
 - c) We are liable to pay the guarantee amount or part thereof under this Bank Guarantee only & only if you serve upon us a written claim or demand on or before.....

In witness whereof I/We of the bank have signed and sealed this guarantee on the ----- day of ----- (Month) **2013** being herewith duly authorized.

For and on behalf of

The.....Bank.

Signature of Authorized Bank official

Name :

Designation :

Stamp/Seal of the Bank :

Signed, sealed and delivered

for and on behalf of the

Bank by the above

Named _____ in

the presence of :

Witness 1.

Witness 2.

Signature

Signature

Name

Name

Address

Address

FORM OF CONTRACT AGREEMENT

(Refer Clause 30.0 of “Instructions to Tenderers”)

This Agreement is made at Kolkata on the _____ day of _____ **2013** Between Kolkata Metro Rail Corporation Limited, ----- hereinafter called “the Employer” of the one part and _____ (Name of Contractor) (Address of Contractor) _____ of _____ hereinafter called “the Contractor” of the other part.

Whereas the Employer is desirous that (** certain Goods and Services should be provided and) the Works should be executed, viz. ----- (Name of work as mentioned under Clause 1.1.1) hereinafter called “the Works” and has accepted a Tender by the Contractor for the execution and completion of such works (** as well as guarantee of such works) and the remedying of defects therein. NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement words and expression shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz:
 - (a) Notice Inviting Tender (NIT)
 - (b) Instructions to Tenderers (ITT)(Including Annexures)
 - (c) Special Conditions of Contract (SCC)
 - (d) General Conditions of Contract (GCC)
 - (e) Structural Specifications
 - (f) Geotechnical Report & Utility details
 - (g) Tender Drawings and Specifications submitted by the Contractor.
 - (h) Bill of Quantities
 - (i) Form of Tender with Appendix
 - (j) Letter of acceptance (LOA)
 - (k) Addendums issued, if any
 - (l) Other conditions agreed to and documented as listed below
 - (i) Tenderer’s Work Schedule as amended if required
 - (ii) Details of Quality Assurance System and Organization
 - (iii) Alternative designs (if applicable)
 - (iv) Statement of deviations (if applicable)
 - (v) Guarantee for the system offered
 - (vi) Any other item as applicable including replies to prebid query
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and

FORM E

PAGE 2 OF 2

complete the works by **_____ and remedy any defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the works and the remedying of defects therein, the Total Contract Price of **Rs _____ being the sum stated in the letter of acceptance subject to such additions thereto or deductions there from as may be made under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. OBLIGATION OF THE CONTRACTOR

The contractor shall ensure full compliance with tax laws of India with regard to this contract and shall be solely responsible for the same. The contractor 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 in respect thereof, which may arise.

6. JURISDICTION OF COURT

The Courts at Kolkata shall have the exclusive jurisdiction to try all disputes arising out of this agreement between the parties.

IN WITNESS WHEREOF the parties hereto have caused their respective Common Seals to be hereunto affixed / (or have hereunto set their respective hands and seals) the day and year first above written.

For and on behalf of the Contractor

For and on behalf of the Employer

Signature of the authorized official

Signature of the authorized official

Name of the official

Name of the official

Stamp/Seal of the Contractor

Stamp/Seal of the Employer

SIGNED, SEALED AND DELIVERED

By the said

By the said

_____ Name

_____ Name

on behalf of the Contractor in the presence of:

on behalf of the Employer in the presence of:

Witness _____

Witness _____

Name _____

Name _____

Address _____

Address _____

Note :

* To be made out by the Employer at the time of finalisation of the Form of Agreement.

** Blanks to be filled by the Employer at the time of finalisation of the Form of Agreement.

*** TO BE DELETED IF NOT APPLICABLE

GENERAL INFORMATION AND JOINT VENTURE DATA

(Refer Clauses 2.2)

Applicant Information Sheet

Date.....

Page of pages

Applicant Information	
Tenderer's Legal Name	
In case of JV, legal name of each partner	
Tenderer's actual or intended country of constitution	
Tenderer's legal address in country of constitution	
Tenderer's authorized representative (Name, designation, address, telephone numbers, fax numbers, email address)	
<p>Attached are copies of following original documents.</p> <ul style="list-style-type: none"> ■ In case of single entity, articles of incorporation or constitution of the legal entity named above. ■ Authorization to represent the firm or JV named in above ■ In case of JV, letter of intent to form JV or JV agreement 	

**JV Information Sheet
for JV Partners and Specialist Subcontractors**

Date.....

Page of pages

Each member of a JV must fill in this form

JV / Specialist Subcontractor Information	
Tenderer's Legal Name	
JV Partner's legal name	
JV Partner's year of constitution	
JV Partner's legal address in country of constitution	
JV Partner's authorized representative information (name, address, telephone numbers, fax numbers, email address)	
<p>Attached are copies of following original documents.</p> <ul style="list-style-type: none"> ■ Articles of incorporation or constitution of the legal entity named above ■ Authorization to represent the firm named above ■ In case of Specialist Subcontractors a formal intent to enter into an agreement 	

Notes : (i) Attach an attested photocopy of Certificate of Registration and ownership as well as of Constitution and legal status.

(ii) In case of Joint Venture / Consortium, attach an attested photocopy of Agreement indicating inter-alia distribution of responsibilities among the members / constituents.

EXPERIENCE RECORD OF SUB-CONTRACTORS

(Refer Clause 9.1.2 c)

Note :

- (i) In Para 2 furnish experience record of each sub-contractor by way of works executed during the last five years and of works in progress now. Details may be furnished of only works similar in nature to the work proposed for Sub-contracting.
- (ii) In Para 2 col.3 “Employer” means the organization which paid for the works and the “Engineer” means the consulting Engineer for the project.

Sl. No.	Description of Works proposed for sub-contracting	Name and Address of Sub-Contractor/Associate identified for executing such work
1	2	3

FORM T-II
PAGE 2 OF 2

Sl.	Name of Sub-contractor	Name of work executed by the pro-posed sub-contractor with location and name & address of "Employer" as well as "Engineer"	Total value of the work (Rs. Crore)	Value for which the proposed sub-contractor was responsible (Rs. Crores)	Contract Period			Certificates Placed	
					Stipulated (Years)	Actual		Annexure	Page
						Start (date)	Completion (date)		
1	2	3	4	5	6a	6b	6c	7a	7b

Notes:

- (i) Details submitted in any other proforma will not be considered.
- (ii) All the details should be supported by attested copies of certificates from clients for each entry otherwise it will not be considered.
- (iii) Additional pages may be attached if required.
- (iv) All the pages must be signed by the authorized signatory of the Tenderer.

RESOURCES PROPOSED FOR THE PROJECT – PERSONNEL

(Refer Clause 9.1)

The figures indicated below are the minimum number of Project-Personnel required which are to be deployed as per the minimum level of supervision and qualification/experience of site-staff is given under Annexure – D. The requirement shown is only for senior level/middle management level, however, the contractor have to employ sufficient Engineers as per the site requirement for day duty and night duty conditions.

Sr. No.	Sector	Minimum no. of Project-Personnel required
1.	Project Manager	1
2.	Planning Engineer	1
3.	Interface Manager	1
4.	Design Engineer	1
5.	Senior Civil Engineer	1
6.	Structural Engineer	2
7.	Geo-Technical Engineer	1
8.	Environmental Specialist	1
9.	Quality Assurance Specialists	1
10.	Safety Officer	1
11.	Procurement Specialist	1
12.	Electrical Engineer	1
13.	Mechanical Engineer	1
14.	Others (give details)	

NOTE:

(i) We confirm to deploy project-personnel as per the above-mentioned minimum requirement and also confirm to deploy manpower over and above the minimum numbers indicated above, if the work requires so.

(ii) For minimum manpower requirement for SHE organisation, please refer General instructions issued by KMRCL under conditions of contract on safety, health and environment.

Signature of Tenderer

FORM T-V

PAGE 1 OF 1

RESOURCES PROPOSED FOR THE PROJECT- PLANTS & EQUIPMENTS

(Refer Cause 9.1)

The figures indicated below are the minimum number of equipment required.

S. No.	<u>Type of equipment required for the work</u>	Minimum No. of Units of equipment required for the work
1	Construction Equipment	
a)	Piling Equipment Hydraulic Rig	2
b)	Installation of Batching Plant by the Contractor is encouraged. However if contractor wishes to use RMC, dedicated RMC plant has to be made and that plant shall not produce any other concrete during the period of supply to this work. The plant will have to be approved by KMRC and KMRC will reserve the right to reject the plant in case of breach of exclusiveness for this project.	1
c)	Concrete Pumps/ Placers	1
d)	Cranes 50 T and above	1
e)	Cranes 10 T to 20 T capacity	2
f)	Gantry in casting yard , if segmental construction procedure adopted	1
g)	Pre-casting beds (typical segments), if segmental construction procedure adopted	2
h)	Pre-casting cells (diaphragm segments), if segmental construction procedure adopted	1
i)	CLC Unit / Launching girders	2 / 1
j)	Transit Mixtures - 2 nos 4 cum capacity and 6 nos 6 cum capacity	3
k)	Trailers for carrying Segments– 4 nos – 50T capacity and one nos 75 T capacity (if segmental construction procedure adopted)	2
l)	Pre-stressing equipments	4 Sets
m)	Complete set of machinery and plant required for fabrication and erection of special spans	1
n)	Survey Instruments - Total station (with one Surveyor and one CAD Operator during entire construction period)	1
o)	Cranes for viaduct (min capacity 75 Ton) (3) or Alternative arrangement	As per requirement
p)	Lab Testing equipments-fully equipped for site tests.	1 no

We confirm to deploy resources as per the above-mentioned minimum requirement and also confirm to deploy plants & equipments over and above the minimum numbers indicated above, if the work requires so.

Signature of Tenderer

FORM T-VI

FINANCIAL DATA

(Refer Clause 9.2)

Total value of construction work done during the last Seven Financial years (For each member in case of Group):

S. No	Description	Year 2004-05 (Rs. in Crore)	Year 2005-06(Rs. in Crore)	Year.2006-07 (Rs. in Crore)	Year 2007-08 (Rs. in Crore)	Year 2008-09 (Rs. in Crore)	Year 2009-10 (Rs. in Crore)	Year 2010-11 (Rs. in Crore)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)		
		Original Value as per Audited balance sheet	Updated value after considering the escalation	Original Value as per Audited balance sheet	Updated value after considering the escalation	Original Value as per Audited balance sheet	Updated value after considering the escalation	Original Value as per Audited balance sheet	Updated value after considering the escalation
1.	Total value of Construction work done								

- i. Attach attested copies of the Audited Financial Statements of the last five financial years as Annexures. Financial Values to be given in Crores of Rupees.
- ii. Updated values upto 31/03/2011 price level, assuming 5% inflation for Indian Rupees every year and 2 % for foreign currency portions per year.
- iii. This sheet should be certified by Company Auditor/ Chartered Accountant along with his signature and seal in original.

-DELETED-

FORM T-VII
PAGE 1 OF 1

TECHNICAL PROPOSAL

(Refer Clause 9.1.2 (F))

A.UNDERSTANDING AND COMPREHENSION OF THE WORK INVOLVED.

(The tenderer shall give a brief on these items)

B.GENERAL APPROCH AND METHODOLOGY INCLUDING SUCH DETAILED INFORMATION AS DEEMED RELEANT.

(The tenderer shall give a brief on these items)

C.TENDER WORK SCHEDULE

(Please attach the work schedule as per clause 9.1.2(f)-iii)

*Indicate clearly distribution of authority and responsibility between Head Office and Site Management.

Annexure –D
MINIMUM ORGANISATION STRUCTURE REQUIRED

Minimum level of supervision & qualification/ experience of site staff is as follows:

S.No.	DESIGNATION	QUALIFICATION	EXPERIENCE LEVEL
1.	Project Manager (Team Leader)	Graduate in Civil Engg.	Minimum 3 years as In-charge of similar works and Minimum total experience 15 yrs.
2.	Quality Assurance (QA)-In-Charge	Graduate in Civil Engg. & Certificate /Diploma in Quality Assurance	Minimum 5 yrs. in QA (field) and out of which one year as In-Charge. Minimum total experience 10 years.
3.	Safety Officer	Concerned Degree/Diploma in Construction safety	Minimum 5 yrs. In safety (field) and out of which one year as In-Charge. Minimum total experience 10 years.
4.	Civil Engineer/ Design Engineer/Geo-technical Engineer	Graduation in concerned Disciplines	Total minimum experience of 10 years out of which minimum 5 years experience in relevant field.
5.	Design Engineer	Graduate in Civil Engg	Total minimum experience of 10 years out of which minimum 5 years experience in relevant field.
6.	Structural Engineer	Graduate in Civil Engg	-do-
7.	Planning Engineer	Graduate in Civil Engg. With knowledge in MS project software.	Total Minimum 5 years Experience.
8.	<u>Interface Manager</u>	<u>Graduate in Civil Engg / Electrical Engg.</u>	-do-
9.	Environment Specialist	Graduate in respective field	Minimum 3 years
10.	Procurement Specialist (1)		Minimum 5 years

NOTE: Minimum level of Shift In-charge should be Senior Engineer with 5 years of field experience in concerned area of activity.

ANNEXURE –F1

-Deleted-

**KOLKATA METRO RAIL CORPORATION LIMITED
(A Government of India Undertaking)**

EAST WEST METRO PROJECT

Design, Construction of 365.646m Viaduct from (Ch. 8958.405m to 9324.051m) connecting Via-duct constructed on either side along the Elevated Section of East West Corridor of Kolkata Metro

CONTRACT NO: EWE-2[R]

TENDER DOCUMENTS

VOLUME 1

PART - III

SPECIAL CONDITIONS OF CONTRACT

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SPECIAL CONDITIONS OF CONTRACT

Cl. NO	Supplement to GCC SUB CLAUSE No.	SPECIAL CONDITIONS OF CONTRACT
1	Sub clause 3.1 Duties and Responsibilities of Engineer	In case The Engineer is employee of any agency hired by the Employer, the Engineer shall take the approval of the Employer for all technical and financial matters otherwise he shall be deemed to have taken the approval of the Employer.
2	Sub-Clause 4.1 Contractor's General Obligations	Replace the third paragraph with the following: The Contractor shall Design and Execute all Temporary and Permanent Works and shall be responsible for the adequacy, stability and safety of all Temporary and Permanent Works and of all Method of Construction
3	Sub-Clause 4.2 Contractor's Warranty of Design	Replace Para c. with Sub-Para I, ii & iii. with the following: The Contractor further specifies and is deemed to have checked and accepted Contractor's Design for all Temporary and Permanent Works.
4	Sub clause 4.11 Specifications and Drawings	<p>4.1 Specifications</p> <p>One copy of Special specifications shall be supplied to the Contractor. CPWD specification/other Specifications viz. IS, IRS, IRC, DSR etc. shall be procured by the Contractor from the market.</p> <p>4.2 Design and Drawings for Permanent Works.</p> <p>Preliminary Drawings showing general dimensions & details elaborating the scope of work (not based on detailed design) will be supplied along with the tender documents. All the documents/drawings supplied to the Contractor are for reference only. The Contractor shall carryout detail field survey to prepare General Arrangement (GA) Drawings to suit to his design requirements and submit 6 sets to the Engineer with all details for his review and approval.</p> <p>Based on the approved GA Drawings the Contractor shall carryout Design for the permanent Works and shall prepare Detailed Working Drawings with specifications and submit 6 sets of all documents with supporting design calculations to the Engineer progressively. The Contractor shall commence any part of the Works only after obtaining 'Notice of No Objection' from the Engineer to that effect.</p> <p>4.3 Drawings for Temporary Works.</p> <p>4.3.1 The contractor shall design the false work, formwork, staging scheme etc. and shall get the same and related working drawings approved by the Engineer. The contractor would supply 6 sets of these drawings to the Engineer for the latter's use.</p>

