

Maharashtra Metro Rail Corporation Limited

(A Joint Venture of Govt. of India & Govt. of Maharashtra)

BID DOCUMENT

FOR

Name of Work: - Annual maintenance of 5000 Trees and Lawns at Little wood plantation at Ambazari for the year 2020-2021.

Tender No: - N1 Misc-34/2020, Dated 15/09/2020.




September -2020

MAHARASHTRA METRO RAIL CORPORATION LIMITED

(NAGPUR METRO RAIL PROJECT)

**“Procurement Department, 1st Floor, “Metro Bhawan”
In front of “Diksha Bhoomi” South Ambazari Road,
Nagpur – 440020, Telefax: 0712 – 255417**

Notice Inviting Tender (NIT)

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|  <p>महा मेट्रो NAGPUR METRO</p> | <p>E-TENDER NOTICE</p> <p>MAHARASHTRA METRO RAIL CORPORATION LTD (NAGPUR METRO RAIL PROJECT)</p> <p>(A joint venture of Govt. of India & Govt. of Maharashtra) "Metro Bhawan, East High Court Road (VIP Road), in front of Dr. Babasahed Ambedkar College, near Dikshabhoomi, Nagpur-440010 E-mail: md.nmrc.tenders@gmail.com; Website:www.metrotrainnagpur.com Telefax:0712-2554217</p> | | | | | | | | | | | | | | | | |
| <p>Tender No. N1-Misc-34/2020 Dated:15.09.2020</p> | | | | | | | | | | | | | | | | | |
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| <p>Key Details:</p> <table border="1"> <tr> <td>Estimated Cost</td> <td>Rs. 16,47,348/- (inclusive of applicable GST)</td> </tr> <tr> <td>Completion Period</td> <td>12 (Twelve Months) from date of issue of LOA.</td> </tr> <tr> <td>Document on Sale</td> <td>Documents can be downloaded from 16.00 hrs. on 16.09.2020 to 16.00 Hrs. on 15.10.2020 from Maha-Metro, e-tender portal.</td> </tr> <tr> <td>Cost of Bid Document</td> <td>INR 11,800/-(Eleven Thousand Eight Hundred only) non-refundable (inclusive of applicable taxes) payable through e-payment by Credit Card/Debit Card/Net Banking, as per procedure given in tender document.</td> </tr> <tr> <td>Last date of submission of queries.</td> <td>Up to 12.00 hrs. 28.09.2020 (Queries received after this date shall not be taken into consideration) e-mail ID: md.nmrc.tenders@gmail.com OR submit bid queries in written to ED (Procurement) on the address provided above before time & date.</td> </tr> <tr> <td>Bid Security(EMD)</td> <td>Bid security (EMD) amount shall be Rs.17,000/- (Seventeen Thousand Only) payable by RTGS/NEFT/Credit Card/Debit Card/Net Banking as per procedure of E-tender Portal payment gateway.</td> </tr> <tr> <td>Date & Time of submission of Tender</td> <td>Online submission up till 16.00 Hrs. on 15.10.2020 on Maha-Metro, e-tender portal.</td> </tr> <tr> <td>Date & Time of Opening of Tender</td> <td>On 15.10.2020 at 16:30 Hours at "Metro Bhawan, East High Court Road (VIP Road), in front of Dr. Babasahed Ambedkar College, near Dikshabhoomi, Nagpur-440010, Maharashtra</td> </tr> </table> | | Estimated Cost | Rs. 16,47,348/- (inclusive of applicable GST) | Completion Period | 12 (Twelve Months) from date of issue of LOA. | Document on Sale | Documents can be downloaded from 16.00 hrs. on 16.09.2020 to 16.00 Hrs. on 15.10.2020 from Maha-Metro, e-tender portal. | Cost of Bid Document | INR 11,800/-(Eleven Thousand Eight Hundred only) non-refundable (inclusive of applicable taxes) payable through e-payment by Credit Card/Debit Card/Net Banking, as per procedure given in tender document. | Last date of submission of queries. | Up to 12.00 hrs. 28.09.2020 (Queries received after this date shall not be taken into consideration) e-mail ID: md.nmrc.tenders@gmail.com OR submit bid queries in written to ED (Procurement) on the address provided above before time & date. | Bid Security(EMD) | Bid security (EMD) amount shall be Rs.17,000/- (Seventeen Thousand Only) payable by RTGS/NEFT/Credit Card/Debit Card/Net Banking as per procedure of E-tender Portal payment gateway. | Date & Time of submission of Tender | Online submission up till 16.00 Hrs. on 15.10.2020 on Maha-Metro, e-tender portal. | Date & Time of Opening of Tender | On 15.10.2020 at 16:30 Hours at "Metro Bhawan, East High Court Road (VIP Road), in front of Dr. Babasahed Ambedkar College, near Dikshabhoomi, Nagpur-440010, Maharashtra |
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| <p>Sale of document, e-Payment procedure, submission and other details are available on Maha-Metro tender portal under section in e-tender portal. https://mahametrotrain.etenders.in. To view this tender notice, interested Agencies may visit the Maha-Metro website www.metrotrainnagpur.com. The bidder shall bear all costs associated with the preparation and submission of the bid. Maha-Metro, in no case, will be responsible or liable for these costs, regardless of the conduct or outcome of the bidding process.</p> | | | | | | | | | | | | | | | | | |

ED/Procurement
Maha-Metro, Nagpur

Section -I **Instruction to Bidders**

a. INTRODUCTION:

Maharashtra Metro Rail Corporation Limited has developed an Urban Forest named “Little Wood” at **Ambazari**. It is a Green Nagpur initiative by **Maharashtra Metro Rail Corporation Limited (Nagpur Metro Rail Project)**. It has been developed in a land area of 30 Hectare (Approximately).

Approximately 5000 nos of trees has been planted and maintained / take care by Maha-Metro.

b. DEFINITION:

- i. “Applicable law” means the laws and any other instruments having the force of law in the Employer country.
- ii. “Bidder” or “Bidders” means “Consultant” who is intended to participate in submission of Bid Documents for this work.
- iii. “Contract” means a legally binding written agreement signed between the Employer and the Bidder.
- iv. “Contract Price” shall be the accepted the contract amount, inclusive all taxes, royalties, duties, fees, cess, octroi, other levies etc., and any tax to be deducted at source except GST.
- v. “Base Date” shall be 07 (Seven) Days prior to the final date of submission of bid.
- vi. “Employer” means MAHA-Metro, the implementing agency that signs the Contract for the Services with the selected Bidder.
- vii. “Engineer” means General Consultants to Maha-Metro or any person nominated or appointed from time to time by the MAHA-METRO for the purpose of the said works.
- viii. “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant.
- ix. “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is taken into account in the technical evaluation of the Consultant’s proposal.
- x. “LOA or Work Order” means the Letter of Acceptance sent by the Employer.
- xi. “Proposal” means the Technical Proposal and the Financial Proposal of the Bidder.