		<p>4.4 “As Constructed” Drawings</p> <p>4.4.1 On completion of the Works, the Contractor shall arrange to furnish to the Employer two bound sets of all “as-constructed” working drawings for every component of the Works, all such copies being on polyester film of quality to be approved by the Engineer or his authorized Representative. The Certificate of Completion of Works shall not be issued by the Engineer in the event of Contractor’s failure to furnish aforesaid “as-constructed” drawings for the entire works.</p>
		<p>2.3.3 It shall be the responsibility of the Contractor to promptly bring to the notice of Engineer any error or discrepancy in the contract documents and obtain his orders thereon.</p> <p>2.3.4 In case of errors, omissions and/or disagreement on the drawings or between the drawings and specifications the following principles shall be followed:</p> <p>a. As between the written description or written dimensions on the drawing and the corresponding one in the specifications, the former shall apply.</p> <p>b. As between the written description of the item in Bill of Quantities and the detailed description in the specification of the same item, the former shall prevail.</p> <p>c. The drawings on a large scale shall have precedence over those on small scale</p> <p>d. Drawings approved as construction drawings from time to time shall supercede corresponding drawing approved earlier</p>
5	Sub clause 4.12 Temporary Works	<p>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 the Engineer.</p> <p>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 the sufficiency of such works.</p> <p>No extra payment will be made for complying with the provisions of this clause and the cost of the work under this element shall be deemed to be included in the Priced Offer.</p>
6	Sub-Clause 4.20 Right of Way and Facilities	<p>Replace the first sentence with the following:</p> <p>The Contractor shall acquire and provide land for Right of Way at his cost and expense by removing/rehabilitating the existing dwellers falling within the influence zone for execution of the Temporary and</p>

		Permanent Works and shall indemnify the Employer against all claims and liabilities of every kind that may arise in this context during execution of Works including Defects Liability Period. For this purpose the Contractor needs to execute an Agreement with those affected dwellers and submit Employer a copy to that effect along with 6 sets of Site Plan after evacuation.
7	Clause 9.0 Quality Assurance Manual	<p>The Contractor shall submit a detailed Quality Assurance Manual demonstrating the proposed method of achieving the required quality standards of the Employer. The quality manual should address the quality system as required by ISO 9001-2008.</p> <p>Quality manual should clearly list out the procedures, activities, checks, standards and any such thing such as schedule of tests, which he proposes to carry out during the progress of the works and are necessary to comply with the quality objectives of the Employer.</p> <p>Manual should also list the corporate policy adopted by the Contractors firm.</p> <p>No extra payment will be made for complying with the provisions of this clause and the cost of the work under this element shall be deemed to be included in the Bill of Quantities</p>
8	Sub Clause 4.15 and clause 7.5 Safety, Health and Environment	<p>The Contractor shall be responsible for total compliance of Safety, Health and Environmental Protection safeguards as elaborated in combined Safety, Health, and Environmental Manual (SHE) of the Employer including the provision stated in Clause 5A below.</p> <p>The Contractor shall provide all necessary access, assistance and facilities to enable the Engineer and Employer to carry out surveillance to verify that the site safety and safety assurance plans are being properly and fully implemented in accordance with the Contract.</p> <p>No extra payment will be made for complying with the provisions of this clause and the cost of the work under this element shall be deemed to be included in the Bill of Quantities.</p> <p>a) Contractor may note that house keeping at Work sites and safe surrounding are very important. Mishandling of bentonite (like splashing of bentonite outside specified width of barricading or non cleaning of tyres of dumpers and transit mixers before leaving the piling site thereby making the road dirty is strictly prohibited. Noncompliance of same shall attract a liquidated damage as follows:</p> <ol style="list-style-type: none"> i. On first observation –Rs one lac ii. On second observation- Rs two lac iii. On third and each subsequent observations- Rs three lac <p>b) Penalties as provided in the conditions of contract on safety, health and environment shall be levied to the contractor for any violation to the provisions.</p>

8A		<p>Prevention and Control of Pollution</p> <p>Pursuant to the Act, 1981 Air (Prevention & Control of pollution) and Environment (Protection) Act, 1986, all the municipalities, local authorities and all other concerned Government Departments within the State of West Bengal, are now directed to take immediate steps to implement the following norms which need to be strictly followed by the Contractors. . In this regard, the Contractor must follow these Acts to provide the following preventive measures during the execution of construction activities of the Project works on Site:</p> <ul style="list-style-type: none"> (a) Wrap construction area / building with geotextile fabric, installing duct barriers, or other actions, as appropriate for the location. (b) Apply water and maintain soils in a visible damp or crusted condition for temporary stabilization. (c) Apply water prior to levelling or any other earth moving activities to keep the soil moist throughout the process. (d) Limit vehicle speeds to 15 mph on the work site. (e) Clean wheels and undercarriage of haul trucks prior to leaving construction site. (f) Apply and maintain duct suppressant on haul routes. (g) Apply a cover or screen to stockpiles and stabilize stockpiles at completion of activity by water and maintain a duct palliative to all outer surfaces of the stockpiles. (h) Stabilize surface soils where loaders, support equipment and vehicles will operate by using water and maintain surface soils in a stabilized condition where loaders, support equipment and vehicle will operate. (i) Stabilize adjacent disturbed soils following paving activities with immediate landscaping activity or installation of vegetative or rock cover. (j) Maintain duct control during working hours and clean track out from paved surfaces at the end of the work shift/day. Track out must now extend 50 feet or more and must be cleaned daily, ay the minimum. (k) Stabilize sloping surfaces using soil binders until vegetation or ground cover can effectively stabilize the slope. (l) Disposal of debris in consultation with the local authorities following proper environmental management practice. (m) During construction work, including cutting of marbles, ambient noise level should not exceed more than 65 dB (A). <p>Practices to be discarded:</p> <ul style="list-style-type: none"> (a) Do not dispose of debris indiscriminately. (b) Do not allow the vehicles to run at high speed within the work site.
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		<p>(c) Do not cut materials without proper duct control/noise control facility.</p> <p>(d) Do not keep materials without effective cover.</p> <p>(e) Do not allow access in the work area except workers to limit soil disturbance and prevent access by fencing, ditches, vegetation, berms or other suitable barrier.</p> <p>(f) Do not leave the soil, sand and cement stack uncovered.</p> <p>(g) Do not keep materials or debris on the roads or pavements.</p> <p>(h) Burning of old tyres in hot mix plant as a fuel during construction and repair of the roads for melting coal tar should be discarded.</p> <p>If the Contractor fails to comply with the aforementioned statutory norms, Department of Environment and West Bengal Pollution Control Board will take necessary action under Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act, 1986 which may lead to stoppage and prohibition of the work including closure and other legal action as warranted under the law including imposition of the Pollution Cost.</p>
9	Sub clause 4.17 Site Data and Inspection of Site	The responsibility of Contractor under sub-clause 4.17 of General Conditions of Contract is full and final and no claim by the Contractor for additional payment or extension of time shall be allowed on the ground that of any misunderstanding or misapprehension by the contractor or that incorrect or insufficient information was given to the Contractor or that he failed to obtain correct and sufficient information
10	Clause 4.11 Plans And Drawings For Layout Of Plant And Equipment	<p>The Contractor shall submit the following information, in triplicate, to the Engineer, for approval, within the time stipulated against each item given below:</p> <p>(a) A general layout plan for construction plant and equipment required for execution of work, within thirty days from the date of issue of "Letter of Acceptance".</p> <p>(b) Drawings or prints showing the locations of major facilities which he proposes to put up at site, at least fourteen days prior to the commencement of the respective work; and</p> <p>any other details and drawings as required under the contract, within the time as specified in the contract.</p>
11	Sub clause 4.14 Setting Out	<p>11.1 The contractor shall survey and fix the alignment, mark pier locations, maintaining vertical & horizontal clearances and keeping in view important site references and obligatory locations in consultation with Engineer. GTS bench mark, temporary bench marks and three control points on all straights & other details shall be handed over by the Engineer.</p> <p>11.2 The Contractor shall establish at his cost, at suitable points, additional reference lines and bench marks as may be necessary. The</p>

		Contractor shall remain responsible for the sufficiency and accuracy of all his benchmarks 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.
12	SUPPLY OF MATERIALS TOOLS, PLANT AND EQUIPMENT BY THE EMPLOYER (Clauses 4.25 and 4.28 of "General Conditions of Contract")	No material, tools, plant and equipment shall be supplied by the Employer. The Contractor has to arrange all tools, plant, equipment as well as construction materials required for the work.
13	USE AND CARE OF SITE (Clause 18.0 "General Conditions of Contract").	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 of performance.
14	DUTIES, TAXES, OCTROI, ROYALTY ETC. (Supplemental to Clause 15.1.2 of GCC)	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 filling 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.
15	(Clause 15.1.2 of GCC) Registration certificate under West Bengal VAT Act	The Contractor shall provide a valid registration certificate and clearance certificate under West Bengal VAT Act, 2005 in absence of which no payment including release of any advance shall be made by the Employer to the Contractor.
16	Sub clause 1.4.1 Governing Law CHANGES IN COST DUE TO LEGISLATION	<p>CHANGES IN COST DUE TO LEGISLATION:</p> <p>"Change in Law," means the occurrence or coming into force of any of the following, at any time after the Date of submission of tender.</p> <ol style="list-style-type: none"> 1. any new tax which is imposed 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 Works 2. change in any law pertaining to work having the above said impact <p>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.</p> <p>However change in the rate of any existing tax will not be considered a</p>

		<p>Change in Law. Any risk of change of tax rate whatsoever related to the work lies with the Contractor.</p> <p>Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if,</p> <p>(a) the same shall have been reflected in the indexing of any of the inputs to the Price Adjustment Formula in accordance with the provisions of Clause 13.0 of “General Conditions of Contract”, or</p> <p>(b) the same shall have been taken into account under any other clause of the Contract.</p> <p>(c) In case Price Variation formula based on Reserve Bank of India indices is proposed to be adopted, no addition/reduction in cost due to Change in Law will be allowed.</p>
17	<p>Sub clause 4.20 Right of Ways and facilities, 4.21 Avoidance of Interference and Safety of Public and 4.32 Extraordinary Traffic</p>	<p>Existing roads and other public roads may be used by the Contractor at his risk and cost to carry out construction activities, with prior approval of the competent authority.</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. The Contractor shall include in his price the cost of strengthening any such public road or bridge if he considers it would be necessary</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 road accidents are avoided.</p> <p>No claim whatsoever shall be entertained on this account. The transportation of certain equipments and materials and launching may not be possible during day and may have to be carried out within time schedule specified by traffic police.</p> <p>No extra payment will be made for construction and maintenance of temporary haul roads if any needed including any special protection or strengthening required and all cost of such works shall be deemed to have been included in the costs of items in Bill of Quantities.</p>
18	<p>Sub clause 8.4 Working Hours</p>	<p>Lighting and Fire Protection:</p> <p>Where night working is permitted by the Engineer to facilitate the Contractor’s Work operations, temporary lighting equipment 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.</p> <p>The Contractor shall provide and maintain adequate fire fighting equipment and take adequate fire precautions for the safety of all personnel and temporary and permanent works and shall take action to prevent damage to or destruction by fire of trees, shrubs and grasses.</p>

		No extra payment will be made to the Contractor for the provision of temporary lighting and fire prevention measures.
19	15.4 and 15.5 Deductions	<p>Following deductions shall be made separately every month from the Contractor's on account bills, final bills and other payments as follows:</p> <p>a. 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.</p> <p>Deduction towards Income Tax, and Sales Tax will be made at source from each on-account progress bill by the Employer as may be directed by Income-Tax Department and other statutory or as provided in statute, relevant acts, rules and circulars and directions issued there under.</p>
20	Sub clause 10.2 Programme of Work	<p>The Contractor shall prepare and submit his detailed Programme of Work so as to achieve key dates of various activities, if any achieved on time. The Contractor shall complete the work in a phased manner fixing priorities to the different stretches of the work to give access to other interfacing contracts as per the requirement of project from time to time and as milestone indicated below:</p> <p>Intermediate Milestones:</p> <p>(a) For Viaduct</p> <p>(i) Partial access to track bed for laying track by track contractor - 11 months</p> <p>(ii) Access to track bed in entire length of viaduct for laying track by track contractor - 15 months</p> <p>(b) Cable ducts in Viaduct</p> <p>(i) Partial access of track bed to civil contractor from Track contractor for laying of cable ducts -12 Months.</p> <p>(ii) Final access of Track bed to civil contractor from Track contractor for laying of cable ducts - 16 Months.</p> <p>Completion of laying of cable ducts – 18 Months.</p>
21	Extension of Time for Delay due To The Contractor (Sub Clause 10.8.1 of GCC)	<p>Liquidated Damages (LD)</p> <p>Liquidated Damages for not achieving milestones as per Key Dates will be levied separately and it shall be 0.5% of Contract value of works for each week or part of week</p> <p>This liquidated damages shall not relieve the contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract.</p> <p>The ceiling of Liquidated damages shall be 10% of Contract Price as mentioned in Sub-Clause 10.8 of General Conditions of Contract.</p>

		<p>The LD on slippages of intermediate Key Dates may be waived and the LD amount returned without interest provided the Contractor adheres to the ultimate Completion Date as per Contracted Schedule.</p> <p>The Contractor shall co-ordinate his programme to the extent feasible with the programmes of other contractors to be engaged at the Site or in the vicinity of the Site as furnished by the Engineer so tat the project can be completed in time as per the overall programme.</p>
22	Sub clause 12.4 Variation in Bills of Quantities	Group of items mean all items covered in a Sub-head.
23	Sub-clause 14.1: Mobilization Advance	The mobilization Advance shall be paid upto 10% of original contract value payable at one installment when the contract becomes effective.
23A	Sub-clause 14.2 & 14.3 Advance against Plant and Machinery	GCC Clause Deleted
23B	Sub-clause 14.4 Advance against Material at Site	GCC Clause Deleted
24	10.2 programme of Works	The Contractor shall submit to the Engineer each month a detailed list by trade classification, of manpower employed during the report period as also a list of all serviceable major items of construction plant and equipment on site.
25	17.3.1 Definition of Defects Liability Period	Defects Liability Period shall be as mentioned in Clause 1.2 (c) of 'Instructions to Tenderers'.
26	Clause 13 Price Variation	<p>Price Variation Formula</p> <p>Payment as per the contract shall be subject to adjustment in accordance with the following Price Variation formula, and other terms given herein, to provide for variation in the market rates of inputs like labour, materials and fuel / energy during the currency of the Contract :</p> $V = VI + Vs + Vc + Vf + Vm$ <p>Where,</p> <p>V = Total adjustment on account of all factors</p> <p>VI = Adjustment on account of labour component = $p \times R \times (I - I_0) / I_0$</p> <p>Vs = Adjustment on account of Steel component = $q \times R \times (X \text{ sail } (b) - X \text{ sail } (a)) / X \text{ sail } (a)$</p> <p>Vc = Adjustment on account of Cement component = $r \times R \times (Wc - Wco) / Wco$</p> <p>Vf = Adjustment on account of Fuel/Lubricant component</p>

		<p> $= s \times R \times (W_f - W_{fo}) / W_{fo}$ $V_m =$ Adjustment on account of Machinery and Machine Tools $= t \times R \times (W_m - W_{mo}) / W_{mo}$ $p =$ Cost Coefficient of Labour to the Total Cost $= 0.22$ $q =$ Cost Coefficient of Steel to the Total Cost $= 0.25$ $r =$ Cost Coefficient of Cement to the Total Cost $= 0.15$ $s =$ Cost Coefficient of Fuel and Lubricant to the Total Cost $= 0.05$ $t =$ Cost Coefficient of other Machinery and Machine Tools to the Total Cost $= 0.18$ Note: $p + q + r + s + t = 0.85$, balance 0.15 shall be fixed component $R =$ Gross value of the work done by the Contractor for the period of work under consideration, after excluding therefrom 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. $I_o =$ Consumer Price Index for Industrial workers, published in the Reserve Bank of India Bulletin, as applicable to Kolkata area for the month in which the tender was opened. $I =$ Average of monthly Consumer Price Index for Industrial workers published in the Reserve Bank of India Bulletins as applicable to Kolkata area for the period of work under consideration. $X_{sail} (a) =$ Rs. 42,700/- per MT/ Ex-Dankuni [Price including ED & Cess but excluding VAT, Entry tax etc] $X_{sail} (b) =$ Price of SAIL (20-32 mm dia bar) for the bill month – Rate Ex-Dankuni [Price including ED & Cess but excluding VAT, Entry tax etc] $W_{co} =$ Whole Sale Price Index (Averages) for Cement and Lime as published in the RBI Bulletin, for the month in which the tender was opened. $W_c =$ Average of the monthly Whole Sale Price Index (Averages) for Cement and Lime as published in the RBI Bulletins, for the period of work under consideration. $W_{fo} =$ Whole Sale Price Index (Averages) for Fuel, Power, Light and Lubricants, as published in the RBI Bulletin, for the month in which the tender was opened. $W_f =$ Average of the monthly Whole Sale Price Index (Averages) for Fuel, Power, Light and Lubricants as published in the RBI Bulletins for the period of work under consideration. $W_{mo} =$ Whole Sale Price Index (Averages) for Machinery and Machine Tools as published in the RBI Bulletin, for the month in which the tender was opened. </p>
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		<p>Wm = Average of the monthly Whole Sale Price Index for (Averages) Machinery and Machine Tools as published in the RBI Bulletins for the period of work under consideration.</p> <p>Period of Work under consideration will mean as under:</p> <ol style="list-style-type: none"> i. In the case of first "On-account Bill" the period from the date of receipt of "Letter of Acceptance" to the date of measurement of the first bill. ii. In the case of second and subsequent "On-account" and Final bills, the Period from the date of measurement for previous bill to the date of measurement of that bill. <p>Note: Responsibility of arranging the RBI Bulletins, Rate of steel from SAIL desired by the Employer or the Engineer shall rest with the Contractor. However, the employer will have full right to check any of these details furnished by contractor.</p>
		<p>Non-application of this Clause to extra items</p> <p>Price variation clause shall not be applicable to any extra item of works, not included in the accepted Bill of Quantities and for which the rates are fixed separately under Clause 12 of "General Conditions of Contract".</p>
		<p>Adjustment on account of price variation</p> <p>26.1.1 Adjustments on account of Price Variations may be positive (in which case extra amount shall be paid to the Contractor), or negative (in which case the amount of Price Variation shall be recovered from the Contractor). Adjustment on account of Price Variation shall be calculated separately, for each period, between two successive dates of measurements for bills and paid along with each bill.</p> <p>26.1.2 After verifying the bill, the Engineer shall certify the adjustment amount and advise the same to the Employer along with the 'On Account' bill. Should any extra amount be due to Contractor, the Employer shall pay the same 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.</p>
		<p>Procedure in case of delay in availability of final RBI Indices</p> <p>Where the final Price Indices are not available in the Reserve Bank of India Bulletins, while making payment towards on-account bills, payment towards Price Variation will be made on provisional basis based on the indices available, to be adjusted in subsequent bills as and when the final Indices figures become available.</p>
		<p>Price variation during extended period of completion.</p>

		<p>The price adjustment as worked out above i.e. either increase or decrease will be applicable upto the stipulated date of completion of the work including the extended period of completion where such extension has been granted under Sub-Clauses 10.7 of the “General Conditions of Contract”. However, where extension has been granted under Sub-Clause 10.8.1 of the “General Conditions of Contract”, price adjustment will be due as follows:</p> <p>26.2.1 In case the indices increase above the indices applicable to a bill made on the last date of original completion period or the extended period under Sub-Clauses 10.7, the price adjustment for the period of extension under Sub-Clause 10.8.1 will be limited to the amount payable as per the indices applicable to a bill made on the last date of the original completion period or the extended period under Sub-Clauses 10.7 of the “General Conditions of Contract” as the case may be.</p> <p>26.2.2 In case the indices fall below the indices applicable to a bill made on the last date of the original or extended period of completion, then the lower indices will be adopted for Price Adjustment for the period of extension under Sub-Clause 13.4 of the “General Conditions of Contract”.</p>
27	<p>PROJECT MONITORING Clause 10.2 of General Conditions of Contract</p>	<p>Activities in the initial works programme would be arranged as per the Works Break Down Structure (WBS) of the work developed by the Contractor and submitted to the Engineer for approval.</p> <p>The contractor will prepare Construction Programme based on Computerized CPM network using the Precedence Diagramming Method within 30 days of award for approval as ‘Baseline Programme’ The base line program shall clearly reflect interface and access dates for other civil/ system-wide contracts.</p> <p>After the work has started, the Contractor shall deliver in the first week of every month to the Engineer an update of the Construction Programme showing changes, if any, in planning or progress scheduling and reflecting the progress of all the activities of the network and the project status as at the end of previous month.</p> <p>If the Contractor falls behind the approved Construction Programme by more than one month, he shall, within fourteen days of the date of such information, submit for approval, a revision of the construction programme showing the proposed measures, including augmentation of plant, labour and material resources to complete the works on time.</p> <p>Whenever the Contractor proposes to change the construction</p>

	<p>programme he shall immediately advise the Engineer in writing and, if the Engineer considers the change a major one, the Contractor shall submit a revised programme for approval.</p> <p>Detailed Network Plan (Works Programme)</p> <p>Detailed Network Plan shall be prepared by the Contractor for each and every activity within the same time frame and in the same sequence as indicated in the master network plan. Activity at this level shall not be more than 15 days duration, except for summary items like procurement/ mobilization etc.</p> <p>The Contractor shall select a PC based broad planning and control software on which the two networks shall be implemented. Software selected shall be Microsoft Project, Version-2002 (MSP-2002) or higher version. If any other compatible software is used, approval of the Engineer will be required. The Contractor shall supply one original licensed copy of the software selected along with the Baseline program network and detailed network plan free of cost and load it on the PC system of the Engineer so that uniform monitoring of the project is done and any slippages are identified well in time and corrective action taken.</p> <p>The following reports, in agreed formats and frequency, shall be submitted by the Contractor at his own cost:</p> <ul style="list-style-type: none"> (a) Progress Reports (b) Material Status Reports (c) Equipment and Manpower Development Reports <p>Any other Report desired by the Employer or the Engineer</p> <p>The Engineer's monitoring team will have access to all the data/information of the Contractor, required for the assessment of the progress and monitoring. If necessary, the monitoring team will visit the Vendor/Contractor's works in order to assess the status of critical activities.</p> <p>Periodic Project Status Review Meetings will be held by the Employer or the Engineer. The Contractor shall depute his Engineers/Managers at appropriate level as decided by the Engineer to attend the Review Meetings.</p> <p>Progress photographs of the major events shall be submitted by the</p>
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		<p>Contractor along with the Progress Reports.</p> <p>The Contractor shall provide additional inputs whenever the PERT-CPM diagram indicates a possible slippage in the completion schedule. Such additional inputs may require supplementing of equipment, personnel, work in excess of the normal work per day, work in excess of the normal work per week or other resources. Provisions under Sub-Clause 10.6.2 and 10.8.1 of General Conditions of Contract will be applicable in cases of delays due to Contractor.</p>
28	Clause 4.35 Progress reports CASH FLOW ESTIMATE	The Contractor shall furnish to the Engineer the detailed cash flow estimate in respect of the works within 3 months of the award of the Contract. This shall be up-dated and submitted every three (3) months thereafter till the completion of the works.
29	Clause 4.3 of GCC Contractor's Obligation towards Tax Laws	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 in respect thereof which may arise.
30	Clause 15.0 Contract Price and Payment	<p>The Contractor shall maintain complete records in respect of payments made for taxes, duties, octroi and other levies payable to various authorities and advise the Employer complete details of such payment every month</p> <p>These records shall remain open for inspection by the Employer or the Engineer at any time and shall be made available to them as and when required</p>
30A	Clause 15.1 Contract Price and Payment - Rates for Items of Work-	SCC Clause Deleted.
30B	Clause 15.1.1	<p>Add the following:</p> <p>The Lump Sum Price of the Tenderer shall also include:</p> <ul style="list-style-type: none"> ○ Removal and/or rehabilitate, as the case may be, existing dwellers from the site to the extent required from safety point of view to facilitate execution of Work as per rehabilitation plan

		<p>agreed by the PAPs. All cost towards arrangement of land for construction of permanent works, temporary works, shifting of utilities and resettlement works are also to be incorporated in Lumpsum price.</p> <ul style="list-style-type: none"> o Shifting of dry utilities like electricity, telephone as per shifting plan and policy approved by utility owing agency/department and shifting of all related structures
30C	Clause 15.1.2 Customs Duty & central Excise and Value Added Tax	The rates shall be all inclusive (including of all taxes, duties, royalties etc.)
30D	Sub-Clause 15.4.1 On Account Payment- Procedure for On Account Payment	<p>Add the following above Sub-Para a.:</p> <p>“On Account” payment will be made based on the Schedule for “On Account” Stage Payment as per the enclosed Annexure to Schedule A of Pricing Document, Volume--. Further break down of above Stage Payment will be subject to the approval of the Employer.</p>
31	Clause 7.0 KMRCL Labour Welfare Fund Rules	<p>1. <u>TITLE & COMMENCEMENTS</u></p> <p>These rules shall be called KMRCL Labour Welfare Fund Rules and came into force from 1.10.2008.</p> <p>These rules are applicable to all contracts executed by KMRCL at all locations including maintenance contracts.</p> <p>2. <u>OBJECTIVES OF THE FUND</u></p> <p>The objectives of the fund are as follows: -</p> <ul style="list-style-type: none"> i) The compensation paid as per statutory laws is inadequate in case of more dependents to the deceased. Hence there is a genuine need to further compensate the family through additional schemes. ii) The widow and children of the deceased worker shall be given additional monetary assistance for upbringing of the children on a case-to-case basis wherever required. iii) In case if the children become orphans, their upkeep and educational requirements should be met from the fund till one of the children becomes major and is gainfully employed. iv) If the deceased is having no children or unmarried and is the only supporting member to the elderly parents / sisters / brothers, they should be adequately compensated. v) If any worker dies wherein compensation is not possible by general rules of contract the dependents of the deceased shall

		<p>be compensated on humanitarian grounds.</p> <p>Note.:</p> <ol style="list-style-type: none"> i. Any payments made from the KMRCL Labour Welfare Fund to the widow or children or other dependents of the deceased worker are outside the payments to be made by the contractor under the statutory laws of the country ii. As this fund is to further supplement the financial aid to workmen the definition of duty shall be looked into in its broader perspective and as per the general observations made by courts in such cases from time to time apply. <p>3. SOURCES OF THE FUND</p> <ol style="list-style-type: none"> a) A contractor shall remit a minimum amount of Rs. 1 lakh against every case of death or total incapacitation due to an accident happened during duty of workmen and KMRCL would also contribute a matching amount. b) All penalties levied towards unsafe acts like bentonite splash, improper barricades, unsafe site conditions, usage of unsafe equipments, non-usage of PPEs etc shall be transferred to this fund. c) The minimum payment of Rs. 1,00,000 for every death / incapacitation by the contractor is outside the payments to be made under statutory laws of the country. Additional contribution over and above Rs. 1,00,000/- can be made by contractors and sub-contractors to strengthen the scheme. <p>4. MANAGEMENT OF THE FUND</p> <p>The fund shall be managed and administered by the following two committees.</p> <p>The Standing Committee and Case to case committee consists of following:</p> <p>4.1.1 Standing Committee</p> <ol style="list-style-type: none"> 1. Chief Engineer – Chairman 2. General Manager(Administration) - Secretary 3. FA & CAO – Member 4. Chief Signal & Telecommunication Engineer – Member 5. Chief Electrical Engineer - Member 6. Contractor’s Representative (Major works in any particular year) 7. Any other representative considered necessary by MD
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		<p>4.1.2 Case to Case Committee</p> <ol style="list-style-type: none"> 1. GM (Administration) - Chairman 2. Dy. Chief Engineer - Secretary 3. Dy.FA & CAO 4. Contractor's Representative – Member <p>4.2 The above are the Standard Committee and Case-to-case sub-committee. However, the Managing Director may at his discretion change the above constitution.</p> <p>4.3 Deleted</p> <p>5. ADMINISTRATION OF FUND</p> <ol style="list-style-type: none"> 1) <u>Fund Management including source of fund and investment of fund</u> Sourcing and management of fund for the various activities shall be decided by the Standing Committee at the beginning of each financial year. Any reallocation during the year, if necessitated, will also be decided by the Standing Committee. 2) <u>Compensation to individual cases</u> Regarding payments to death/incapacitation, the general procedure to be adopted is as follows: <ol style="list-style-type: none"> i) A token amount of Rs. 25,000 from contractor's contribution and additional Rs. 25,000 from KMRCL's side totaling to Rs. 50,000/- may be paid to all cases. This amount of Rs. 50,000/- should be paid to the legal heir of the deceased immediately on confirmation of the death. ii) For additional compensation the judgment given under workmen compensation award may be considered as a reference. Depending upon the no. of dependents their age, education and other family background the decision can be made on case-to-case basis. Money shall be deposited on a fixed deposit and the monthly interest can only be made available to dependents on a proportionate basis. The amount and period of deposit for each dependent may be decided on a case-to-case basis. iii) For cases of unmarried workmen or married workmen without any children where the deceased is <u>not the only supporting member</u> to the elderly living parents, sisters or brothers <u>no further payment</u> is admissible under the fund. iv) For all cases the total compensation amount paid including
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		<p>KMRCL labour Welfare Fund amount, should not exceed Rs. 7 Lakhs (Rs. Seven Lakhs) per case</p> <p>6. ACCOUNTS OF THE FUND</p> <p>The accounts of the fund shall be maintained separately in appropriate form by a nominated Officer of the Accounts Department, who will be the Accounts Officer to the fund. Disbursements from the fund shall be made on the recommendation of the above-nominated Committee. Periodical statement of accounts shall be prepared by the nominated Accounts Officer and put up to the Managing Director with the approval of the Committee.</p> <p>7. BANKERS</p> <p>An Account shall be opened in a nationalized bank in the name of "KMRCL LABOUR WELFARE FUND A/c". All cheques for disbursement shall be signed jointly by the Chairman and the nominated Accounts officer as mentioned in Item 6 above.</p> <p>8. AUDIT</p> <p>The accounts of the fund shall be audited annually by an Auditor appointed by the Committee.</p> <p>9. GENERAL</p> <p>i) In case of death due to accident, the immediate relative of the deceased should be given an ex-gratia payment by the contractor to take care of funeral and other related expenses.</p> <p>ii) The contractor should also provide employment to one of the dependents of the deceased under the ongoing contract, if the family of the deceased has no other means of livelihood and the family was dependent on the income of the deceased.</p> <p>iii) In case of any major accident, an enquiry must be ordered by the Head of Project / Department of KMRCL within 24 hours and report made available to the Committee within 72 hours. CSO/GC to be the nodal officer and permanent member in all such committees. In addition the enquiry committee should consist of one officer from KMRC and one from contractor's side.</p> <p>iv) All decisions taken by a majority shall prevail. However, the Managing Director is competent to alter, modify or cancel any decision taken by the Committee.</p>
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32	Clause 20 Settlement of Disputes and Arbitration	<p>Existing clause is replaced by the following:</p> <p>32.1 Procedure for Claims</p> <p>If the Contractor intends to claim any additional payment under any clause of these Conditions or otherwise subject to the provision under GCC Sub-Clause 17.4, 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> <p>If the Contractor fails to comply with this Sub-Clause, he shall not be entitled to claim any additional payment.</p>
		<p>32.2 Payment for Claims</p> <p>The Contractor shall be entitled to have included in any Interim Payment Certificate such amount for any claim as the Engineer considers due, after taking approval from the Employer. If the particulars supplied are insufficient to substantiate the whole of the claim, the Contractor shall be entitled to payment for such part of the claim as has been substantiated.</p>
		<p>32.3 No Legal Action Till Dispute Settlement Procedure is Exhausted</p> <p>Any and all Disputes shall be settled in accordance with the provisions of Clause 32. 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 32 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.</p>
		<p>32.4 Notice of Dispute</p> <p>For the purpose of Sub-Clause 32.5, 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 60 days after the date of completion of the Work.</p>

	<p>32.5 Two Stages of Dispute Resolution</p> <p>Disputes shall be settled through two stages:</p> <p>(a) Conciliation procedures as established by "The Arbitration and Conciliation Act-1996" (as amended from time to time) and in accordance with this Clause. In the event this procedure fails to resolve the Dispute then;</p> <p>(b) Arbitration procedures undertaken as provided by "The Arbitration and Conciliation Act -1996" (as amended from time to time) and in accordance with this Clause.</p> <p>In both the stages the venue shall be at Kolkata.</p>
	<p>32.6 Conciliation</p> <p>Within 60 days of receipt of Notice of Dispute, either party shall refer the matter in dispute to conciliation.</p> <p>Conciliation proceedings shall be initiated within 30 days of one party inviting the other in writing to Conciliation. Conciliation shall commence when the other party accepts in writing this invitation. If the invitation is not accepted then Conciliation shall not take place. If the party initiating conciliation does not receive a reply within 30 days from the date on which he sends the invitation he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.</p> <p>The Conciliation shall be undertaken by one Conciliator selected from a panel of Conciliators maintained by the Employer. The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner.</p>
	<p>32.7 Conciliation Procedure</p> <p>The Employer shall maintain a panel of Conciliators with requisite qualifications and professional experience that shall be from serving or retired engineers of Government Departments, or of Public Sector of Undertakings. Out of this panel, a list of three Conciliators shall be sent to the Contractor who shall choose one of them to act as Conciliator and conduct conciliation proceedings in accordance with "The Arbitration and Conciliation Act, 1996", of India. The party serving notice of dispute on the other party shall also serve such notice on the Conciliator chosen as per this Clause. The Employer at the time of offering the panel of Conciliator(s) to be appointed as Conciliator shall also supply the information with regard to the qualifications of the said Conciliator nominated in the panel along with their professional experience, phone nos. and addresses to the Contractor.</p> <p>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.</p> <p>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</p>