GENERAL

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| 1. Scope of Bid | <p>1.1 In connection with the Invitation for Bids specified in the Bid Data Sheet (SECTION-II: BID DATA SHEET), the Employer, as specified in the SECTION-II: BID DATA SHEET, issues these Bidding Documents for the procurement of Works as specified in Section IV, Scope of Works. The name, identification, and number of lots (contracts) of this International Competitive Bidding (ICB) process are specified in the SECTION-II: BID DATA SHEET.</p> |
| | <p>1.2 Throughout these Bidding Documents:</p> <p>(a) the term “in writing” means communicated in written form and delivered against receipt;</p> <p>(b) except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and</p> <p>(c) “day” means calendar day.</p> |
| 2. Source of Funds | <p>2.1 The Employer specified in the SECTION-II: BID DATA SHEET has received or has applied for financing (hereinafter called “funds”) from the German Government owned development bank (KfW), AFD & Equity (hereinafter called “the Agency”) (status described in SECTION-II: BID DATA SHEET) toward the project named in the SECTION-II: BID DATA SHEET. The Employer intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued.</p> |
| 3. Corrupt and Fraudulent Practices | <p>3.1 The Agency requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section V.</p> <p>3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit the Agency to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Agency.</p> |
| 4. Eligible Bidders | <p>4.1 A Bidder may be a firm that is a private entity, a government-owned entity—subject to ITB 4.3—or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution.</p> |

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| | <p>Unless specified in the SECTION-II: BID DATA SHEET, there is no limit on the number of members in a JV.</p> |
| | <p>4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:</p> <ul style="list-style-type: none"> (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or (b) receives or has received any direct or indirect subsidy from another Bidder; or (c) has the same legal representative as another Bidder; or (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or (e) participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same sub-contractor in more than one bid; or (f) any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or (g) any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the Contract implementation; or (h) has a close business or family relationship with a professional staff of the Employer (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Agency throughout the procurement process and execution of the contract. |
| | <p>4.3 The Agency’s eligibility criteria to bid are described in Section V – Eligibility criteria and social and environmental responsibility.</p> |
| | <p>4.4 A Bidder shall not be under suspension from bidding by the Employer as the result of the operation of a Bid Security.</p> <p>4.5 This bidding is open only to prequalified Bidders unless specified in the SECTION-II: BID DATA SHEET.</p> |

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| | <p>4.6 A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.</p> <p>Refer SECTION-II: BID DATA SHEET for additional paras</p> |
| 5. Eligible Materials, Equipment, and Services | <p>5.1 The materials, equipment and services to be supplied under the Contract and financed by the Agency may have their origin in any country subject to the restrictions specified in Section V, Eligibility criteria and social and environmental responsibility, and all expenditures under the Contract will not contravene such restrictions. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.</p> |
| B. Contents of Bidding Documents | |
| 6. Sections of Bidding Documents | <p>6.1 The Bidding Documents include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8. (Replaced in SECTION-II: BID DATA SHEET)</p> <ul style="list-style-type: none"> • Section I. Instructions to Bidders (ITB) • Section II. Bid Data Sheet (SECTION-II: BID DATA SHEET) • Section III. Evaluation and Qualification Criteria • Section IV. Scope of Work • Section-V. General Condition of Contract • Section –VI. Special Conditions of Contract • Section-VII. Bid & Contract Form • Section-VIII. Financial Bid |
| | <p>6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Documents. Ref. SECTION-II: BID DATA SHEET</p> |
| | <p>6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding Documents, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or Addenda to the Bidding Documents in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail or as specified in SECTION-II: BID DATA SHEET.</p> |
| | <p>6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its bid all information and documentation as is required by the Bidding Documents. (Addition in SECTION-II: BID DATA SHEET)</p> |
| 7. Clarification of Bidding Documents, | <p>7.1 A Bidder requiring any clarification of the Bidding Documents shall contact the Employer in writing at the Employer's address specified in the SECTION-II: BID DATA SHEET or raise its enquiries during the pre-bid meeting if</p> |

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| <p>Site Visit, Pre-Bid Meeting</p> | <p>provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received on or before the date specified in this document. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so specified in the SECTION-II: BID DATA SHEET, the Employer shall also promptly publish its response at the web page identified in the SECTION-II: BID DATA SHEET. Should the clarification result in changes to the essential elements of the Bidding Documents, the Employer shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2</p> |
| | <p>7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense. (as specified in SECTION-II: BID DATA SHEET).</p> |
| | <p>7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.</p> |
| | <p>7.4 If so specified in the SECTION-II: BID DATA SHEET, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage (as specified in SECTION-II: BID DATA SHEET).</p> |
| | <p>7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the meeting or as specified in SECTION-II: BID DATA SHEET.</p> |
| | <p>7.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder OR as provided for in SECTION-II: BID DATA SHEET</p> |
| <p>8. Amendment of Bidding Documents</p> | <p>8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Documents by issuing addenda.</p> |

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| | 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Employer in accordance with ITB 6.3 . The Employer shall also promptly publish the addendum on the Employer's web page in accordance with ITB 7.1 . or as specified in SECTION-II: BID DATA SHEET. |
| | 8.3 To give Bidders reasonable time in which to take an addendum into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2 |
| C. Preparation of Bids | |
| 9. Cost of Bidding | 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process. |
| 10. Language of Bid | 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the SECTION-II: BID DATA SHEET . Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the SECTION-II: BID DATA SHEET , in which case, for purposes of interpretation of the Bid, such translation shall govern. |
| 11. Documents Comprising the Bid | 11.1 The Bid shall comprise the following: (refer SECTION-II: BID DATA SHEET for additional requirement) <ul style="list-style-type: none"> (a) Letter of Bid in accordance with ITB 12; (b) completed schedules as required, including Price Schedules, in accordance with ITB 12 and 14; (c) Bid Security or Bid-Securing Declaration, in accordance with ITB 19.1 (as specified in SECTION-II: BID DATA SHEET) (d) alternative bids, if permissible, in accordance with ITB 13 (as specified in SECTION-II: BID DATA SHEET); (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2; (f) Statement of Integrity, Eligibility and Social and Environmental Responsibility duly signed, in accordance with ITB 12; (g) documentary evidence in accordance with ITB 17 establishing the Bidder's continued qualified status or, if post-qualification applies, as specified in accordance with ITB 4.5, the Bidder's qualifications to perform the contract if its Bid is accepted; (h) Technical Proposal in accordance with ITB 16; |

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| | <p>(i) any other document required in the SECTION-II: BID DATA SHEET.</p> <p>11.2 In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.</p> <p>11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid (as specified in SECTION-II: BID DATA SHEET)</p> <p>Refer SECTION-II: BID DATA SHEET for additional paras</p> |
| 12. Letter of Bid and Schedules | <p>12.1 The Letter of Bid, the Statement of Integrity and Schedules, including the Bill of Quantities for unit price contracts or the schedule of price in case of lump sum contracts, shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The Letter of Bid and the Statement of Integrity must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.</p> |
| 13. Alternative Bids | <p>13.1 Unless otherwise specified in the SECTION-II: BID DATA SHEET, alternative bids shall not be considered.</p> |
| | <p>13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the SECTION-II: BID DATA SHEET, as will the method of evaluating different times for completion.</p> |
| | <p>13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Employer's design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer (as specified in SECTION-II: BID DATA SHEET)</p> |
| | <p>13.4 When specified in the SECTION-II: BID DATA SHEET, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the SECTION-II: BID DATA SHEET, as will the method for their evaluating, and described in Section VII, Scope of Works.</p> |
| 14. Bid Prices and Discounts | <p>14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below. (or as specified in SECTION-II: BID DATA SHEET)</p> |

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| | <p>14.2 The Bidder shall submit a bid for the whole of the Works described in ITB 1.1, by filling in price(s) for all items of the works, as identified in Section IV, Bidding Forms. In case of admeasurement contracts, the Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Employer. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive bidders will be added to the bid price and the equivalent total cost of the bid so determined will be used for price comparison. (or as specified in SECTION-II: BID DATA SHEET)</p> |
| | <p>14.3 The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered (or as specified in SECTION-II: BID DATA SHEET).</p> |
| | <p>14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid (or as specified in SECTION-II: BID DATA SHEET)</p> |
| | <p>14.5 Unless otherwise specified in the SECTION-II: BID DATA SHEET and the Contract, the rate(s) and price(s) quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings.</p> |
| | <p>14.6 If so specified in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the bids for all lots (contracts) are opened at the same time or as specified in the SECTION-II: BID DATA SHEET.</p> |
| | <p>14.7 Unless otherwise specified in the SECTION-II: BID DATA SHEET, all duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.</p> |
| 15. Currencies of Bid and Payment | <p>15.1 The currency (ies) of the bid and the currency (ies) of payments shall be as specified in the SECTION-II: BID DATA SHEET.</p> |