		<p>Conciliator may reformulate the terms of a possible settlement in the light of such observations.</p> <p>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.</p> <p>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.</p> <p>As far as possible, the conciliation proceedings should be completed within 60 days of the receipt of notice by the Conciliator.</p> <p>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.</p>
		<p>32.8 Termination of Conciliation Proceedings</p> <p>The conciliation proceedings shall be terminated:</p> <ul style="list-style-type: none"> (a) by the signing of the settlement agreement by the parties on the date of agreement; or (b) by written declaration of the conciliator, after consultation with the parties, to the effect further efforts at conciliation are no longer justified, on the date of declaration; or (c) by a written declaration of the parties to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration; or (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration. <p>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.</p>
		<p>32.9 Arbitration</p> <p>If the efforts to resolve all or any of the disputes through conciliation fails, then such disputes or differences, whatsoever arising between the parties, arising out of touching or relating to construction/ manufacture, measuring operation or effect of the Contract or the breach thereof shall be referred to Arbitration in accordance with the following provisions:</p> <ul style="list-style-type: none"> (a) Matters to be arbitrated upon shall be referred to a sole Arbitrator if the total value of the claim is up to Rs. 25 lakh and to a panel of three Arbitrators if total value of claims is more than Rs. 20 lakh. The Employer shall provide a panel of three arbitrators for the claims up to Rs.25 lakh and a panel of five Arbitrators which for claims of more than Rs. 25 lakh. The Contractor shall have to

		<p>choose the sole Arbitrator from the panel of three and/or one Arbitrator from the panel of five in case three Arbitrators are to be appointed. The Employer shall also choose one Arbitrator from this panel of five and the two so chosen will choose the third arbitrator from the panel only. The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/ demand of appointment of Arbitrator from either party. Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator(s). The arbitration proceedings shall be held in Kolkata only. The language of proceedings, that of documents and communication shall be English.</p> <p>(b) The Employer at the time of offering the panel of Arbitrator(s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrator nominated in the panel along with their professional experience, phone nos. and addresses to the Contractor.</p> <p>(c) The award of the sole Arbitrator or the award by majority of three Arbitrators as the case may be shall be binding on all parties.</p>
		<p>32.10 Interest on Arbitration Award</p> <p>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.</p>
		<p>32.11 Cost of Arbitration</p> <p>The cost of arbitration shall be borne by the respective parties. The cost shall, inter alia, include the fees of the Arbitrator(s) as per rates fixed by the Employer from time to time.</p>
		<p>32.12 Jurisdiction of Courts</p> <p>Where recourse to a Court is to be made in respect of any matter, the court at Kolkata shall have the exclusive jurisdiction to try all disputes between the parties.</p>
		<p>32.13 Suspension of Work on Account of Arbitration</p> <p>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.</p>

33	<p>Additional Clause</p> <p>Compliance with Statutes, Regulations and Laws</p>	<p>The Contractor shall familiarize himself and conform in all aspects with:</p> <ul style="list-style-type: none"> (a) the provision of any enactment in India as applicable from time to time (b) the regulations and bye-laws of any local body and utilities (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. <p>The Contractor shall include all financial impact to comply with the above in his Lump Sum Offer. 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 enactment of laws, regulations, bye-laws or rules.</p>

**KOLKATA METRO RAIL CORPORATION LIMITED
(A Government of India Undertaking)**

EAST WEST METRO PROJECT

**Design, Construction of 365.646m Viaduct from (Ch. 8958.405m to
9324.051m) connecting Via-duct constructed on either side along the
Elevated Section of East West Corridor of Kolkata Metro**

CONTRACT NO: EWE-2[R]

TENDER DOCUMENTS

VOLUME 1

PART - IV

GENERAL CONDITIONS OF CONTRACT

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**GENERAL CONDITIONS OF CONTRACT
FIOR
BUILD ONLY AND PART DESIGN & BUILD CONTRACTS**

1. GENERAL PROVISIONS

1.1 Definitions

In the Contract (defined below), the following words and expressions shall have the meanings assigned to them, except where the context requires otherwise. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise

- a. **“Employer”** means the **Kolkata Metro Rail Corporation Ltd. (KMRC), its legal successors and assignees.**
- b. **“Employer”** means any person nominated or appointed from time to time by the Employer to act as the Engineer for the purpose of the Contract and notified to the Contractor by the Employer.
- c. **“Engineer’s Representative”** means any Assistant of the Engineer, appointed from time to time by the Engineer under **Sub-clause 3.2.**
- d. i) **“Contractor”** or **“Successful Tenderer”** means the person whose Tender has been accepted by the Employer and the legal successors in title to such person. In this conditions the two words are used interchangeably.
ii) **“Contractor’s Representative”** shall mean a person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-clause 4.4 to act on behalf of Contractor.
- e. **“Sub-Contractor”** means any person named in the Contract a Sub-Contractor or any person appointed as a sub-Contractor for a part of the Work and the legal successors in title to each of the persons
- f. **“Other Contractor”** means a person employed by or having a Contract directly or indirectly with the Employer otherwise than through the Contractor.
- g. **“Tenderer or Bidder”** means the person submitting a bid/Tender.
- h. **“Scheduled Bank”** means a bank included in the second schedule to the Reserve Bank of India Act, 1934, or modified thereto
- i. **“Contract”** means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.
- j. **“Tender or Bid”** means the offer made by the Tenderer to the Employer for the execution of the Works.
- k. **“Specification”** means the Specification referred to in the Contract and any modification thereof or addition thereto, as may from time to time be furnished or approved in writing by the Engineer.
- l. **“Drawings”** means the Drawings of the Works, as included in the Contract and any additional/modified Drawings approved by the Engineer from time to time.
- m. **“Bill of Quantities”** means the priced and completed bill of quantities forming part of the Tender.
- n. **“Contract Price”** or **“Contract Value”** means the sum stated in the Letter of Acceptance, subject to such additions thereto or deductions there from as may be made under the provisions of the Contract.
- o. i) **“Works”** means the Permanent Works and Temporary Works, or either of

- them as appropriate.
- ii) **“Permanent Works”** means the Permanent Works to be executed, completed and maintained in accordance with the Contract.
 - iii) **“Temporary Works”** means all temporary and enabling Works of every kind required for the execution and completion of the Works and the remedying of any defects therein.
- p. **“Contractor’s Documents”** means the calculations, computer programs and other softwares, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
 - q. **“Construction Plant”** means all machinery, appliances or things of whatsoever nature, required for the execution, completion or maintenance of the works, but does not include material or things, intended to form or forming part of the Permanent Works.
 - r. **“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 places as designated in the Contract as forming part of the Site.
 - s. **“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) as specified in the Contract.
 - t. **“Test”** means such Tests as are prescribed in the Specifications or by the Engineer or Engineer’s Representative, whether performed by the Contractor or by the Engineer or his Representative or any agency acting under the direction of the Engineer.
 - u. **“Approval of Approved”** means Approval in writing including subsequent written confirmation of previous verbal Approval.
 - v. **“Defect Liability Period”** means the period for remedy of defects (if any) specified in the Contract commencing from the date of completion of the work as certified by the Engineer
 - w. **“Letter of Acceptance”** means the formal acceptance letter from the Employer of the Tender.
 - x.
 - i) **“Day”** means a calendar day
 - ii) **“Month”** means a calendar month
 - iii) **“Year”** means 365 days
 - y. **“Terms and expressions not herein defined”** shall have the meanings assigned to them in the “Indian General Clauses Act, 1987: or the Indian Contract Act or the Indian Sale of Goods Act or any other applicable Indian Law, as the case may be.

1.2 Interpretation

In the Contract except where the context requires otherwise:

- (a) Words indicating one gender include all genders;
- (b) Words indicating the singular also include the plural and words indicating the plural also include the singular and
- (c) “written” or “in writing” means handwritten, type written, printed or electronically made and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these conditions

1.3 Communications And Language of Contract

1.3.1 Communications To Be In Writing

Communications between parties will be effective only when in writing. A notice will be effective

only when delivered.

1.3.2 Language of Contract

The contract document shall be in English

1.4 Governing Law and Priority of Documents

1.4.1 Governing Law

The Contract shall be governed by the laws for the time being in force in India

1.4.1.1 Jurisdiction of courts

The courts at KOLKATA shall have the exclusive jurisdiction to try all disputes between the parties arising out of this agreement

1.4.2. Priorities of Documents

The several documents forming the Contract are to be taken as mutually explanatory of one another. If any inconsistency or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction. For the purpose of interpretation, the priority of documents shall be in accordance with the following sequence:

- a) the Contract Agreement (if completed)
- b) the Letter of Acceptance.
- c) the Notice Inviting Tender/Instructions to Tenderers
- d) Special Conditions of Contract.
- e) General Conditions of Contract
- f) Drawings
- g) the Specifications
- h) the Schedules and any other document forming part of Contract

1.5 Joint and Several Liability

Of the Contractor is (under applicable Laws) a joint venture, consortium, or other incorporated grouping of two or more persons:

- a) These Persons shall be deemed to be jointly and severally liable to the Employer for the Performance of the Contract
- b) These Persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
- c) The Contractor shall not alter its composition or legal status without the prior consent of the Employer

2. EMPLOYER

2.1 General Obligations

The Employer shall provide the Site and pay the Contractor in accordance with the Contract.

2.2 The Employer shall give the Contractor right of access to land and possession of the Site progressively to enable the Contractor to complete the Works as per schedule. The right and possession may not be exclusive to the Contractor

2.3 Permits, License or Approvals

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

2.4 Assignment by the Employer

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

3. ENGINEER AND ENGINEER'S REPRESENTATIVE

3.1 Duties and Authority of Engineer

The Engineer shall carry out the duties specified or implied in the Contract. If the Engineer is required to obtain the Approval of the Employer before exercising a specified authority, the requirement shall be stated in the Special Conditions of Contract. Any requisite Approval shall be deemed to have been given by the Employer for any such authority exercised by the Engineer. The Engineer shall have no authority to amend the Contract nor to relieve the Contractor of any of its obligations of the Contract.

3.2 Delegation by the Engineer

- i. The Engineer may from time to time assign duties and delegate authority to Engineer's Representative/Assistants and may also revoke such assignment or delegations. The delegations or revocation shall be in writing and shall be applicable only after same has been notified in writing to the Contractor
- ii. Each Assistant to whom duties have been assigned or authority has been delegated, shall be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any Approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, Test or similar act by an assistance shall have the same effect as though the act had been an act of the Engineer. However:
 - a. Any Failure to disapprove any work, plant or Materials shall not constitute Approval, and shall not therefore prejudice the right of the Engineer to reject the work, plant and Materials.
 - b. If the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer who shall promptly confirm, reverse or vary the determination or instruction.

3.3 Assistants to Engineer and Engineer's Representative

The Engineer or the Engineer's Representative may appoint any number of assistants to assist them after duly notifying their names, duties and scope of authority to the Contactor.

3.4 Instructions of the Engineer

The Contractor shall comply with the instructions given by the Engineer, Engineer's Representative or the delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant.

- a. Gives an oral instruction
- b. Receives a written communication of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
- c. Does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation

then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

4. CONTRACTOR

4.1 Contractor's General Obligations

The Contractor shall design (to the extent specified in the Contract), execute and complete

the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether or a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

The Contractor shall be responsible for the adequacy, stability and safety of all such operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plants and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specifications of the Permanent Works

The Contractor shall, whenever required by the Engineer, submit details of the arrangement and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer

If the Contract specifies that the Contractor specifies that the Contractor shall design any part of the Permanent Works, then unless stated in Special Conditions of Contract:

- a. the Contractor shall submit to the Engineer the Contractor's document for the part in accordance with the procedures specified in the Contract;
- b. these Contractor's Documents shall be in accordance with the Specifications and Drawings, shall be written in the language for communications defined in Sub-clause 1.3.2 and shall included additional information required by the Engineer to the Drawings for co-ordination of each party's designs:
- c. the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- d. prior to the commencement of the Tests on completion, the Contractor shall submit to the Engineer the "as-built" documents and operations and maintenance manuals in accordance with the Specifications and in sufficient detail for the Employer to operate, maintain dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of issue of Completion Certificate under Sub-clause 17.1 until these documents and manuals have been submitted to the Engineer

4.2 Contractor's Warranty of Design

If it is specified in the Contract that the Contractor shall be responsible for part design;

- a. The Contractor warrants that the Contractor's part of the design (in accordance with Sub-Clause 4.1) meets the specifications provided by the Employer and is fit for the purpose thereof. Where there is any inadequacy, insufficiency, impracticality or unsuitability in or of the specification or any part thereof, the Contractor's part of the design shall take into account, address or rectify such inadequacy, insufficiency, impracticality or unsuitability at Contractor's own cost
- b. 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.
- c. The Contractor further specifies and is deemed to have checked and accepted full responsibility for the Contractor's part of the design (in accordance with Sub-Clause 4.1)
 - i. Notwithstanding that such design may be or have been prepared, developed or

issued by the Employer, any of Contractor's consultants, his sub contractors and/or his qualified personnel/persons or cause to be prepared, developed or issued by others.

- ii. Notwithstanding any warranties, quarantines 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

4.3 Compliance With Regulations And Bylaws

The Contractor shall conform in all aspects with:

- (a) The provision of any enactment in India as applicable from time to time
- (b) The regulations of bye-laws of any local body and utilities.
- (c) The Contractor shall be bound to give all notices required by statute, regulations or by-laws, as aforesaid and to pay all fees and bills payable in respect thereof. The Contractor will arrange necessary clearances and Approvals before the Work is taken up

Ignorance of Rules, Regulations and Bylaws shall not constitute a basis for any claim at any stage of work

4.4 Representation On Works

The Contractor if not in a position to be physically present at site shall have with prior written Approval of the Engineer, a responsible Contractor's Representative there at all times act on behalf of the Contractor and the Contractor's Representative shall have the same responsibilities as the Contractor. Failure on part of the Contractor to comply with these provisions shall constitute a breach of Contract leading to action under **Sub-Clause 11.4**

4.5 Provision of Efficient and Competent Staff

The Contractor shall employ and keep on the Works at all times efficient and competent staff to give necessary directives to his workers for execution of Works in a safe and proper manner. If the Engineer asks the Contractor to remove a person of his work force stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

4.6 Securities

4.6.1 Tender Security

All tenderers shall be accompanied with the requisite Tender Security as per the contract conditions. Tenderers without the requisite tender security shall be summarily rejected. The Tender Security of unsuccessful tenderer shall be returned as per contract conditions.

4.6.2 Performance Security

4.6.2.1 Amount of Performance Security

- i. Within 30 days of receipt of the Letter of Acceptance, the successful Tenderer shall furnish Performance Security in the form of a bank guarantee from a Scheduled Commercial Bank in India for an amount of ten percent of the Contract Value. The approved form provided in the "Instructions to Tenderers documents" shall be used for Bank Guarantee. The Bank Guarantee shall be valid upto 6 months beyond the "Defects Liability Period"
- ii. Failure of the successful Tenderer to furnish the required performance Security shall be a ground for the annulment of the award of Contract and forfeiture of the Tender security

4.6.2.2 Release of Performance Security

- i. The whole of the Performance Security amount shall be liable to be forfeited by the Employer at the discretion of the Employer, in the event of any breach of Contract on

the part of the Contractor.

- ii. On completion of the entire work, one half of the Performance Security shall be refunded to the Contractor, on issue of Completion Certificate by the Engineer, in accordance with Sub-Clause **17.1 and 17.2** of these conditions. This shall not relieve the Contractor from his obligations and liabilities, to make good that may be detected during the Defects Liability Period.
- iii. The balance amount, shall become due and shall be paid to the Contractor, after the expiry of the final Defects Liability Period.

4.7 Assignment of Contract

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.

4.8 Subcontracting

- i. The Contractor shall not subcontract the whole of the Works.
- ii. The Contractor may subcontract parts of the Work with prior written consent of the Employer.
- iii. Subcontracting does not alter the Contractor's obligations in any manner and the Contractor shall ensure sufficient superintendence as well as impose such terms and conditions on the Sub-Contractor as are appropriate to the parts of the Works Sub-Contractor, to enable the Contractor comply with his obligations under the Contract.
- iv. The Contractor shall not required to obtain such consent for provision of labour and material and for petty Contractors/Piece Works under direct supervision of Contractor's Representatives.

4.9 Assignment of Subcontractor's Obligations

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.

4.10 Compensation for Breach

Any breach of Sub-clauses **4.7 to 4.9** shall entitle the Employer to rescind the Contract under **Clause 11.4** of these conditions and also render the Contractor liable for loss or damage arising due to such cancellation.

4.11 Specifications and Drawings

4.11.1 Ownership

The Contractor shall keep at Site in good order, one copy of latest approved Specifications, Drawings and other documents. All Specifications and Drawings shall remain the property of the Employer and shall be returned to the Employer on completion or on termination of the Contract.

4.11.2 Adherence to Specifications and Drawings

- i. The Works shall be executed in conformity with the Specifications and Drawings of the Contract issued to the Contractor by the Engineer from time to time. If the Contractor does any work or part in a manner contrary to the Specifications or Drawings, he shall bear all the costs arising there from including dismantling and reconstruction strictly in accordance with the Specifications and Drawing and shall be responsible for all loss to the Employer
- ii. If any ambiguity arises as to the meaning and intent of any portion of the

Specifications and Drawings or as to execution or quality of any work or material or as to the measurement of the Works, the decision of the Engineer there shall be final and binding.

- iii. The term "Drawings" in this Sub-clause includes the Drawings prepared by the Contractor and approved by the Engineer, as specified in the Special Conditions of Contract.

4.11.3 Compliance with Contractor's request for Details

- i. The Contractor shall give written notice to the Engineer whenever progress of the Works is likely to be delayed or disrupted unless any further Drawing, where the Special Conditions of Contract provide for such Drawings to be prepared by the Engineer, or order, including a direction, instruction or Approval is issued by the Engineer within a reasonable time. The notice shall include details of the Drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if this issue is delayed.
- ii. The Engineer shall furnish with reasonable promptness, on receipt of request from the Contractor, additional instructions by means of Drawings or otherwise necessary for the proper execution of the Works or any part thereof. All such Drawings and instruction shall be consistent with the Contract documents and reasonably inferable there from. The Engineer may ask the Contractor for alternative proposals or clarifications or additional data or any other detail in respect Contractors request, if any

If, due to any failure or inability of the Engineer to issue within a reasonable time any Drawing or order requested by the Contractor as stated above, the Contractor suffers delay and / or incurs additional costs. The Engineer shall take such delay into account while determining any extension of time to which the Contractor would be entitled under.

4.12 Temporary Works

All Temporary Works necessary for the proper execution of the Works shall be provided and maintained by the Contractor at his cost and subject to the consent of the Engineer shall be removed by Contractor at his own expense when they are no longer required and in such manner as the Engineer shall direct. In case the Contractor fails to remove the Temporary Works on completion the Engineer is authorized to get the same removed and recover the cost there of from the Contractor.

4.13 Bore Holes and Explanatory Excavation

The Contractor shall be guided by the Site Investigation details furnished in the Tender Documents. In such cases, if the Engineer shall require the Contractor make bore holes or to carry out explanatory excavation, the same shall be paid extra to the Contractor as determined by the Engineer

4.14 Setting Out

4.14.1 Accurate Setting Out

The Contractor shall be responsible

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

4.14.2 Errors in Setting Out

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 his cost, rectify such error to the satisfaction of the Engineer.

4.15 Safety of Works

The Contractor shall be responsible for safety of Works at Site. In this connection, Contractor is required to take note of all the necessary provisions in Employer's Safety, Health and Environment Manual (SHE Manual), which shall be binding in the Contract and the Contractor's price shall be inclusive of all the necessary costs to meet the prescribed safety standards. In the case, the Contractor fails in the above, the Employer may provide the necessary arrangements and recover the costs from the Contractor.

4.16 Security of Site and Works

Unless otherwise stated in Special Conditions of Contract

- a) The Contractor shall be responsible for keeping unauthorized persons of the Site
- b) Authorized persons shall limited to the Employees of the Contractor, Subcontractor or persons authorized by the Engineer

4.17 Site Data and Inspection of Site

- i. The Employer shall have made available to the Contractor with the Tender documents such relevant data in Employer's possession on hydrological and sub-surface conditions. The Contractor shall be responsible for interpreting all such data.
- ii. The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works
- iii. The Contractor shall also be deemed to have inspected and examined the Site, its surroundings, the above data and other available information and to have been satisfied before submitting the Tender as to all the relevant matters, including without limitation:
 - (a) the form and nature of the Site, including the subsurface condition
 - (b) the hydrological and climatic conditions
 - (c) the extent and nature of work and goods necessary for the execution and completion of the Work 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, water and other services

4.18 Sufficiency of Accepted Contract Amount

The Contractor shall be deemed to have satisfied himself, before Tendering, as to the correctness and sufficiency of his Tender for the Works and of the rates and prices stated in the priced Bill of Quantities and the Schedule of Rates and Prices, if any, all of which, shall, except insofar as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution and maintenance of the Works. The Tenders containing any deviation from the Contractual terms and conditions, Specifications and other requirements save as provided in this General Conditions of Contract or Special Conditions of Contract are liable to be summarily rejected as non responsive.

4.19 Unforeseeable Physical Conditions

In this Clause "physical conditions" means natural physical conditions, which the Contractor encounters at Site while executing the Works excluding climatic conditions.

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:

- a. for complying with any instruction which the Engineer may issue to the Contractor in connection therewith, and
- b. for any proper and reasonable measures approved by the Engineer which the Contractor may take in the absence of specific instructions from the Engineer, as a result of such conditions or obstructions being encountered.

The decision of the Engineer as to the additional cost shall be final and binding.

4.20 Right of Way and Facilities

The Employer will acquire and provide land for Permanent Works and right of way (within KMRC's land). 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 reserved the right to make use of these service roads/rights of way itself or for other Contractors working in the area, as and when without any payment to the Contractor.

4.21 Avoidance of Interference and Safety of Public

- i. The Contractor shall not interfere unnecessarily or improperly with:
 - (a) The convenience of the public, or
 - (b) The access to and use of all roads, footpaths, waterways without the prior permission of the Engineer.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

- ii. During progress of work in any street or thoroughfare, the Contractor shall make adequate provision for the passage of traffic, for securing safe access to all premises approached from such street or thoroughfare and for any drainage, water supply or means of lighting which may be interrupted by reason of execution of Works and shall erect and maintain at his own cost save as provided in the Contract barriers, lights and other safeguards as prescribed by the Engineer for the regulation of traffic, and provide watchman necessary to prevent accidents. The Works shall in such cases be executed day and night if the Engineer so decides and so that the traffic is impeded for as short a time as possible
- iii. Existing road or watercourses shall not be clocked, cut through, altered, diverted or obstructed in anyway by the Contractor, except with the permission of the Engineer. All compensation claimed for any unauthorized closure, cutting through alteration, diversion or obstruction to such roads or water courses by the Contractor of his staff or Sub Contractors shall be recoverable from the Contractor by deduction from any sums which may become payable to him in terms of Contract or any other amount due to him in any other Contract.
- iv. The Contractor shall be responsible for taking all precautions to ensure safety of the public, whether on public or Employer's property and shall post such look-out men as may, in the opinion of the Engineer, be necessary to comply with the regulations appertaining to the work and to ensure safety.

4.22 Electricity, Water and Gas

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 this respect.

4.23 Contractor's Equipment

4.23.1 All Constructional Plant and Materials provided by the Contractor once brought by Contractor to Site shall be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove them without the consent in writing of the Engineer. Such consent shall not be unreasonably withheld or delayed.

4.23.2 Upon completion of the Works the Contractor shall remove from the Site all the said constructional Plant and his unused Materials

4.23.3 The Employer shall not at any time be liable for the loss or damage to any of the Constructional Plant. Temporary Works or Materials save as mentioned in **Clauses 18.5 and 18.1**

4.23.4 In respect of any Constructional Plant which the Contractor shall have imported for the purpose of the Works, the Employer may assist the Contractor, where required, in procuring any necessary Government consent for re-export of the same after completion of the Works.

4.23.5 The Employer may assist (but is not obliged to) the Contractor, where required, in obtaining clearance through the Customs of Constructional Plant. Materials and other things required for the Works

4.24 Protection of Environment

The Contractor shall comply with the Safety, Health and Environment Manual of the Employer and shall submit a detailed Site Safety Manual and Environmental Plan as specified in Special Conditions of Contract. Nothing extra shall be payable to the Contractor on his account and his Tender price shall be inclusive of expenditure required to be incurred for working as per SHE Manual

The Contractor shall take all reasonable steps to protect the Environment (both on and off Site) and to limit damage and nuisance to people and property resulted from pollution, duct, noise and other results of his operations.

The Contractor shall ensure that emission, surface discharges and effluent from the Contractor's activities shall not exceed the values indicated in the Specification and shall not exceed the values prescribed by applicable laws. The Contractor will ensure strict compliance of provisions in regard to protection of environment of Special Conditions of Contract.

4.25 Tools, Plants and Equipment Supplied by the Engineer

Except for any specific item mentioned in the Special Conditions of Contract, 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. One completion of the Works, the Contractor shall hand over the unused balance of the tools, plants and equipments to the Employer in good order and repair, fair wear and tear expected, and shall be responsible for any failure to account for the same or any damage done thereto. The decision of the Engineer as to the amount recoverable from the Contractor on this account shall be final and binding.

4.26 Sheds, Stores, Yards

It shall be the responsibility of the Contractor to provide at his own expense the required sheds, store, 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.

4.27 Use of Explosives

Explosives if required on the Work shall be used by Contractor only with prior Approval of the Engineer and in the manner and to the extent permitted by him. The Contractor shall be responsible for safe upkeep of such explosives in a special magazine as per the law of explosives as well as for taking all the precautions in the usage of the explosives with proper license and at Contractor's cost, sole risk and responsibility. The Contractor shall hold the Employer harmless and indemnify for the above.

4.28 Employer's Material

4.28.1 Materials to be supplied by the Employer

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.

4.29 Discoveries

Anything of historical importance or other interest or of significant interest discovered on the Site shall be the property of the Employer. The Contractor shall notify the Engineer of such discoveries promptly and carry out Engineer's instructions for dealing with that.

4.30 Excavated Materials

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

4.31 Housekeeping at the Site of Works

The Contractor shall at all times, maintain the Site free from unnecessary obstructions and shall store or dispose neatly any Contractor's equipment and surplus materials. The Contractor shall clear away and remove from Site any wreckage, rubbish or Temporary Works no longer required.

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

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.

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

4.32 Extraordinary Traffic

4.32.1 Avoidance of Damage to Roads

The Contractor shall use every reasonable means to prevent any of the highways or bridges communicating with or on the routes to the Site from being damaged or injured by any traffic of the Contractor or any of his Representatives or Sub-Contractors and, in particular, shall

select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will be inevitably arise from the moving of plant and material and to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such highways and bridges. Should any damage or injury occur, the cost of rectification or reconstruction thereof shall be borne by the Contractor and he shall indemnify the Employer fully against any claim on this account.

4.32.2 Special Loads

Save insofar as the Contract otherwise provides, the Contractor shall be responsible for and shall pay the cost of strengthening any bridges or altering or improving any road communicating with or on the routes to the Site to facilitate the movement of Contractor's plant or Materials or execution of Temporary Works and the Contractor shall indemnify and keep indemnified the Employer against all claims for damage to any such road or bridge caused by such movement, including such claims as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.

4.32.3 Settlement of Extraordinary Traffic Claims

If, notwithstanding Sub-clause 4.32.1, any damage occurs to any bridge or road communicating with or on the routes to the Site arising from the transport of Materials or Plant, the Contractor shall notify the Engineer with a copy to the Employer, as soon as he becomes aware of such damage or as soon as he receives any claim from the authority entitled to make such claim. Where under any law or regulation the hauler of such Materials or Plant is required to indemnify the road authority against damage, the Employer shall not be liable for any costs, charges or expenses in respect thereof or in relation thereto. In other cases the Employer shall negotiate the settlement and pay all sums due in respect of such claim and shall indemnify the Contractor in respect thereof and in respect of all claims, proceedings, damages, costs, charges and expenses in relation thereto. Provided that if and so far as any such claim or part thereof is, in the opinion of the Engineer, due to any failure on the part of the Contractor to observe and perform his obligations under Sub-clauses 4.32.1 and 4.32.2, then the amount, determined by the Engineer, after due consultation with the Employer and the Contractor, to be due to such failure 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 and the Engineer shall notify the Contractor whenever a settlement is to be negotiated and where any amount may be due from the Contractor, the Employer shall consult with the Contractor, the Employer shall consult with the Contractor before such settlement is agreed.

4.33 Disclosure of Relationship

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.

4.34 Opportunity for Other Contractors

4.34.1 Reasonable opportunity

The Contractor shall, in accordance with the requirements of the Engineer, afford all reasonable facilities for any other Contractor who may be carrying out, on or adjacent to any Site any Work not included in the Contract but required by the Employer, any utilities undertaking or other duly constituted authority

The Contractor shall, on the written request of the Engineer, make available to any such other Contractor, or to the Employer or any such authority, any roads or ways for the maintenance of which the Contractor is responsible, for which no additional payment shall be

made by the Employer

4.34.2 Inspection of work of other Contractors

If any part of the Contractor's work depends upon the work of another Contractor, he shall inspect and promptly report to the Engineer any defects in such work that may render it unsuitable for such proper execution. The Contractor's failure to so inspect and report shall constitute acceptance of the other Contractor's work as fit as proper except as to defects which may develop in the other Contractor's work after execution of his work.

4.35 Progress Reports

Unless otherwise stated in Special Conditions of Contract, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the commencement of Works in accordance with Sub-Clause 10.1. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work, which is known to be outstanding at the completion date stated in the Completion Certificate for the Works.

Each report shall include:

- a. Charts and detailed descriptions of progress, including each stage of design (in accordance with Sub-Clause 4.1), Contractor's Document, procurement, manufacture, delivery to the Site, construction, erection and testing; and including these stages for work by each Subcontractor
- b. Copies of quality assurance documents, test results and certificates of Materials
- c. List of notices given by either party
- d. Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- e. Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with Contract and measures being adopted to overcome delays
- f. Labour welfare compliance report if desired by the Engineer in accordance with Sub-Clause 7.1

5. CORRUPT OR FRAUDULENT PRACTICES

5.1 The Employer requires that the Bidders/Contractors observe the highest standards of ethics during Tendering and execution of this Contract. In pursuance with this policy, the Employer:

- a. Defines, for the purpose of these provisions, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to Employer, Engineer or any of their employees, influence in the procurement process or in Contract execution: and
 - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a Contract to the detriment of the Employer, and includes collusive practice among Bidders (prior to or after bid submission) designed to establish, bid prices at artificial non-competitive levels and to deprive the Employer of the benefits of free and open completion.
- b. Will reject the Tender for the work or rescinds the Contract if the Employer determines that the Bidder/Contractor has engaged in corrupt or fraudulent practices.
- c. Will declare a Contractor ineligible, either indefinitely or for a stated period of time, to be awarded a Contract/s if he at any time determines that the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing the Contract

5.2 Compensation to Contractor on rescission of Contract under this clause

In the event of rescission of Contract under **Sub-clause 5.1**, the Contractor shall not be entitled to any compensation whatsoever, except for the work done upto the date of rescission.

6. INSURANCE

6.1 Requirements

Before commencing execution of Works, unless stated otherwise in the Special Conditions of Contract, it shall be obligatory for the Contractor to obtain at his own cost stipulated insurance cover under the following requirements:

- a. Contractor's All Risk and Third Party Cover
- b. Liability under the Workmen's compensation Act, 1923, Minimum Wages Act, 1948 and Contract Labour (Regulation and Abolition) Act, 1970.
- c. Accidents to staff, Engineers, Supervisors and others who are not governed by Workmen's Compensation Act
- d. Damage to Material, machinery and Works due to fire, theft etc
- e. Any other risk may be specified in the Special Conditions of Contract.

6.2 **Policy in Joint Names of Contractor and Employer**

The policy referred to under **Sub-clause 6.1 (a)** above shall be obtained in the joint names of the Contractor and the Employer and shall inter-alia provide coverage against the following, arising out of or in connection with execution of Works, their maintenance and performance of the Contract.

- Loss of life or injury involving public, employee of the Contractor, or that of Employer and Engineer, labour etc.
- Injury, loss or damages to the Works or property belonging to public, Government bodies, local authorities, utility organizations, Contractors, Employer or others.