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| | <p>15.2 Bidders may be required by the Employer to justify, to the Employer’s satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the Schedule of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.</p> <p>Refer SECTION-II: BID DATA SHEET for additional clauses.</p> |
| <p>16. Documents Comprising the Technical Proposal</p> | <p>16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV – Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidder’s proposal to meet the Scope of Works and the completion time.</p> <p>Refer SECTION-II: BID DATA SHEET for additional clauses.</p> |
| <p>17. Documents Establishing the Qualifications of the Bidder</p> | <p>(ITB 17 is replaced in SECTION-II: BID DATA SHEET)</p> <p>17.1 In accordance with Section III, Evaluation and Qualification Criteria, to establish that the Bidder continues to meet the criteria used at the time of prequalification, the Bidder shall provide in the corresponding information sheets included in Section VII, Bid and Contract forms, updated information on any assessed aspect that changed from that time, or if post-qualification applies as specified in ITB 4.5, the Bidder shall provide the information requested in the corresponding information sheets included in Section VII, Bid and Contract forms.</p> |
| | <p>17.2 If a margin of preference applies as specified in accordance with ITB 33.1, domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITB 33.1.</p> <p>17.3 Any change in the structure or formation of a Bidder after being prequalified and invited to Bid (including, in the case of a JV, any change in the structure or formation of any member thereto) shall be subject to the written approval of the Employer prior to the deadline for submission of Bids. Such approval shall be denied if (i) as a consequence of the change, the Bidder no longer substantially meets the qualification criteria set forth in Section III, Qualification Criteria and Requirements; or (ii) in the opinion of the Employer, the change may result in a substantial reduction in competition. Any such change should be submitted to the Employer not later than fourteen (14) days after the date of the Invitation for Bids.</p> |
| <p>18. Period of Validity of Bids</p> | <p>18.1 Bids shall remain valid for the period specified in the SECTION-II: BID DATA SHEET after the bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.</p> |

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| | <p>18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.</p> |
| | <p>18.3 Unless specified in SECTION-II: BID DATA SHEET, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:</p> <p>(a) In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor specified in the SECTION-II: BID DATA SHEET.</p> <p>(b) In the case of adjustable price contracts, no adjustment shall be made.</p> <p>(c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.</p> |
| 19. Bid Security | <p>19.1 The Bidder shall furnish as part of its bid, a bid security as specified in the SECTION-II: BID DATA SHEET, in original form and, in the case of a bid security, in the amount and currency specified in the SECTION-II: BID DATA SHEET.</p> |
| | <p>19.2 A Bid-Securing Declaration shall use the form included in Section VII, Bid and Contract forms.</p> |
| | <p>19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option:</p> <p>(a) an unconditional guarantee issued by any Scheduled bank in India;</p> <p>(b) an irrevocable letter of credit;</p> <p>(c) Demand Draft, from any Scheduled Bank in India.</p> <p>(d) another security specified in the SECTION-II: BID DATA SHEET, from a reputable source from an eligible country as specified in Section IV-Eligibility criteria and social and environmental responsibility. If the unconditional guarantee is issued by a financial institution located outside the Employer's Country, the issuing financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section VII, Bid and Contract forms, or in another substantially similar format approved by the Employer prior to bid submission. The bid security shall be valid for twenty-</p> |

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| | eight (28) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2 . |
| | 19.4 Any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Employer as non-responsive. |
| | 19.5 The bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the performance security pursuant to ITB 42 . |
| | 19.6 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security. |
| | 19.7 The bid security may be forfeited or the Bid-Securing Declaration executed: <ul style="list-style-type: none"> (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or (b) if the successful Bidder fails to: <ol style="list-style-type: none"> 1. (i) sign the Contract in accordance with ITB 41; or 2. (ii) furnish a performance security in accordance with ITB 42. <p>(Replaced in SECTION-II: BID DATA SHEET)</p> |
| | 19.8 The bid security or a Bid-Securing Declaration of a JV shall be in the name of the JV that submits the bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the bid security or the Bid-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2 . or as Specified in SECTION-II: BID DATA SHEET, |
| | 19.9 If a bid security is not required in the SECTION-II: BID DATA SHEET pursuant to ITB 19.1, and <ul style="list-style-type: none"> (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereto provided by the Bidder, or (b) if the successful Bidder fails to sign the Contract in accordance with ITB 41; or furnish a performance security in accordance with ITB 42; <p>the Employer may, if provided for in the SECTION-II: BID DATA SHEET, declare the Bidder ineligible to be awarded a contract by the Employer for a period of time as stated in the SECTION-II: BID DATA SHEET.</p> |
| 20. Format and Signing of Bid | 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL." Alternative bids, if permitted in accordance with ITB 13 , shall be clearly marked "ALTERNATIVE." In |

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| | <p>addition, the Bidder shall submit one set of copies of the bid, in the number specified in the SECTION-II: BID DATA SHEET and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail. (Replaced in SECTION-II: BID DATA SHEET)</p> |
| | <p>20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the SECTION-II: BID DATA SHEET and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid. (Replaced in SECTION-II: BID DATA SHEET)</p> |
| | <p>20.3 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives. (As specified in SECTION-II: BID DATA SHEET)</p> |
| | <p>20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.</p> |
| <p>D. Submission and Opening of Bids (as specified in SECTION-II: BID DATA SHEET)</p> | |
| <p>21. Sealing and Marking of Bids</p> | <p>21.1 The Bidder shall enclose the original and one set of all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope.</p> <p>(Replaced in SECTION-II: BID DATA SHEET)</p> |
| | <p>21.2 The inner and outer envelopes shall:</p> <ul style="list-style-type: none"> (a) bear the name and address of the Bidder; (b) be addressed to the Employer in accordance with ITB 22.1; (c) bear the specific identification of this bidding process specified in the SECTION-II: BID DATA SHEET 1.1; and (d) bear a warning not to open before the time and date for bid opening. |
| | <p>21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid.</p> |
| <p>22. Deadline for Submission of Bids</p> | <p>22.1 Bids must be received by the Employer at the address and no later than the date and time specified in the SECTION-II: BID DATA SHEET. When so specified in the SECTION-II: BID DATA SHEET, bidders shall have the option</p> |

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| | of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the SECTION-II: BID DATA SHEET. |
| | 22.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended. |
| 23. Late Bids | 23.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder or as specified in SECTION-II: BID DATA SHEET |
| 24. Withdrawal, Substitution, and Modification of Bids | 24.1 Unless specified in SECTION-II: BID DATA SHEET, A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2. The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be: <ul style="list-style-type: none"> (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION," and (b) received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 22. |
| | 24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders. |
| | 24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof. |
| 25. Bid Opening Replaced in SECTION-II: BID DATA SHEET | 25.1 Except in the cases specified in ITB 23 and 24, the Employer shall publicly open and read out in accordance with ITB 25 all bids received by the deadline (regardless of the number of bids received), at the date, time and place specified in the SECTION-II: BID DATA SHEET, in the presence of Bidders` designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as specified in the SECTION-II: BID DATA SHEET. |
| | 25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding |

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| | <p>withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only bids that are opened and read out at bid opening shall be considered further.</p> |
| | <p>25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a bid security and any other details as the Employer may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. The Letter of Bid and the Schedules are to be initialed by a minimum of three representatives of the Employer attending bid opening. The Employer shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 23.1) (Replaced in SECTION-II: BID DATA SHEET)</p> |
| | <p>25.4 The Employer shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; and the presence or absence of a bid security. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders. (Replaced in SECTION-II: BID DATA SHEET)</p> |
| <p>E. Evaluation and Comparison of Bids</p> | |
| <p>26. Confidentiality</p> | <p>26.1 Information relating to the examination, evaluation, and comparison of the bids, and qualification of the Bidders and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 40.</p> |
| | <p>26.2 Any attempt by a Bidder to influence the Employer in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, or Contract award decisions may result in the rejection of its bid.</p> |
| | <p>26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if a Bidder wishes to contact the Employer on any matter related to the bidding process, it shall do so in writing.</p> |