6.3 **Currency of Policy**

The policies shall remain in force through out the period of execution of the Works and till the expiry of the Defects Liability Period. If the Contractor fails to effect or keep in force or provide adequate cover in the Insurance policies mentioned in Sub-clause 6.1, or any other insurance he might be required to effect under the Contract, then, the Employer may effect and keep in force any such insurance or further insurance and the cost and expenses incurred by him in this regard shall be deductible from payment due to the Contractor or from the Contractor's Performance Security

7. FACILITIES FOR LABOUR

7.1 Provision of Accommodation

The Contractor shall provide at his own expense, all necessary accommodation and the welfare facilities for his staff and labour. This includes good practices like provision of temporary crèche (Bal Mandir) where 50 or more women are employed at a time. All accommodation shall be maintained in a clean and sanitary condition, by the Contractor at his cost.

The Contractor shall have a Labour Welfare Organisation which shall be responsible for labour welfare and compliance with prevalent labour laws, statues and guidelines. In this context the Contractor is also required to be familiarize himself with KMRC's Labour Welfare Fund Rules as specified in Special Conditions of Contract and comply with the same.

The Contractor shall prepare and submit compliance reports of adherence to labour laws as and when desired by the Engineer.

7.2 Compliance with Rules for Employment of Labour

The Contractor shall be responsible for compliance with all the statutes, guidelines and rules for the time being in force regarding engagement of labour by the Contractor or through his petty Contractors or Sub Contractors. The Contractor shall also ensure that he or his Sub-Contractors do not employ children below age 18 and that women labourers are not employed near military cantonments or soldier's barracks.

7.3 Labour to be Contractor's employee

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

7.4 Preservation of Peace

The Contractor shall be responsible for preservation of peace at Site and its neighborhood by Contractor's employees, Representatives, petty Contractors, sub Contractors etc. In case, deployment of a Special Police Force, becomes necessary at or near Site, during the tenure of Works, the expenses for the same shall be borne by the Contractor

7.5 Health and Safety

Precautions shall 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 local health authorities, ensure that medical staff, first aid facilities, other medical facilities, sick bay and ambulance are available at the accommodation and on the Site at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirement 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 Safety, Health and Environment Manual (SHE Manual), which shall be binding on the Contract.

7.6 Use of Intoxicants

The Contractor shall ensure that no labour or employee is permitted to work at the Site in an intoxicated state or under influence of drugs.

8. STAFF AND LABOUR

8.1 Engagement

The Contractor shall make his own arrangements for the engagement of all staff and labour at its own cost.

8.2 Labour Laws

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

8.3 Rates of Wages and Conditions of Labour

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

8.4 Working Hours

The Contractor if required after notifying the Engineer shall carry out Works during night hour or in shifts unless specifically provided otherwise in the Contract. No increase in rates or extra payment shall be admissible for night work. The Contractor shall provide adequate lighting and safety arrangement.

8.5 Persons in the service/retired of Employer/Engineer

- a) The Contractor and/or any of his sub-contractors shall not recruit or attempt to recruit, staff and labour from amongst the Employer and the Engineer's personnel
- b) Employment of Retired Officer . Engineer of Employer / Engineer
The Contractor and/or any of his sub-contractors either at the Tendering stage or during construction stage not employ any retired employee of Employer or Engineer of the Employer in any capacity unless such employee has completed at least one year 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.
- c) In case of non compliance of above, in addition to any or several of the courses, referred in Sub-clauses 11.4.1 and 11.4.2 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

8.6 Claim on account of violation of labour laws

The Contractor shall be solely accountable for violation of any labour law by it, its petty Contractors or sub Contractors and will pay any such claim/damage to the authorities forthwith on demand. If any moneys shall, as a result of any instructions, directions or decisions from the Authorities or claim or application made under any of the labour laws or regulations, be directed to be paid by the Employer, such moneys shall be deemed to be moneys payable to the Employer by the Contractor and he will pay the same to the Employer forthwith on demand, without demur and without asking for any reasons/explanations from the Employer. On failure of the Contractor to repay the Employer any moneys paid or to be paid by it as aforesaid within seven days after the same shall have been demanded, the Employer shall be entitled to recover the amount from any moneys due to accruing to the Contractor under this or any other Contract with the Employer.

8.7 Report of Accidents to Labour

The Contractor shall be responsible for safety of all employees, employed by him on works, directly or through petty Contractors of Sub-Contractors, and shall report accidents to any of them, however, and wherever occurring on Works, to the Engineer or the Engineer's Representative, and shall make every arrangement to render all possible assistance and to provide prompt and proper medical attention. The compensation for affected Workers or their relatives shall be paid by the Contractor in such cases with utmost expeditious in accordance with the Workmen's Compensation Act.

9. QUALITY CONTROL

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the requirement in Special Conditions of Contract. The Engineer shall be entitled to audit any aspect of the system. Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibility in the Contract.

9.1 Manner of Execution

All Plant, Materials, goods and workmanship shall be

- a. Of the respective kinds described in the Contract and in accordance with the Engineer's instructions
- b. Subject from time to time to such Tests as the Engineer may require at the place of manufacture, fabrication, or in the Site or any such other place or places as may be specified in the Contract

9.2 Contractor to Provide Everything Necessary for Testing

The Contractor shall provide such assistance, instruments, machines, labour and Materials as may be necessary for examining, measuring and Testing any work and the quality, weight or quantity of any material used and shall supply samples of Materials before incorporation in the Works for Testing as may be selected and required by the Engineer

9.3 Sources of Materials

Sources of Materials being supplied shall be intimated to the Engineer and are subject to his Approval. Materials that are not specified in the Contract document shall conform to the relevant Indian Standards or in their absence conform to any International Standard approved by the Engineer.

9.4 Supply of Sample

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

9.5 Cost of Test

The cost of making any Test shall be borne by the Contractor if such Test is clearly intended by or provided for in the Contract. If any Test is ordered by the Engineer which is either:

- a. not so intended by or provided for in the Contract, or
- b. though so intended or provided for is ordered by the Engineer to be carried out by an independent person at any place other than the Site or the place of manufacture or fabrication of the Materials Tested

Then the cost of such test shall be borne by the Employer, If, however, the Test shows the workmanship of Materials not to be in accordance with the Contract, then the cost of such Test will be borne by the Contractor.

9.6 Correction of Defects

- i. If as a result of the examination, inspection, measurement or Testing, any plant, Materials or workmanship is found to be defective or not in accordance with the Contract, the Engineer may reject the same by giving notice to the Contractor with the reasons. The Contractor shall promptly make good the defect and ensure that the rejected item complies with the Contract.

Notwithstanding any previous Test or certification, the Engineer shall have the authority to instruct the Contractor

- a. to remove from the Site and replace any plant or Materials which is not in accordance with the Contract
 - b. remove and re-execute any other work which is not in accordance with the Contract
 - c. Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise
- ii. In case of default on the part of the Contractor in carrying out such order, the Employer shall be entitled to employ and pay other parties, to carry out the same, and all expenses consequent thereof or incidental thereto, shall be recoverable from the Contractor or may be deducted by the Employer from any money which may be due to the Contractor.

9.7 Covering Up Of Work

9.7.1 Examination of work before covering up

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.

9.7.2 Cost of uncovering the work already covered up

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 9.7.1 and the Works are found to be executed in accordance with the Contract, the expenses of uncovering, making openings in or through, reinstating 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.

10. TIME MANAGEMENT

10.1 Commencement of Work

The Contractor shall commence the works on the date specified in the Letter of Acceptance or if no date is specified in the Letter of Acceptance, on the date specified in an instruction in writing to that effect from the Engineer. Thereafter the Contractor shall proceed with due diligence, without delay, and in accordance with the programme or any revised or modified programme of the Works. Time will be the essence of Contract and time for completion shall run from the date the Contractor is to commence the Works under this Clause.

10.2 Programme of Work

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

- (d) the order and procedure in which the Contractor proposes to carry out the Works
- (e) the sequence and timing of inspections and Tests specified in the Contract.
- (f) a supporting report which includes a general description of the method which the Contractor intends to adopt and of major stages in the execution of the Works

No significant alterations to the programme or to such arrangements and methods shall be made without obtaining the Approval of the Engineer. Approval by the Engineer to the programme of Works shall not relieve the Contractor of any of his responsibilities or obligations under the Contract.

10.3 Handing over, Possession and Use of Site

10.3.1 No land belonging to or in the possession of the Employer shall be occupied by the Contractor without the permission of the Engineer or the Employer. The Contractor shall not use, or allow the site to be used for any purpose other than that of executing the Works.

10.3.2 The Employer shall give the Contractor, right to or right of access to or possession of all or parts of Site as the case may be from time to time as stated to in the Contract and as conforming with the requirement of the programme of the Work.

10.3.3 If the Contractor suffers delay or incur extra cost due to failure by the Employer to give such possession within such time, then the Contractor shall be entitled to extension of time if completion will be delayed due to this. No extra payment shall be payable to the Contractor in this regard.

10.4 Access to Site of Work

10.4.1 Access for Engineer

The Contractor shall allow the Engineer or the Engineer's Representative at all times access to the Site, and to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where Materials or plant are being manufactured, fabricated and/or assembled for the Works. The Contractor shall ensure that sub Contracts if any shall contain provisions entitling the Engineer or any person authorized by him to have such access.

10.4.2 Access Road and Way Leaves

Providing access roads/way leaves to the Site will be Contractor's responsibility.

10.5 Time for Completion

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 of the whole of the Works and/or parts thereof before the same is taken over by the Employer.

10.6 Delay

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

10.6.2 In case of delay on the part of the Contractor, the Contractor shall be liable to pay liquidated damages in addition go any other compensation for the damages suffered by the Employer. This is without prejudice to the right of the Employer to rescind the Contract in terms of Clause 11.4.

10.7 Extension of Time for Completion not on Contractor's fault

The time within which, the Works or any phase or part of the work is to be completed, may be extended by the Engineer by such further period of time as may reasonably reflect delay in completion of Works notwithstanding due diligence and the taking of all reasonable steps by the Contractor to avoid or reduce such delay, caused by any of the following events :

- iii. "Force Majeure" referred to in Clause 19.0.
- iv. The issue of any instruction or major Variation by the Engineer.
- v. The Contractor not being given possession of or access to the Site or any part thereof in accordance with the Contract
- vi. Instruction of the Engineer to suspend the Works and the Contractor not being in default as to reasons of suspension
- vii. Acts or omissions of Other Contractors in executing work not forming part of this Contract and on whose performance, the performance of the Contractor necessarily depends.
- viii. Any act of prevention or Breach of Contract by the Employer and not mentioned in this Clause.
- ix. Any order of Court restraining the performance of the Contract in full or in any part thereof.
- x. 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.

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. 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, together with any notice required by the Contract and relevant to such Clause.

10.8 Extension of Time for Delay due to Contractor and Liquidated Damage

10.8.1 Extension of Time for Delays due to Contractor

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.

10.8.2 Liquidated Damages

In case the Engineer decides to extend the Contract with liquidated damages for delays due to Contractor, in that case without prejudice to any other right or remedy available to the Employer, the liquidated damages shall be levied at the rate of half percent of the Contract Value for the Works for each week or part of the week the Contractor is in default subject to a maximum of 10% of the total Contract Value.

If the delay relates only to a portion of the Works with a separate and earlier completion period, the Contract Value shall be restricted to the cost of that portion of the Works only.

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

10.9 Rate of Progress

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 any part thereof, 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 to expedite progress so as to complete the Works or any part thereof within date of Completion. The Contractor shall not be entitled to any additional payment for taking such steps.

If any step 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 and shall be deducted by the Employer from any monies due, or become to the Contractor.

10.10 Suspension

10.10.1 Suspension of Work

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During suspension, the Contractor will protect, store and secure such part or whole of the Works against any deterioration, loss or damage.

10.10.2 Consequences of Suspension

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

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

If suspension is ordered by the Engineer for reasons other than those mentioned in Sub-clause 10.10.2 then the Contractor's entitlement are in the table below

Suspension Period	Extension of Time	Compensation for the suspension period	Remarks
Upto 14 Days	NO	NO	Engineer may at his sole discretion give extension of time in exceptional circumstances.
15 – 30 days	YES	NO	Extension of time as considered proper by the Engineer
Above 30 days	YES	<ul style="list-style-type: none"> • 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
Above 90 days, if Contractor asks for fore closure	NO	No compensation except as per part (iii) of Sub-clause 11.1	Contractor may ask for closure of the Contract, or deletion from the Contract of that part of Works which has been suspended.

The decision of the Engineer shall be final on the amount of compensation payable on account of any idle labour/employees and idle plant/machinery. Recovery of installments towards all advances shall remain suspended during the period the suspension of work lasts, and no interest on advance shall be charged for the said period of suspension.

Apart from this, the Contractor has no other remedies in connection with suspension.

11. TERMINATION OF CONTRACT

11.1 Termination for Employer's Convenience

- (i) The Employer may terminate the Contract by giving notice to the Contractor with effect from the date stated in the notice, for its convenience and without need to give reasons.
- (ii) The Contractor must comply with the instructions of the Employer to wind down and stop work and the Contractor must leave the Site by the date stated in the termination notice and remove all Temporary Works it has brought on to the Site except for those items identified in the termination notice as to be retained on the Site.
- (iii) After termination under Clause 11.1 subject to its other rights under the Contract, the Employer must pay to the Contractor.
 - a. the value of approved materials actually brought to the Site and reasonably required to execute the Works during next three months, as per approved programme, and
 - b. Value of Work completed up-to-date by the Contractor at rates specified in the Contract, after taking into account any deductions, retentions, setoff
 - c. In addition, a sum not exceeding 2% (two percent) of the value of the work remaining incomplete on the date of Termination notice taking effect.

- (iv) 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.
- (v) Any remaining tools, plants, equipments and surplus Materials or Employer with Contractor will be returned to the Employer at Employer's depot at Contractor's cost. In case of failure of the Contractor to do so, the Employer will be entitled to recover their cost from the Contractor from the amount becoming due to the Contractor or from any other money due in any other Contracts. The decision of the Engineer of amount to be recovered will be final decision and full credit at rates initially changed to the Contractor shall be allowed for such Materials. Similarly, the Employer shall be entitled to recover the cost of unreturned material, plant, equipment and tools from the Contractor where such Materials have been supplied free of cost and plant, equipment and tools free of cost or on lease basis to the Contractor as stipulated in the Special Conditions of Contract.
- (vi) Provided further, that any diminution of quantities against individual items of the Contract, merely as a variation when the work is completed, shall not constitute foreclosure of Contract in terms of this clause, and no compensation or payment whatsoever as per this clause will be due or payable to the Contractor on that account.

11.2 Termination for Default of Employer

In the event of the Employer :

- a) failing to pay to the Contractor the amount due without reasonable cause, under any certificate of the Engineer, within ninety days after the same shall have become due under the terms of the Contract, subject to any deduction that the Employer is entitled to make under the Contract, or
- b) becoming bankrupt or, being a company, going into liquidation, other than for the purpose of a scheme of reconstruction or amalgamation

then, the Contractor may give notice requiring the Employer to remedy the default within 28 days after receipt of the notice. If the Employer fails to remedy the default or fails to propose steps reasonably acceptable to the Contractor to do so and in that case, the Contractor may terminate the Contract after issue of 14 days notice to the Employer with a copy to the Engineer. In this case, the Contractor shall be compensated as per Sub Clause (iii) of 11.1.

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

11.3 Rescission of Contract Due to Death of Contractor / Partner

If the Contractor is an individual or a sole proprietary concern, and the Contractor dies, or if the Contractor is a partnership concern and one of the partners dies, in that case unless the Employer is satisfied that the legal representative of the individual Contractor or of the sole proprietor, or in the case of a partnership firm, all surviving partners, are capable of carrying out and completing the Contract, the Employer shall be entitled to rescind the Contract as to its incomplete part. The Engineer's decision in this regard will be final and binding on the parties. In that event, the Employer shall not be liable to pay any compensation to the legal heirs of the deceased Contractor and/or to the surviving partners of the Contractor's firm, on account of such cancellation of Contract. Provided further that the legal representatives of the Deceased Contractor the surviving partners, shall also not be liable to pay any damagers, to the Employer, in respect of incomplete part of the Contract. Any liability incurred by the deceased Contractor, or by the deceased partner of the Contracting firm, shall be recovered from the legal representatives of the deceased Contractor or from the surviving partners of the said contracting firm as the case may be.

11.4 Termination of Contract Due to Contractor's Default

11.4.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and remedy it within a specified reasonable time as the Engineer may deem reasonable.

11.4.2 Conditions Leading to Termination of contract

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

- a) fails to comply with a notice under Sub clause 11.4.1
- b) abandons or repudiates the Contract

which, at any time thereafter, may become due to the Contractor atone or jointly under this or any other Contract or otherwise.

11.4.3 Non-exercise of power not to constitute waiver

Provided always that in case any of the powers conferred upon the Employer by Sub-clause 11.4.1 and Sub-clause 11.4.2 above, shall have become exercisable, and the same may not have been exercised, the non-exercise thereof shall not constitute waiver of any of the conditions thereof.

12. VARIATIONS

12.1 Authority to order modifications

Engineer acting on behalf of Employer shall have the authority to make any variation of the form, quality or quantity of the Works or part thereof, that in his opinion may be necessary at any time prior to issue of Completion Certificate. The Contractor shall execute and be bound by each variation ordered by the Engineer and shall do any of the following :

- a) increase or decrease the quantity of any item or part of work included in the Contract
- b) omit any such work included in the Contract
- c) add a new part or item of the work not included in the Contract
- d) change the character or quality or kind of any such work
- e) change the levels, lines, positions and dimensions of any part of the Works
- f) execute additional work of any kind necessary for the completion of the Works or
- g) change any specified sequence or timing of construction of any part of the Works.

No such variation shall in any way vitiate or invalidate the Contract. The decision of the Engineer under this clause shall be final.

12.2 Variations to be authorized in writing

All variations shall be recorded in a written instruction from the Engineer and shall not be implemented by the Contractor without such an instruction in writing from the Engineer. On receipt of an instruction from the Engineer to execute variation, the Contractor shall forthwith proceed to carry out the variation and be bound to these conditions in doing so as if such variation was stated in the Contract.

The work shall not be delayed pending the granting of an extension of the Time for Completion or for fixing the rates/prices under this Sub-clause.

12.3 Value Engineering or Innovation

12.3.1 Value Engineering Proposals

The Contractor may submit to the Employer, in writing at its own cost, value engineering proposals for modifying the Specifications for the purpose of reducing construction 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.

12.3.2 Value Engineering Proposals – Contents

If the Employer requires 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) an itemized list of all the proposed modifications to the Drawings and Specifications
- (c) an itemized list 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.

12.3.3 Value Engineering Proposals – Employer Review

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.

12.3.4 Amendments – Employer Issuance

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 3% 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.

12.3.5 Contractor's Acceptance and Payment

The Contractor shall either accept or reject any proposed amendment executed by the Employer 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.

12.4 Variation in the Bill of Quantities

- I. The quantities of items shown in the Bill of Quantities of Schedule B, C & D are approximate, and liable to vary during the actual execution of the Work. Some items / group of items may have to be altered, added or omitted. The Contractor shall be bound to carry out and complete the stipulated work as instructed by the Engineer, irrespective of the magnitude of variations including additions, alterations or omissions in the Bill of quantities, individual items or group of items, specified in the Bill of Quantities.
- II. Such variations shall be paid as follows :
 - a) At the accepted rates of the Contract for variation in quantities to the extent of 25% on either side i.e. increase/decrease, except in the case of foundation

Works. Unless otherwise specifically provided for in the Bill of Quantities or elsewhere in the Contract, the variation of $\pm 25\%$ shall be applicable to a group of items mentioned therein and not to individual items.

- b) In the case of foundation work, no variation limit applies and Contractor shall carry out the Work, at rates stipulated in the Contract irrespective of any variation.
- c) In case of earthwork, the aforesaid variation limit of 25% shall apply to the gross quantity of earthwork and variation in the quantity of individual classifications of soil be subject to this limit.
- d) For items against which the quantity given in the Bills of Quantities is "if or as required", there shall be no increase/decrease of rates whatever be the quantity finally executed.
- e) Variation in the quantity of items individually costing upto 1% of the total Contract Value, shall be payable at the rates slated in the Contract, notwithstanding the magnitude of variation upto 2% of the original Contract Value for each such item.
- f) In case the variation in individual items or the group of items as stipulated above is more than 25% on either side, the rate for the varied quantity beyond 25% shall be negotiated between the engineer and the Contractor and mutually agreed rates arrived at.
- g) In case Engineer introduces an item for which the Contract does not contain any rates or prices applicable to the varied Works, the rate of such items shall be derived, wherever possible, from rate for similar items available in the Bill of Quantities of the accepted Tender. In case this is not possible, the rate may be decided on the following basis :
 - i) Cost of Materials at current market rates, as actually utilized in the final finished Permanent Works, including a reasonable percentage for wastage and transportation.
 - ii) Cost of enabling Works if any (unless provided for separately) worked out on the above basis but with less stringent quality Specifications minus salvage value of serviceable material released after completion of work and cost of material released as scrap.
 - iii) Cost of labour actually used at the site of work at rates under Payment of Minimum Wages Act for the area of work for each category of worker, further enhanced by a percentage of 30% of the aforesaid rates to account for labour not directly utilized at Site and other ancillary and incidental expenses on labour.
 - iv) Hire charges for Plant & Machinery, scaffolding, shuttering, forms, etc., required to be used at the site of work. The tools used by various trades shall not be counted as Plant & Machinery for this purpose.
 - v) An amount of 20% of items (a), (b), (c) and (d) above to allow for Contractor's overheads, taxes and profits. This percentage shall also apply to estimated cost of Materials supplied free to the Contractor.
 - vi) In all cases where extra items of work are involved, for which there are no rates in the accepted Bill of Quantities, the Contractor shall give a notice to the engineer, of at least 7 days before the need for their execution arises.
- h) In the event of disagreement in respect of items (f) and (g) above, the Engineer shall fix such rates or prices as are, in this opinion appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on account payments to the Contractor. Alternatively, in the event of disagreement, the Contractor shall

have no claim to be executed with the responsibility of execution of extra quantities / new items, and the engineer shall be free get such additional quantities beyond 25% / new items executed through any agency. However, if the Engineer or the Employer so directs the Contractor shall be bound to carry out any such additional quantities beyond the limits stated above original quantities and or new items and the disagreement or the difference regarding rates to be paid for the same, shall be settled in the manner laid down under the conditions for the settlement of dispute.

III. Daywork

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

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

IV Normally there should not be any variation in the Lump sump price of Schedule A. If there is any variation in length of viaduct, it will be paid as per note (vi) of Annexure 1 to Schedule A of ill of Quantities in Pg 6 of Vol-3

However if any other variation is allowed by Employer in exceptional circumstances, it shall be evaluated and paid on actual basis in accordance with clause no. 12.4(g) of GCC

13. PRICE VARIATION

13.1 Accepted Rate Applicable till the Completion of Work

The rates as per the accepted Bill of Quantities, shall applicable till the completion of the Work and will be varied only to the extent of permissible price variation as per Clause 13.4.2 below and Price Variation formula in Special Conditions of Contract.

13.2 Price Variation Formula

- I. The payment as per the Contract shall be subject to adjustment in accordance with the Price Variation Formula, and other items and conditions as provided in "Special Conditions of Contract".
- II. 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 in the accepted Bill of Quantities shall be deemed to include amounts to cover the contingency of such rise or fall of costs.

13.3 Price Variation for Varied Items

Normally, no price variation clause shall be applicable to new rates not originally included in the Bill of Quantities. It shall, however, be open to the Engineer o accept price variation clause in such cases where the rates are not based on actuals and the work is likely to continue for more than one year.

13.4 Price Variation During Extended Period of Contract

Price adjustment applicable during the extended period of Contract will be regulated as per provisions in the Special Conditions of Contract unless the extension has been granted due

to Contractor's fault.

14. ADVANCES

The Employer shall make following interest free advance payments :

14.1 Mobilisation Advance

Mobilisation advance shall be paid upto 10% of original Contract Value payable in two equal installments. The first installment shall be paid after mobilization has started and next installment shall be paid after satisfactory utilization of earlier advance.

Mobilization advance shall be paid against acceptable Bank Guarantee from a Scheduled Commercial Bank in India.

In case of mobilization advance, the Contractor, once the 50% of mobilization advance has been recovered, shall have a one line option to reduce the Bank Guarantee for the mobilization by the amount received recovered.

14.2 Advance against Plant and Machinery

Plant and machinery advance shall be paid upto 5% of original Contract Value. However, for highly specialized plant and equipment additional advance upto 5% of Contract Value may be considered at Employer's discretion, if such a provision is specified in Special Conditions of Contract. In any case the advance shall be limited to 8% of the assessed cost of machinery.

14.3 Plant and machinery advance shall be paid against hypothecation of plant and machinery to the Employer.

14.4 Advance Against Material at Site

Advance on account of main construction materials required for the Permanent Works, shall be paid on request of the Contractor after these materials are brought to site, against an Indemnity Bond in a form acceptable to Employer is duly executed. The advance shall be limited to 8% of the actual value or assessed value of these materials and the total advance on account of construction materials at a time shall be limited to 3% percent of original Contract Value or likely average consumption of such materials for three months, whichever is less and at any time the total outstanding advance against material at Site shall not exceed 4% percent of the original Contract Value. The valuation of the average consumption of such main construction materials shall be approved by the Engineer, whose decision shall be final. Materials which are of perishable nature should be adequately insured.

14.5 Written Request for Advances

Advances as admissible, shall be payable only on contractor's written request to the Employer.

14.6 Recovery of Advances

- a. The recovery of Advances shall commence when 20% of the original Contract Value of the work has been paid and it will be completed by the time 85% of the original contract value has been paid or by the time of original date of completion whichever is earlier. The recovery of advances shall be limited to 30% of On Account Bill.
- b. No advance, except material advance, shall be given after 40% of the original Contract amount has been paid.
- c. The Contractor shall always have the option to have the recoveries commenced and/or completed earlier, and/or to have recoveries affected in installments of higher amount and also to repay part or whole of the advance by direct payment rather through On-account Bills.

14.7 Interest In Case of Delay in Repayment of Advances

Should there be any delay in the progress and completion of work, as a result of which it is not possible to recover the advance and interest thereon, before the original date of completion stipulated in the Contract, then the interest to be charged from the Contractor on

the remaining portion of the advance beyond the completion date specified in the Contract, shall be 2% above State Bank of India prime lending Rate or 10% whichever is higher.

14.8 **Advances to be Used only for This Work**

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 liable to return the advance at once and to pay interest at 2% above State Bank of India prime lending Rate or 15% per annum whichever is higher, till the advance is recovered back from him.

15 **CONTRACT PRICE AND PAYMENTS**

15.1 **Rates for Items of Work**

The Contractor shall be paid only at accepted rates for finished work as per approved construction drawings. Where such rates are not available the Contractor shall be paid as per Clause 12.0 "Variation" of these Conditions.

15.1.1 The rates entered in the accepted Bill of Quantities of the Contract, shall provide for Works duly and properly completed in accordance with these Conditions of Contract, Special Conditions of Contract and the Specifications and Drawings, together with such enlargement, extension, diminution, reduction, alteration or addition, as may be ordered in terms of conditions of Contract, and without prejudice to the generally thereof, shall inter-alia be deemed to include and cover all charges relating to labour and superintendence thereof, supply including all cost and freight of Materials, stores, equipments, profiles, moulds, cuttings, centerings, scaffoldings, shuttering, machinery, derricks, tackles, ropes, pegs, posts, tools and all apparatus and plants, required at / for the work, and contingencies, except such items as may be specified in the Special Conditions of Contract to be supplied to the Contractor by the Employer. The rates quoted shall also include :

- Erection, maintenance and removal of all Temporary works and buildings
- All watching, lighting, pumping and draining unless otherwise provided for
- All barriers and arrangements for safety of the property, utilities, public or of employees/workers during the execution of Works
- All sanitary and medical arrangements for labour camps as may be prescribed
- The setting out of all Works of construction, repair and up-keep of all centre lines, benches, brackets, etc.
- Site clearance
- All taxes, royalties, duties, cess, octroi and other levies payable to various authorities except as provided in **Sub-Clause 15.1.1 and 15.1.3**

15.1.2 **Customs Duty & Central Excise and Value Added Tax**

- I. The rates shall be all inclusive (including all taxes, duties, royalties etc.) except for Value Added Tax (VAT) paid under W.B. VAT Act 2003.
- II. Employer has applied for and is likely to receive exemptions on customs duty, central excise duty and reimbursement of VAT. The Contractor shall maintain meticulous records of all the taxes and duties paid and provide the same as and when required by the Employer, so that the Employer is able to avail the reimbursement. Alternatively, the Employer may direct the Contractor to get the reimbursements based on exemption certificates / government's order and it shall be obligatory on part of the Contractor to get the reimbursements from the statutory authorities and pass them on to KMRC.
- III. Value Added Tax : VAT paid under WB:VAT Act 203 shall be reimbursed separately and shall not be included in the Contract price quoted by the tenderer. Within 7 days of payment by Contractor to Government of reimbursed VAT amount, the Contractor

will submit a certificate to this effect to KMRC in a format acceptable to KMRC.

- 15.1.3 Subject to Sub-clause 15.1.1 above, nothing extra shall be payable over the quoted rates, notwithstanding any provision to the contrary in any law for the time being in force, save and except what is specifically provided in General or Special Conditions of Contract.

15.2 Payment on actual measurements

The quantities set out in the Bill of Quantities, are the estimated quantities and not the actual quantities of work to be executed by the Contractor. The Contractor shall be paid for the Works, at applicable rates based on the actual measurements.

Measurements of the work in progress shall be taken by the Contractor in presence of the Engineer. These measurements shall be recorded at such intervals, as in the opinion of the Engineer shall be proper having regard to the progress of the work in the Measurement Books to be supplied by the Engineer.

The Contractor or his authorized representative shall sign the result of the measurements, which shall also be signed by the Engineer or the Engineer's representative as an acknowledgement and acceptance of the accuracy thereof.

The Engineer or the Engineer's Representative shall have the right to delete or correct any measurement if it is found at a later stage that the work is incomplete, defective and / or not conforming to the Specifications.

15.3 Payment Currency

The mode of payment in the Contract will be Indian Rupees unless specified otherwise

15.4 On Account Payment

15.4.1 Procedure for On-Account Payment

- a. The Contractor shall be entitled to be paid from time to time normally once in a calendar month, by way of "On-account" bills, only for such Works as, in the opinion of the Engineer, The Contractor has executed in terms of Contract.
- b. The Contractor shall submit the on-account bills, by the date stipulated by the Engineer, in the prescribed performa, supported with measurements, jointly acknowledged and accepted in the measurement books.
- c. After preliminary scrutiny and certification by the Engineer, payment of 80% of the certified amount shall be made by the Employer within 7 days. The amount certified shall account for all deductions, including statutory deductions, recoveries for advances and any amounts due from the Contractor, The balance 20% shall be paid within 28 days, from the date of the preliminary certification of the bill by the Engineer.
- d. Such payments made by the Employer, shall not constitute any acceptance of the measurements or bill of quantities by the Employer and the Employer shall have the right to alter, modify, reduce or diminish the quantities of classification entered in the Measurement Books or Bills. The Employer shall have right to recover any amount paid in the earlier bill from any subsequent bill and should the amount to be recovered be more than the amount of the subsequent bill, the Contractor shall on demand from the Engineer or Employer immediately refund the extra amount to the Employer within 7 days failing which he shall have to pay interest @10% per annum with monthly rest till the said extra amount is paid back by him

15.4.2 Non-recording of measurements

The Engineer reserves the right not to record the measurements, and / or not to entertain an on-account bill, when the work done during the period is less than 25% of the work to be executed for the period as per agreed programme.

15.4.3 On-Account Payment without prejudice

'On account' payments made in respect of work; done or Materials delivered by the

Contractor, shall be without prejudice to the final accounts, (except where measurement are specially noted in the measurement book as "final measurement" and have as such been signed by the Contractor), and shall not be considered by itself to be evidence of any facts, stated in or to be inferred from such payments or of any work done or Materials supplied, or of the manner of its execution.

15.5 Final Measurements And Payments

- (i) Soon after the issue of the Completion Certificate, as per Clause 17.1 and 17.2 the Engineer shall have the final measurements taken, recorded and signed, as in the case of interim measurements referred to in Clause 15.2. A joint accountal of any plant, equipment and Materials issued by the Employer to the Contractor, shall also be prepared and signed jointly.
- (ii) Based on above, the Contractor shall submit a draft Final Bill with supporting documentation at the earliest but not later than 60 days from the issue of Completion Certificate
- (iii) The Engineer shall check the bill within 60 days of its receipt and return the bill to the Contractor for correction if any. Employer shall pay 75% of the undisputed amount of the bill to the Contractor at the stage of returning the bill.
- (iv) The Contractor shall resubmit the bill with correction within 30 days of the return together with a written discharge in form of "No Claim Certificate" representing full or final settlement of all money due to the Contractor under or in connection with the Contract or a list of total unsettled claims in accordance with Clause 16.1

The Employer, shall, on receipt of the Certificate, arrange to make payment, subject always to any deductions under these presents, due to the Contractor, with a period of further 30 days failing and after which the Employer shall be liable to pay interest at 10% per annum which shall be compounded every 3 months. Provided always, that, no interest shall be payable on any amount disallowed or disputed by the Engineer or the Employer in any case.