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| 27. Clarification of Bids | 27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 31 . |
| | 27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Employer's request for clarification, its bid may be rejected. |
| 28. Deviations, Reservations, and Omissions | 28.1 During the evaluation of bids, the following definitions apply: <ul style="list-style-type: none"> (a) "Deviation" is a departure from the requirements specified in the Bidding Documents; (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents. |
| 29. Determination of Responsiveness | 29.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11 . |
| | 29.2 A substantially responsive bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that, <ul style="list-style-type: none"> (a) if accepted, would: <ul style="list-style-type: none"> 3. (i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or 4. (ii) limit in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the proposed Contract; or (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids. |
| | 29.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 16 , in particular, to confirm that all requirements of Section VII , Scope of Works have been met without any material deviation, reservation or omission. |

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| | 29.4 If a bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. |
| 30. Nonmaterial Nonconformities | 30.1 Provided that a bid is substantially responsive, the Employer may waive any nonmaterial non-conformity in the Bid. |
| | 30.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid. |
| | 30.3 Provided that a bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. |
| 31. Correction of Arithmetical Errors | 31.1 Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis: <ul style="list-style-type: none"> (a) Only for admeasurement contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected; (b) Only for admeasurement contracts, if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless, only for admeasurement contracts, the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above. |
| | 31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1 shall result in the rejection of the Bid. (Refer SECTION-II: BID DATA SHEET) |
| 32. Conversion to Single Currency | 32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the SECTION-II: BID DATA SHEET. |

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| 33. Margin of Preference | 33.1 Unless otherwise specified in the SECTION-II: BID DATA SHEET , a margin of preference for domestic bidders shall not apply. |
| 34. Subcontractors | <p>34.1 Unless otherwise stated in the SECTION-II: BID DATA SHEET, the Employer does not intend to execute any specific elements of the Works by subcontractors selected in advance by the Employer.</p> <p>34.2 In case of Prequalification, the Bidder's Bid shall name the same specialized subcontractor as submitted in the prequalification application and approved by the Employer, or may name another specialized subcontractor meeting the requirements specified in the prequalification phase.</p> <p>34.3 In case of Post-qualification, the Employer may permit subcontracting for certain specialized works as indicated in Section III Experience. When subcontracting is permitted by the Employer, the specialized sub-contractor's experience shall be considered for evaluation. Section III describes the qualification criteria for sub-contractors or as specified in SECTION-II: BID DATA SHEET.</p> |
| 35. Evaluation of Bids | <p>35.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.</p> <p>35.2 To evaluate a bid, the Employer shall consider the following (as specified in SECTION-II: BID DATA SHEET):</p> <ul style="list-style-type: none"> (a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Schedules, but including Day work items, where priced competitively; (b) price adjustment for correction of arithmetic errors in accordance with ITB 31.1; (c) price adjustment due to discounts offered in accordance with ITB 14.4; (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32; (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3; (f) the additional evaluation factors as specified in Section III, Evaluation and Qualification Criteria. |
| | 35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation. |
| | 35.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated |

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| | price of the lot (contract) combinations, including any discounts offered in the Letter of Bid Form, is specified in Section III , Evaluation and Qualification Criteria. |
| | 35.5 If the bid, which results in the lowest Evaluated Bid Price, is significantly lower than the Employer's estimate or seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Schedules, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. If it turns out that the bid price is abnormally low, the bid may be declared non-compliant and rejected. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract. (As specified in SECTION-II: BID DATA SHEET) |
| 36. Comparison of Bids | 36.1 The Employer shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 35.2 to determine the lowest evaluated bid. (As specified in SECTION-II: BID DATA SHEET) |
| 37. Qualification of the Bidder | 37.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid either continues to meet (if prequalification applies) or meets (if post-qualification applies) the qualifying criteria specified in Section III , Evaluation and Qualification Criteria. (As specified in SECTION-II: BID DATA SHEET) |
| | 37.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1 . |
| | 37.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily. |
| 38. Employer's Right to Accept Any Bid, and to Reject Any or All Bids | 38.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders. .(Refer additional clauses in SECTION-II: BID DATA SHEET) |
| F. Award of Contract | |

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| 39. Award Criteria | 39.1 Subject to ITB 38.1 , the Employer shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily. |
| 40. Notification of Award | 40.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”)and the requirement for the Contractor to remedy any defects therein. At the same time, the Employer shall also notify all other Bidders of the results of the bidding. |
| | 40.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract. |
| | 40.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1 , requests in writing the grounds on which its bid was not selected. (Additional clause in SECTION-II: BID DATA SHEET) |
| 41. Signing of Contract | 41.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement. |
| | 41.2 In case the agreement is sent, within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer. (Additional information in SECTION-II: BID DATA SHEET) |
| 42. Performance Security | 42.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the General Conditions of Contract, subject to ITB 35.5 , using for that purpose the Performance Security Form included in Section VII , Bid and Contract forms, or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer’s Country. (as specified in SECTION-II: BID DATA SHEET) |
| | 42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid-Securing Declaration. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive |

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| | <p>and is determined by the Employer to be qualified to perform the Contract satisfactorily.</p> <p>Refer SECTION-II: BID DATA SHEET for new clause no. 42.3, 42.4, 43,</p> |
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Section II. Bid Data Sheet

A. Introduction

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| General | <p>The following terms are used in the Bidding Documents shall have the same meaning and interpretations:</p> <ul style="list-style-type: none"> • ‘Tender(s)’ and ‘Bid(s)’ • ‘Tenderer(s)’ and ‘Bidder(s)’ • ‘Scope of Work |
| ITB 1.1 | <p>The name of the tender is: Annual maintenance of 6000 Trees and 3000 bamboos plantation at Little wood extension near Kamalanagar on Amravati road for the year 2020-2021</p> |
| ITB 1.1 | <p>Open Tender The number of the Invitation for Bids is: N1-Misc 33/2020</p> |
| ITB 1.1 | <p>The Employer is: <u>Maharashtra Metro Rail Corporation Limited (Maha-Metro)</u></p> |
| ITB 1.3 (Additional Clauses) | <p>The detailed Scope of Work for the Annual maintenance of this contract is further described in the Section-III “Scope of work” and other documents. The Contractor has to execute the work accordingly with the approval of Employer. The Bidders are particularly advised to pay attention to the IT Requirements of Employer (Clause 2.3 of General Specifications).</p> <p>The Contractor shall also carry out effective interface and coordination with Detailed Design Consultants, Designated Working Contractors and other agencies appointed by the Employer from time to time, during the Contract Period. Apart from that co-ordinations may require with the local administration and various other authorities of Government of Maharashtra.</p> |
| ITB 1.4 (Additional Clauses) | <p>The successful Bidder has to establish its Office at Nagpur if it does not have at present. The cost and expenses for setting up the said office (s) will be deemed to have been included in the Bill of Quantities and no separate / extra / additional payment will be made on this account.</p> |
| ITB 2.1 | <p>The name and details of the project is Maharashtra Metro Rail Corporation Limited, <u>Nagpur Metro Rail Project.</u></p> <p>The employer has concluded project finance agreement with AFD, KFW & Equity of GoM & GoI</p> |
| ITB 4.1 | <p>Maximum number of members in the JV shall be: No JV or Consortium Permitted</p> |