The Engineer for his pure Convenience retains the right to instruct the Contractor to furnish the details of both on account and final bill in soft form as well.

15.6 Round Off

In every payment to the Contractor, sums of less than fifty paise shall be omitted and sums of fifty paise and more up to one rupee shall be reckoned as one rupee.

15.7 Payment By Cheque/E-Payment

All payments to the Contractor will be made by cheque or through "E-Payment" as decided by the Employer.

15.8 Tax Deduction at Source

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

15.9 Production of Vouchers

- 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 in the question of relevancy of any documents, information or returns shall be final and binding on the parties.
- II. If any part or item of the work is allowed to be carried out by a sub-Contractor, assignee or any subsidiary or allied firm, the Engineer shall have power to secure the books of such sub-Contractor, assignee or any subsidiary or allied firm through the Contractor, and shall have power to examine and inspect the same. The above obligations are without prejudice to the obligations of the Contractor under any statute, rules or orders

15.10 Withholding And Lien for Sums Claimed

- i. The Employer shall have lien over all or any moneys that may become due and payable to the Contractor under the Contract, and / or over the deposit of Performance Security or other amount or amounts made under the Contract and which may become payable to the Contractor
- ii. And further, unless the Contractor pays and clears immediately on demand any claim of the Employer, the Employer shall at all times be entitled to deduct the amount of the said claim from the moneys, securities and / or deposits which may have become or will become payable to the Contractor under these presents, or under any other Contract or transaction whatsoever between the Employer and the Contractor even if the matter stands referred to Arbitration. The Contractor shall have no claim for any interest or damage whatsoever in respect of any amounts withheld or treated as withheld under the lien referred to above and duly notified as such to the Contractor.

15.11 Signature On Receipts For Payments

Every receipt of payment to Contractor including refund of the Performance Security shall be signed by the person authorized to do so on his behalf. In the event of death of any of the Contractor's partners in case the Contractor is a partnership firm, during the currency of the Contract, it is hereby expressly agreed that every receipt by any one of surviving Contractor's partners, shall, if so signed as aforesaid, be a good and sufficient discharge as aforesaid, provided that nothing in this Clause shall be deemed to prejudice or affect any claim, which the Employer may hereafter have against the legal representatives of any Contractor's partner so dying, for or in respect of breach of any of the conditions of the Contract. Provided also that nothing contained in this clause shall be deemed to prejudice or affect the respective rights and obligations of the Contractor's partners, or of the legal heirs / representatives of any deceased Contractor / partner interse.

15.12 Post Payment Audit

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.

16. CLAIMS & LIENS IN RESPECT OF CLAIMS IN OTHER CONTRACTS

16.1 Claims

The Contractor shall send to the Engineer's Representative once in every three months an account giving particulars, along with full details and justification, of all claims for any additional payment to which the Contractor may consider himself entitled and of all extra or additional work ordered by the Engineer which he has executed during the preceding three months. No final or interim claim for payment for any such work or expense will be considered which has not been included in such particulars.

16.2 Lien In Respect Of Claims In Other Contracts

Any money due to the Contractor either alone or jointly with others, including the Performance Security amount returnable to him, may be withheld or retained by exercise of lien by the Employer, against any claim of the Employer in respect of payment of a sum of money arising out of or under any Contract other than the present Contract made by the Contractor, alone or jointly with the Employer. It is an agreed term of Contract that the sums of money so withheld or retained under this clause by the Employer, shall be kept withheld or retained till the claims arising out of or under the other Contract, are either mutually settled or determined by the Arbitrator, or by the competent Court, as the case may be and the Contractor will have no claims of interest or damages in this regard whatsoever.

17 COMPLETION AND MAINTENANCE CERTIFICATE

17.1 Completion and Completion Certificate

After completion of the Work the Contractor shall serve a written notice of such completion, (whether of the whole of the Works or any part of the work for which a separate date of completion is stipulated in the Contract) to the Engineer. The Engineer or Engineer's Representative within 30 days of the receipt of this notice shall conduct a complete joint survey of the Works (including carrying out any Tests as prescribed in the Contract) and prepare a Defects List jointly with the Contractor. The defects pointed by the Engineer or Engineer's representative shall be rectified by the Contractor within 30 days and there and there after acceptance report be signed jointly by the Contractor and Employer or Engineer on his behalf. This joint report shall be treated as "Completion Certificate".

17.2 Completion Certificate not to Absolve

The contract requires defects free Completion and completion certificate issued as per Completion Certificate **Sub-Clause 17.1** above, shall not absolve the Contractor from his liability to make good defects, imperfections and shrinkages or faults, which may appear during the Defects Liability Period specified in the Contract, arising in the opinion of the Engineer from any design for which the Contractor is responsible or any Materials or workmanship being not in accordance with Drawings or Specifications or instructions of the Engineer. These defects shall be rectified by the Contractor at his own cost and if he fails to do so, the Engineer may employ labour, plant and machinery and Materials or appoint another agency of Contractor, to amend and make good such defects, imperfections, shrinkages and faults all costs for the same, and shall be borne by the Contractor and shall be recoverable from any moneys due to him under this or any other Contract.

17.2 Maintenance Certificate

17.3.1 Definition of "Defects Liability Period"

In the Contract, the expression "Defects Liability Period", shall mean the Defects Liability Period named in the Special Conditions of Contract, calculated from the date of completion of the Works, as certified by the Engineer in accordance with **Clause 17.1 and 17.2**.

17.3.2 Maintenance Certificate

The Contract shall not be considered as completed, until a Maintenance Certificate shall have been signed by the Engineer at the end of Defects Liability Period stating that Works have completed and maintained to his satisfaction

17.3.3 Final Approval by Maintenance Certificate

No certificate other than 'Maintenance Certificate' referred to in **Sub-clause 17.3.2** of these conditions, shall be deemed to constitute final Approval by Engineer of discharge of Contractor's obligations under the Contract

17.4 Cessation of Employer's Liability

The Employer shall not be liable to the Contractor for any matter, arising out of or in connection with the Contractor, or the execution of the Works, unless the Contractor shall have made a claim in writing in respect thereof within 60 days from the date of completion of the Works

17.5 Unfulfilled obligations

Notwithstanding the issue of Maintenance Certificate, the Contractor and the Employer, shall remain liable for the fulfillment of any obligation incurred under the provision of the Contract, prior to the issue of the Maintenance Certificate, which remain unperformed at the time such certificate is issued, and for the purpose of determination of the nature and extent of any such obligation, the Contractor shall be deemed to remain in force between the parties hereto.

18 RISK & RESPONSIBILITY

18.1 Contractor's Care of Work

- i. The Contractor shall take full responsibility for the care of Works from the commencement of the Works until the date stated in the Completion Certificate for the whole of the Works is issued pursuant to Clause 17.1 and 17.2,
- ii. The Contractor shall not demolish, remove or alter structures or other facilities on the Site without prior Approval of the Engineer.
- iii. If the Engineer shall issue a Completion Certificate in respect of any part of the Permanent Works for which a separate date of completion is stipulated as provided for in Sub Clause 17.2, the Contractor shall cease to be liable for the care of that part of the Permanent Works from the date stated in the Completion Certificate in respect of that part for which responsibility to take care will shift to Employer
- iv. Provide further that the Contractor shall take full responsibility for the care of any outstanding work, which he shall have undertaken to finish during the Defects Liability Period
- v. If any loss or damage happens to Works during the period for any cause while the Contractor shall be responsible for the care thereof, the Contractor shall rectify the loss or damage at Contractor's risk and cost so that the Works conform with the Contract.
- vi. In the event of any such damage, loss or injury happening from any of the "Force Majeure" for the portion of work already measured, the Contractor if and to the extent required by the Engineer shall undertake the repair and make good the defect at the cost of the Employer
- vii. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of completing any outstanding work or complying

18.2 Urgent Repairs

If, by reason of any accident, or failure, or other event occurring to or in connection with the Works, or any part thereof or proximity thereof, either during the execution of the Works, or during the Defects Liability Period, any remedial or other work or repair shall, in the opinion of the Engineer or the Engineer's representative, be urgently necessary and the Contractor is unable or unwilling to do such work or repair or other work at once, the Engineer may authorize the carrying out such repair or other work by a person other than the Contractor. If

the work of repair so got done by the Employer is work which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all expenses incurred by the Employer in carrying out the same shall be recovered by the Employer from the Contractor.

18.3 Damage To Employer's Property, Private Property and Life

The contractor shall be responsible for all risks to the Works and for trespass and shall make good, at his own expense, all loss or damage to the Works themselves or to any other property of the Employer or the lives, persons and property of others from whatsoever cause in connection with Works until they are taken over by the Employer, incase the Employer is called upon to make good any such costs, loss of damages, or to pay compensation (including that payable under the provisions of Workmen Compensations Act or statutory amendments thereof) to any person or persons sustaining damage as aforesaid by reason of any act, omission or negligence on the part of the Contractor the amount of any costs or charges (including costs and charges in connection with legal proceedings), which the Employer may incur in reference thereto, shall be charged to the Contractor. This will include any payment made by the Employer for any legal proceedings.

18.4 Indemnity BY Contractor

18.4.1 Indemnity Against All Actions of Contractor

The Contractor shall hold and save harmless and indemnify the Employer, from and against all actions, suits, proceedings, loss, costs, damages, charges, claims and demands of every nature and description brought or recovered against the Employer, by reason of any act or omissions of the Contractor, his Representative or his employees, in the execution of the Works or in the guarding of the same. All sums payable by the 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.

18.4.2 Indemnity Against All Claims of Patent Rights and Royalties

The Contractor shall defend, indemnify and save harmless the Employer from and against all claims and proceedings for or on account of infringements of any patent rights, design, trademark name or copyright or other protected rights in respect of any construction equipment, Plants, Materials, goods or design (submitted by the Contractor pursuant to his obligations under the contract) used for or in connection with or for incorporation in the Works and From or against all loss, expense, costs or damages whatsoever in respect of such claims or proceedings or in relation thereto, except her such infringement results from compliance with the design or Specifications provided by the Engineer.

18.5 Indemnity BY Employer

The Employer shall indemnify and hold harmless the Contractor against all claims, damages, losses, and expenses in respect of:

- a. Bodily injuries or damages to persons which is attributable to any negligence, willful act or breach of the Contract by the Employer
- b. Where the injury is contributed partially by the Other Contractor, the proportion of the liability to be borne by each party will be decided by the Engineer.

19 FORCE MAJEURE

If, at any time during the currency of the Contract, the performance in whole or in part by either party of any obligation under this Contract shall be prevented or delayed by reasons of any war, hostilities, invasion, acts of public or foreign enemies, rebellion, revolution, insurrection, civil commotion, sabotage, large scale arson, floods, earthquake, large scale epidemics, nuclear accidents, any other catastrophic unforeseeable circumstances, quarantine restrictions, any statutory rules, regulations, orders or requisitions issued by a Government department or component authority or acts of God (hereinafter referred to as "event") then, provided notice of the happening of such an event as given by either party to

the other within 21 days of the occurrence thereof.

- a. Neither [party shall be reason of such event be entitled to terminate the Contract or have claim for damages against the other on respect of such non-performance or delay in performance.
- b. The obligation under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.
- c. If the performance in whole or part of any obligation under the Contract is prevented or delayed by reason of the event beyond a period mutually agreed to if any, or 90 days, whichever is more, either party nay at its option, after serving a notice of one week, terminate the Contract.
- d. 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
- e. 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
- f. If the Contract is terminated under this Clause, 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.
- g. If neither party issues notice regarding the event within 21 days of its occurrence, the sais event shall be deemed not have occurred and the Contract will continue to have effect as such

20 SETTLEMENT OF DISPUTES AND ABITRATION

20.1 Dispute To be Referred To And Settled By Engineer At The First Phase

Should any dispute or difference of any kind whatsoever arise between the Employer and the Contractor, touching, in connection with, or arising out of the Contract, or subject matter thereof, or the execution of Works; whether, during progrees of Works or after completion and whether before or after termination, anandonment or breach of Contact, it should, in the first place, subject to the provision under **Sub-clause 17.4** be referred to and settled by the Engineer, who shall, within a period of sixty days after being requested in writing by either party to do so, give written notice of his decision to the Employer and the Contractor. The Engineer while considering the matters of dispute referred to him, shall be competent to call for any records, vouchers, information and enforce the attendance of the parties either in person or through authorized representatives, to sort out or clarify any issue, resolve the differences and to assist him to decide the matters referred to him. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the Contractor and shall forthwith be given effect to by the Employer and by the Contractor, who shall proceed with the execution of Works with all due diligence irrespective of whether any of the parties goes in or desired to go in for arbitration. If the Engineer and no intimation of reference of any claim to arbitration has sent to him by either the Employer or the Contractor within a period of sixty days from receipt of such notice, the sais decision of the Engineer shall remain final and binding upon the Employer and the Contactor and the same shall be deemed to have been accepted by them. The Employer or the Contractor shall not seek and arbitration thereafter

20.2 Referring of Dispute for Arbitration

If the Engineer shall fail to give notice of his decision, as aforesaid, within a period of sixty days after being requested or if either the Employer or the Contractor be dissatisfied with any

such decision of the Engineer, then the matter in dispute shall be referred to arbitration as herein provided.

20.3 Dispute Due for Arbitration

Disputes or differences shall be due for arbitration only if all the conditions in Sub-clause 20.1 and 20.2 are fulfilled.

20.4 Settlement of Disputes

Except where otherwise provided in the Contract, all disputes, whatsoever arising between the parties, arising out of touching or relating to construction, measuring, operation or effect of the Contract or the breach thereof, shall be settled by arbitration as detailed in **Sub-clause 20.5**.

20.5 Nomination of Arbitrators/Sole Arbitrator

Matters to be arbitrated upon shall be referred to a sole Arbitrator where the total value of claims does not exceed Rs. 1.50 millions. Beyond the claim limit of Rs. 1.50 million, there shall be three arbitrators. For this purpose, the Employer will make out a panel of Engineers with the requisite qualifications and professional experience relevant to the field to which the Contract relates. This panel will be from serving or retired Engineers of Government departments or of Public Sector. Here will be no objection if the arbitrator/Engineer so appointed is an official of KMRC of the rank of Deputy and above. The arbitrator/Arbitrators shall be appointed within a period of 30 days from the date of receipt of written notice/demand of appointment of Arbitrator from either party. In case of a single arbitrator, the Panel will be three Engineers, 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 and the two so chosen will choose the third arbitrator. Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator/s on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in Kolkata only. The language of proceedings, that of documents and communication shall be English and the awards shall be made in writing. The arbitrators shall always give item-wise and reasoned awards in all cases where the value of total claims exceeds Rs. 1.00 million. Where three arbitrators have been appointed, the award by the majority will prevail.

20.6 No Suspension of Work

The reference to arbitration shall proceed notwithstanding that Works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reasons of arbitration being conducted during the progress of Works. Neither party shall be entitled to suspend 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.

20.7 Award to be Binding on all Parties

The arbitration award shall be binding on all parties.

20.8 Rules Governing the Arbitration Proceedings

The arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act, 1996, as amended from time to time.

20.9 Limitation of Time

No dispute shall be referred to Arbitration after expiry of 60 days from the date of decision by the Engineer, if notified, or from the date when the Engineer ought to have given his decision in terms of provisions under **Sub-clause 22.1** in case of failure on the part of the Engineer to give notice of decision.

20.9A Where the arbitral award is for payment of money, no interest shall be payable on the whole or any part of the money for any period till the date on which the award is made.

20.9B The cost of arbitration shall be borne by the respective parties. The cost shall inter-alia the fees of the Arbitrator(s) as per the rates fixed by the Kolkata Metro Rail Corporation Limited from time to time.

21. NOTICES

21.1 Notice to Contractor

All notices to the Contractor, shall be served by post or telex 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.

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 4.4**.

21.2 Notice to Employer and Engineer

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.

21.3 Change of Address

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

21.4 Change in Constitution of Firm

The Contractor shall forthwith notify the Employer of any change in constitution of the firm.