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| ITB 4.2 (e) | No Bidder can be a subcontractor of another bidder while submitting a Bid individually in his own name. |
| ITB 4.5 | This Bidding Process is in single stage two-packet system . Eligible bidders meeting the eligibility criteria as described in Section-III are permitted to participate. |
| ITB 4.6 (Additional Clauses) | The bidders must not have been banned or blacklisted by any Central / State government department or public sector/Urban Local Bodies and such blacklisting should not be effective on the date of Bid Submission. |
| ITB 4.8 (Additional Clauses) | <p>Bidder is required to submit along with its Bid, a Power of Attorney duly signed and stamped and supported by its board resolution / Directors authorizing an individual as its authorized signatory, inter alia, to sign and submit the Bid. The formats of the Power of Attorney as well as the board resolution are provided in Section VII: Bids & Contract Form.</p> <p>The mode of execution of the power of attorney should be in accordance with the procedure, if any laid down by the applicable law and the charter documents of the executants(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.</p> |
| ITB 4.10 (Additional Clauses) | The Bidder shall submit with the Bid full details of its ownership and control. The required information should be submitted as per Annexure 2 in the Section VIII: Bids & Contract Forms . |
| ITB 4.11 (Additional Clauses) | Bidder is required to confirm and declare with its Bid that no agent, middleman or any intermediary has been, or will be, engaged to provide any services, or any other item or work related to the award and performance of this Contract. Such Bidder will have to further confirm and declare in the Bid that no agency commission or any payment which may be construed as an agency commission has been, or will be, paid and that the Contract Price will not include any such amount. If the Employer subsequently finds to the contrary, the Employer reserves the right to declare the Bidder as non-compliant, and declare any Contract if already awarded to the Bidder to be null and void. Specific declaration to this effect exactly as per Section VII Bid and Contract forms shall be submitted with the Technical Package. |
| ITB 4.12 (Additional Clauses) | Canvassing or offer of an advantage or any other inducement by any person with a view to influencing acceptance of a Bid will be an offence under laws of India. Such action will result in the rejection of the Bid, in addition to other punitive measures. |
| B. Bidding Documents | |
| ITB 6.1 | <p>Replaced provisions of ITB 6.1 with the following:</p> <p>The Bidding Documents include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8.</p> <ul style="list-style-type: none"> • Section I. Instructions to Bidders (ITB) • Section II. Bid Data Sheet (SECTION-II: BID DATA SHEET) |

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| | <ul style="list-style-type: none"> • Section III. Evaluation and Qualification Criteria • Section IV. Scope of Work • Section-V. General Condition of Contract • Section –VI. Particular Conditions of Contract • Section-VII. Bid & Contract Form • Section-VIII. Financial Bid |
| ITB 6.2 | The invitation of bid (NIT) is part of bid document |
| ITB 6.3 | Unless obtained directly by the bidder concerned from the Employer, the Employer is not responsible for the completeness of the Bidding Documents, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or Addenda to the Bidding Documents in accordance with ITB 8 . In case of any contradiction, documents or subsequent corrigendum or addendum issued by Employer shall prevail. |
| ITB 6.4 | <p>Following is added to existing ITB 6.4</p> <p>Failure to comply with the requirements of the Bidding Documents and to furnish all information required by the Bidding Documents or submission of a Bid not substantially responsive to the Bidding Documents in every respect will be at the Bidder’s risk and may result in rejection of its Bid.</p> |
| ITB 6.5 (Additional Clauses) | The Bidder shall not make or cause to be made any alteration, erasure or obliteration, editing to the text of the Bid Documents, Corrigendum and addendum issued by MAHA-METRO. |
| ITB 6.6 (Additional Clauses) | The document including the Bid Documents and all attached documents provided by Maha-Metro and shall remain or becomes the property of Maha-Metro and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. The provisions of this Para shall also apply mutatis mutandis to the Bids and all other documents submitted by the Bidders, and MAHA-METRO will not return to the Bidders any Bid, document or any information provided along therewith. |
| ITB 6.7 (Additional Clauses) | Contents of Supporting Documents |
| ITB 6.7.1 (Additional Clauses) | The reference documents, reports, drawings containing site information included in the Bidding Documents are for general information only and any interpretation of the results shall be construed as opinions only and not as representations or warranties as to the actual site conditions. The Bidders’ attention is specifically drawn to ITB 6.7.3 below. |
| ITB 6.7.2 (Additional Clauses) | The accuracy or reliability of the documents and reports referred to in this Para ITB 6.7 and of any other information supplied, prepared or commissioned at any time by the Employer or others in connection with the Contract is not warranted. The Bidder should visit, examine and assess the Site including working conditions and will be deemed to have satisfied himself of the risks and obligations under the Contract. |

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| ITB 7.1 | For clarification purposes only, the Employer's address is: Executive Director (Procurement) MAHARASHTRA METRO RAIL CORPORATION LIMITED 1st Floor "Metro Bhawan" In front of "Diksha Bhoomi" South Ambajhari Road, (VIP Road) Nagpur – 440020 (Maharashtra) Electronic mail address: md.nmrc.tenders@gmail.com Web page: www.metrorailnagpur.com |
| ITB 7.1 | All correspondence from MAHA-METRO pertaining to this Bid till award of the work shall be done by the authorized representative of MAHA-METRO. The Bidders are advised to regularly check their email ID registered with Maha-Metro or E-Mail Details submitted to Maha-Metro along with their tender. |
| ITB 7.1.1 (Additional Clauses) | Any clarification regarding content of Bid Documents and bidding Process may be submitted by bidder through E-Mail i.e. md.nmrc.tenders@gmail.com not later than the date specified in NIT. |
| ITB 7.1.2 (Additional Clauses) | MAHA-METRO shall endeavor to respond to the questions raised or clarifications sought by the Bidders in the form of corrigendum/ clarification through letter or E-Mail within the time and date specified in the NIT. MAHA-METRO will not respond and reply to each of the bidders separately. |
| ITB 7.1.3 (Additional Clauses) | If necessary MAHA-METRO may also issue interpretations /clarifications / amendments regarding content of Bid Document in the form of Addendum and the same shall be communicated through website of Maha-Metro . All clarifications, addendum and interpretations issued by MAHA-METRO shall be deemed to be part of the Bid Documents. Verbal clarifications and information given by MAHA-METRO or its employees or representatives shall not in any way or manner be binding on MAHA-METRO. |
| ITB 7.2 | Following is added to existing ITB 7.2 Any site information given in this bidding document is for guidance only. It shall be deemed that the Bidder has undertaken a visit to the Site of the Works and is aware of and has ascertained itself, the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to Site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by it prior to the submission of the Bid. |
| ITB 7.4 | Pre-Bid queries (If any) may be submitted by bidder in writing within 7 calendar days from the date of issue of NIT at Procurement Department of Maha-Metro at e-mail & address given below. Procurement Department , 1st Floor, "Metro Bhawan" In front of "Diksha Bhoomi" South Ambajhari Road, (VIP Road) Nagpur – 440020, Telefax: 0712 – 2554217, E-mail:md.nmrc.tenders@gmail.com |
| ITB 7.5 | The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer before the date and time specified in NIT & ITB 7.4 above. The bidder may send such queries either by post to the address mentioned in the bid document or send by mail to md.nmrc.tenders@gmail.com . |

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| ITB 7.6 | Reply of the pre-bid queries, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared, will be sent to all shortlisted bidder and the same shall also be part and parcel of the Bid Document. |
| ITB 8.2 | <p>Following is added to existing ITB 8.2</p> <p>Such modification in the form of an addendum will be sent to shortlisted bidders by post or E-Mail. Without prejudice to the general order of precedence prescribed in the Clause 1.5 of GC and Clause 1 of PC, the provisions in any such addenda shall take priority over the Invitation to Bidders and Bidding Documents previously issued. Bidder shall ensure these documents should be submitted along with their original Bid documents submission. All these addendums, corrigendum and clarifications shall be part of the contract agreement.</p> |

C. Preparation of Bids

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| ITB 10.1 | <p>The language of the bid is: English</p> <p>All correspondence/ exchange shall be in the English language. Language for translation of supporting documents and printed literature is English.</p> <p>Supporting documents related to eligibility criteria enclosed with the bid, other than English Language, should be translated in to English and will have to be endorsed by the Indian Embassy or notarized/registered with appropriate statutory authority in the jurisdiction where the supporting document is being issued.</p> <p>However, such documents provided by a Bidder from a country which has signed the Hague Legislation Convention 1961 is not required to be endorsed by the Indian Embassy, if it carries a conforming Apostille Certificate.</p> <p>The bidder should provide the relevant contact number & E-Mail ID along with the postal address, in English, of issuing authority / agency of such documents for verification purpose.</p> |
| ITB 11 | <p>Documents Comprising the Bid</p> <p>Replace the Para 11 and its Sub-Paras with the following:</p> |
| ITB 11.1 | General Requirements |
| ITB 11.1 (a) | <p>The Bidder shall, on or before the date and time given in the Notice of Invitation of Tender (NIT) to Bid, submit his bid in hard copy in accordance with provisions in ITB 22.1.</p> <p>Cost of the bid document: As per NIT</p> <p>Bid Security / Tender Security: As per NIT (Enclosed in Technical Envelope with original technical bid)</p> <p>For Bid Security: refer BDS ITB 19.1 below</p> <p>Technical Package: To be submitted online through E-Tender portal of Maha-Metro.</p> |

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| | Financial Package: To be submitted on line through E-Tender Portal of Maha-Metro (Detail procedure of submission of Tender has been described in Tool Kit of E-Tender provided as Annexure-2A) |
| ITB 11.1 (d) | Alternative bid is not permissible |
| ITB 11.1 (i) | The bid documents shall include all the corrigendum/ addendum/ clarifications provided by the Employer during the course and before submission of Bid. In case bidder does not submit the signed & stamped copy of same the same in Technical Package, the bid shall be treated as non-responsive & shall not be considered further. |
| ITB 11.2 | No JV/Consortium Permitted. Successful Bidder is allowed to engage a Sub-Contractor for E&M /EMP work, on his own commercial terms & condition. Successful bidder shall submit the credential of such Sub-Contractor & engage by approval of Maha-Metro. |
| ITB 11.3 | Such declaration shall be submitted by bidder in the format provided in Section-IV |
| ITB 11.4 (Additional Clauses) | The Bid submitted by bidder shall consist the following |
| ITB 11.4.1 (Additional Clauses) | <p>The Bidder shall submit/ upload (through digital signature of authorized person in e-tender portal of MAHA-METRO) in the Technical Package of its Bid the following documents, duly completed, which in the event of acceptance of the Bid, shall form part of the Contract:-</p> <ol style="list-style-type: none"> i. Complete bid documents along with addendum/ corrigendum/ clarifications & reply of quires issued online to be down loaded by bidder using DSC of authorized signatory of bidders or JV/Consortium only and entire document to be uploaded by bidder on E-Tender portal of MAHA-METRO through the same digital signature of the Bidder. ii. Physical Sign & seal of bidder on each page of bid documents available online is not required. iii. Copy of Power of Attorney signing the bid of bidder or of Lead member in case of JV/Consortium iv. Scanned copy of Bid Security (Cash as well as BG component refer E-tender Notice) v. Scanned copy of POA of each member & Lead member in case of JV/ Consortium vi. All relevant formats given in Section IV: Bidding format. Physically Signed by authorized signatory / POA of bidders or Lead member in case of JV/ Consortium. vii. Certificate of registration and other statutory documents of formation of bidder's company or JV/ Consortium or each members of JV/ Consortium (If not incorporated yet) issued by appropriate authority. viii. Copy of PAN card of bidder. (PAN card of Indian member of JV/Consortium, if JV/Consortium consist foreign member) ix. Copy of all financial documents as directed in Section-III x. Relevant work experience certificate (in line of Section III: Evaluation and Qualification Criteria) and other qualifications certificates as given in Evaluation of Qualification under Section III, |

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| | All Format of Section-IV and other enclosure, certificates stated above or desired elsewhere in the bid documents shall be physically filled, signed & stamped by authorized signatory / POA of bidder or POA of Lead member of JV/Consortium and scanned copies of such enclosures/documents should be uploaded on e-tender portal of MAHA-METRO along with bid documents. The enclosures meant for Technical Package shall be uploaded with Technical Envelope & Financial enclosures (If any) shall be uploaded with Commercial Envelope on E-Tender Portal of MAHA-METRO only. |
| ITB 11.4.2 (Additional Clauses) | Financial Package of Bid: <ul style="list-style-type: none"> (i) Summary sheet provided in the Commercial Envelope Section of E-Tender portal of MAHA-METRO shall be duly filled up online. (ii) Few price schedules may require to be filled up physically and should be signed & stamped by authorized signatory / POA of bidder or POA of Lead member of JV/Consortium and a scanned copy of such schedules may be uploaded, as instructed in the BOQ or Tender Portal. (iii) The Bid Total Price includes all Taxes, Duties, Levies, Cess, Royalties inclusive of applicable GST. The price to be quoted shall be the total price of the Bid as elaborated in Part 4 Financial Bid & Bill of Quantities |
| ITB 12.2 (Additional Clauses) | The Letter of Bid with all Schedules/ Forms shall be completed and signed by a authorized and empowered representative vide POA of the Bidder. |
| ITB 13.1 | Alternative bids shall not be permitted under ITB 13.2, ITB 13.3, or ITB 13.4 |
| ITB 13.2 | Alternative times for completion not permitted. |
| ITB 13.3 | Not Applicable. |
| ITB 13.4 | Alternative technical solutions from bidder is not permitted |
| ITB 14.1 | No discounts are allowed and also not to be quoted by the bidder in the Letter Of Bid and in the Schedules or Financial Bid |
| ITB 14.2 | The bidder shall quote the price in terms of percentage in the section VIII (Financial Bid) only and strictly nowhere else in "Technical Bid" |
| ITB 14.3 | The price quoted in the commercial envelope shall be the total price of bid including all kind of taxes, overhead, profit and any other expenses incurred during execution & completion of proposed work. |
| ITB 14.4 | No discounts or any other methodology shall be quoted by the bidder in the Letter of Bid by the bidder. |
| ITB 14.5 | Price adjustment – Not applicable |
| ITB 14.6 | No discounts are applicable. |
| ITB 14.7 | Base date for consideration of inclusion of all kind of Taxes, GST, duties and fees exemptions in the quoted rate /price by bidder is 28 days prior to submission of bid. It is assumed that prevailing legislation regarding all kind of taxes /leviable of GOI & GOM has been taken into consideration by bidder in to the quoted price till base date. The |

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| | <p>effect on price due to change in base date has been elaborated in Particular condition of contract.</p> <p>(a) Taxes prior to Base date i.e. 28 days prior to latest date of submission of Bid is deemed to be inclusive of price quoted by Bidder.</p> <p>(b) Any change in legislation of any kind of Taxes by GoI or GOM, after Base Date shall be accounted for separately and It is applicable both way (Reimbursement & Deduction)</p> |
| ITB 14.8 (Additional Clauses) | Bidders shall quote for the entire work on a “single responsibility” basis such that the Bid Price covers all Contractor’s obligations mentioned in or to be reasonably inferred from the Bid Documents in respect this Contract and completion of the whole of works. This includes all requirements under the Contractor’s responsibilities for testing and commissioning of the works executed including integrated testing and commissioning, the acquisition of all permits, approvals and tender licenses, etc.; the operation, maintenance and such other items and services till DLP period as specified in the Bid Documents. |
| ITB 14.9 (Additional Clauses) | The Employer may get, from the Government, partial or complete waiver of taxes, royalties, duties, Labour, Cess, Octroi, GST and other levies payable to various authorities. The successful Bidder (the Contractor) shall maintain meticulous records of all the taxes and duties paid and provide the same with each running bill. In case the waiver becomes effective, the Contractor will be advised on the process to be followed to obtain the refund from the concerned authority. The Contractor shall arrange for the remit of the refund to the Employer. In case of failure by the Contractor to remit such amounts, the same shall be recovered from amounts due for payment to the Contractor. The Pro forma of undertaking is provided in Section VII: Bid and Contract Form |
| ITB 14.10 (Additional Clauses) | With the Bid submission, the Bidder shall submit the Pro forma of undertaking provided in Section VII: Bid and Contract Form stating that registrations under various fiscal and labour laws, GST, Profession Tax, Service Tax, Central Excise, Import Export Code, Employee State Insurance, Provident Fund, Maharashtra Labour Welfare Fund, Local Body Tax shall be obtained by the bidders in the event of award of the work. |
| ITB 14.12 (Additional Clauses) | <p>MAHA-METRO project is covered under Project Import chapter 98.01 of Custom Tariff Act according to which only concessional custom duty is payable. The Bidder should avail this benefit and pass on the benefit of the same to MAHA-METRO.</p> <p>As regards registration under Project Import, after the award of the contract, MAHA-METRO at the written request of Contractor shall facilitate the Contractor for obtaining sponsoring / recommendation letter from the Ministry of Urban Development / Government of Maharashtra for getting themselves registered for availing Project Import benefits. The responsibility to avail the concessional benefits under Project Import shall solely rest with the Contractor.</p> |
| ITB 15.1 | The currency of the Bid shall be Indian National Rupees (INR) only. |
| ITB 17 | |
| ITB 18.1 | The bid validity period shall be 120 days . |
| ITB 18.3 (a) | The bid price shall not be adjusted in event of delay of award. |
| ITB 19.1 | A <i>Bid Security</i> is required in form as below: |

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| | <p>The total bid security amount shall be as per NIT and to be paid as below</p> <p>(a) In the form of unconditioned guarantee issued by any Scheduled Commercial Bank of Indian origin or Scheduled commercial foreign bank having business office in India. (Bank Guarantee issued by Co-Operative Bank is not acceptable) drawn in favour of “Maharashtra Metro Rail Corporation Limited” In the form of Bid Security as per Section VII: Bid and Contract Form.</p> <p>(b) The validity of such Bank Guarantee shall be 45 Days beyond the Bid Validity.</p> <p><u>(c) Bidder may opt to submit Bid Security as per Structured Finance Messaging System (SFMS).</u></p> <p><u>* Bankers Detail of Employer (MAHA-METRO) for issuance of Bank Guarantee as Part (b) of</u></p> <p>Bank Name: ICICI Bank Branch with Address: ICICI Bank Ltd., Commercial Banking, 9C/A & 9C/B, Ground floor, Shriram Tower, Near LIC chowk , Nagpur (India)-440001 Bank Account Name: MAHARASHTRA METRO RAIL CORPORATION LTD. Bank Account No.: 005905017306 Bank Account Type: Current Account IFSC Code: ICIC0000059 MICR Code: 440229002 Note: - Bidders are requested not to deposit any cash in the above account towards Bid Security. This account is only for issuance of Bank Guarantee through Bidder’s Bank in Electronic format (SFMS).</p> |
| <p>ITB 19.3</p> | <p>The Bidder shall submit with his Bid a Bid Security for the sum mentioned in BDS/NIT by BG as specified in ITB 19.1 above.</p> |
| <p>ITB 19.7</p> | <p>The bid security or the Bid-Securing Declaration executed submitted by bidder may be forfeited:</p> <p>(c) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or</p> <p>(d) if the successful Bidder fails to:</p> <p>5. (i) sign the Contract in accordance with ITB 41; or</p> <p>6. (ii) furnish a performance security in accordance with ITB 42.</p> <p>(e) If bidder submit any fake, forged and fabricated document, information along with his / her bid, which fails in verification of authenticity or prove false after submission of bid.</p> <p>(f) If bidder tamper, edit the content of bid document or bidder submit a conditional bid.</p> |

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| ITB 19.8 | The bid security, as specified in Section-II BDS, Cl No. 19.1 shall be submitted bidder only. |
| ITB 19.9 | Bid Security is required in this bid.- INR |
| ITB 20.1 | <p>Replacement for ITB as under:</p> <p>Bidder shall submit the bid, physically in hard copy in a sealed outer envelope which shall consist Technical & Financial bid in two separate envelope.</p> <p>Superscripting the Tender No, Name of work & Complete Address, Contact Details of bidder.</p> |
| ITB 20.2 | <p>(a) The entire Bid Document issued to bidder along with all corrigendum and Addendum issued from time to time and requisite enclosures, statutory documents, described and directed in bid documents, each page duly signed by the authorized representative/ signatory on behalf of the bidder shall be submitted in Technical Envelope,</p> <p>(b) The Financial bid / BOQ duly filled the price & signed on each page by authorized signatory / POA shall be submitted in Financial Bid.</p> |
| ITB 20.3 | No JV/Consortium is permitted to participate. The bid is to be signed by authorized representative of shortlisted bidder, whom the bid document has been issued |
| ITB 21.1 | Only one original copy of bid shall be submitted by bidder. |
| ITB 22.1 | <p>The deadline for bid submission is: As per NIT</p> <p>The Bidder shall, on or before the date and time given in the Notice inviting Bid or as may have submit the bid at the place given in NIT or amended from time..</p> <p>The Bidders shall furnish the information strictly as per the formats given in the Bid documents without any ambiguity. The MAHA-METRO shall not be held responsible if the failure of any Bidder to provide the information in the prescribed formats results in a lack of clarity in the interpretation and consequent disqualification of its Bid. Loss of any part of document, prior to opening of bid shall not be responsibility of Maha-Metro</p> <p>In case of support or help required during for queries & clarification during preparation of bid Bidders may contact the following officials: (Helpline for Bid only)</p> <ol style="list-style-type: none"> 1. <u>Mr. Pradeep Gautam (JE/Mech/Proc): Mob. No.-7888006266</u> 2. <u>Mr.Kailash Thakur (Nextender) Technical support : Mob.No. 9167246754</u> |
| ITB 23.1 | Bids received after due date and time of submission shall not be accepted. MAHA-METRO will not be responsible for any delay in submission of bid what so ever the reason may be. |
| ITB 23.2 (Additional Clauses) | The Employer (Maha-Metro) may, at his discretion, extend the deadline for submission of Bids by issuing an amendment in accordance with ITB, in which case all rights and obligations of the Employer and the Bidders previously subject to the original deadline will thereafter be subject to the deadline as extended. |

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| ITB 24 | <p>(a) Bidder may withdraw or modify or substitute the bid prior to final date & time of closing of bid submission.</p> <p>(b) Withdrawal, Modification, Substitution is not permitted after closing time & date of submission of bid</p> |
| ITB 25.1 | <p>The bid opening / shall take place at office of: As per NIT HOD, Procurement Department. Maharashtra Metro Rail Corporation Limited (Nagpur Metro Rail Project) "Metro Bhawan", East High Court Road (VIP Road) In Front Of Dr.Ambedkar College, Near Dikshabhoomi Nagpur- MH 440010, Telefax: 0712 – 2554217 E-Mail: md.nmrc.tenders@gmail.com</p> <p>i. The received Bids shall be opened by the nominated opening committee of Maha-Metro on due date and time of Bid opening.</p> <p>ii. No minimum number of bids is required in order to proceed to bid opening.</p> <p>iii. The Bid will be opened, checked and details will be read out for the information of representative of Bidders, present at the time of opening of Bid.</p> <p>iv. Financial Envelope/ Package of those Bidders who have not submitted Bid Security shall not be opened. Bid which is accompanied by an unacceptable or fraudulent Bid Security shall be considered as non – compliant and rejected.</p> |
| ITB 25.3 | <p>The opening of bids and reading out shall mean opening and reading out the corresponding Technical Proposal as applicable. The reading out of the Technical Proposal shall include the presence or absence of a bid security; and any other details as the Employer may consider appropriate. The Letter of Bid and the Schedules are to be initialed by a minimum of three representatives of the Employer (Maha-Metro) attending bid opening. The Employer shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 23.1) at this stage.</p> |
| ITB 25.4 | <p>Replace provisions of ITB 25.4 with the following:</p> <p>The Employer shall prepare a record of the bid opening that shall include, as a minimum: The name of the Bidder and presence or absence of a bid security and documents enclosed with the bid. The Bidders' representatives who are present shall be requested to sign the attendance sheet. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record.</p> |
| ITB 25.5 (Additional Clauses) | <p>On opening of the Bid, it will be checked if they contain Technical & Financial Packages. The Employer shall prepare a record of opening of the Technical Package, which shall include, the name of Bidder and presence or absence of a Bid Security. The Bidder is advised that the Employer's policy in respect of comparison of Bids is that the Technical Packages will be opened and reviewed to determine their acceptability and responsiveness to requirement of the bidding documents, the Scope of Works and Bidding Drawings. Unacceptable and non-responsive bids will be rejected and the corresponding Financial Package will not be opened.</p> |

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| ITB 25.6 (Additional Clauses) | After the evaluation of the Technical Proposals in accordance with ITB 27 , 28 , 29 and ITB 30 , the Employer shall prepare a list of responsive Bidders for opening of their Financial Proposals. A date, time and venue will be electronically notified to responsive Bidders for announcing the result of evaluation and opening of Financial Proposals. The opening of Financial Proposals shall be done in presence of respective representatives of responsive Bidders who choose to be present. |
| ITB 25.7 (Additional Clauses) | Financial packages of only those Bidders whose submissions are found substantially responsive and technically compliant will be opened. The Employer shall prepare a record of the opening of Price Bids that shall include, as a minimum: the name of the Bidder, the 'BID TOTAL QUOTED PRICE'. |
| E. Evaluation, and Comparison of Bids | |
| ITB 26.4 (Additional Clauses) | The Bid Documents, as listed in ITB 6.1 above and any corrigendum/ addenda thereto, together with any further communications, are issued for the purpose of enabling the Bidders to submit the Bids only. The Bidder shall not disclose any information contained in the documents or otherwise supplied in connection with this Bid invitation to any third party except for the purpose of preparing its Bid. The Bidder shall maintain complete confidentiality till the Contract is awarded except otherwise stated in the Bidding Documents and the Contract. A letter of undertaking is attached in Section VII: Bid and Contract Forms and shall be completed by the Bidder and returned in the Technical Package. In the event that such confidentiality is breached, the Employer may reject the Bid. Copyright in all plans and any other document issued to the Bidder is reserved. |
| ITB 26.5 (Additional Clauses) | The Bid drawings and documentation issued for this work is the property of MAHA-METRO (Employer) and shall be used solely for bidding purpose as general guidance. They shall not be used in part or whole or altered form for any other purpose without the permission in writing of the Employer. |
| ITB 29.5 (Additional Clauses) | Bidders may note that pursuant to their qualification in the 'qualification and Evaluation Criteria' and 'Technical Evaluation' as per ITB 29.4 above, in case the Bidder (applies to each individual member in case of a Joint Venture/Consortium) is debarred/blacklisted by Government of India/State Government/Government undertaking/ULB after the due date of submission of Bid but before opening of financial package by MAHA-METRO, they shall inform the same to MAHA-METRO in writing within 5 working days of issue of such debarment, failing which it will be considered that the Bidder has willfully concealed the information and the Bidder shall be solely responsible for all implications that may arise in accordance with the conditions of this Bid. Any such debarment will result in disqualification of the Bidder and the Financial Package of such Bidder shall be returned unopened. |
| ITB 31 | Correction of Arithmetical Errors |
| ITB 31.2 | Bids determined to be substantially responsive will be checked by the Employer for any arithmetic errors. Errors will be corrected by the Employer on the following basis: if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail |

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| | <p>and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;</p> <p>If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and</p> <p>If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetical error, in which case the amount in figures shall prevail subject to (A) and (B) above.</p> <p>If the Bidder does not accept the corrected Bid, its Bid will be rejected and the Bid Security forfeited.</p> |
| ITB 32.1 | Bidder shall quote his rate & price in INR (Indian Rupees) Only |
| ITB 33.1 | No purchase preference is applicable |
| ITB 34.1 | No subcontractor is selected by Employer (Maha-Metro) |
| ITB 34.3 | Sub-Contract- Not allowed |
| ITB 35.2 | <p>Replace existing ITB 35.2 as below:</p> <p>For evaluation of Price Bid, the employer shall consider the price bid submitted by the bidder making corrections for errors, if any, pursuant to ITB 31.2 above only.</p> <p>Price variation clause will not be considered for financial evaluation.</p> |
| ITB 35.5 | <p>If bidder's quoted price is lower than the 10% of the estimated cost of the proposed work, additional performance guarantee at the rate of 10% of the difference of the lowest allowable limit of quoting and quoted price by the bidders is to be furnished along with the normal performance guarantee.</p> <p>Additional Performance Guarantee (APG) shall be calculated as under:-</p> <p>A=Estimated cost of the work;</p> <p>B=Quoted price by the bidder;</p> <p>Difference of cost, $C=A-B$, if $C > (10\%A)$, then</p> <p>$APG = (C-10\%A) \times 10/100$</p> <p>However, such bid may be accepted by employer solely at their discretion, after going through the cost analysis submitted by the bidder and finding it workable.</p> |
| ITB 35.6 (Additional Clauses) | Variations, deviations, alternative offers and other factors which are not in line with the requirement and conditions of the bidding documents or otherwise result in the accrual of unsolicited benefits to the Employer shall not be taken into account in Bid evaluation. |
| ITB 36.1 | The price of bid shall be compared in INR (Indian Rupees) |
| ITB 37.1 | Online open bidding in Two Packet System (Technical & Financial). Evaluation shall be done in due process of bidding. |

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| ITB 38.2 (Additional Clauses) | Employer (Maha-Metro) reserve the right to modify, withdraw, cancel the bid or entire bidding process prior to award of this work. In such circumstances participating bidder shall have no claim towards the cost incurred to them or any loss of business. Maha-Metro shall not compensate any such claim. |
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F. Award of Contract

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| ITB 40.4 (Additional Clauses) | <p>The “Letter of acceptance” will be sent in duplicate to the successful Bidder, who will return one copy to the Employer duly acknowledged and signed by the authorized signatory, within one week of receipt of the same by him. The Letter of Acceptance will constitute a part of the Contract.</p> <p>The date of commencement of work shall be reckoned from the date of issue of LOA (Letter Of Acceptance)</p> |
| ITB 41.2 | <p>Addition to the existing ITB 41.2 with the following</p> <p>In the event of successful Bidder’s acceptance of the LOA, the Bidder will be required to execute the Contract Agreement in the form specified in Section VII. Bid & Contract Forms with necessary modifications as may be considered necessary at the time of finalization of the Contract within a period of 21 days from the date of issue of the Letter of Acceptance.</p> |
| ITB 42.1 | <p>The Performance Guarantee required in accordance with Clause 4.2 of the GC shall be for an amount as specified Section VII. Bid & Contract Forms in the form of a bank guarantee issued from a Scheduled Commercial bank (excluding Cooperative Banks) or from a scheduled commercial Foreign Bank having business office in India as defined in Section 2(e) of RBI Act 1934 read with Second Schedule in the types and proportions of currencies in which the Contract Price is payable.</p> |
| ITB 42.3 (Additional Clauses) | <p>Guarantees and Warranties</p> <p>The Bidder has to furnish other Guarantees, Undertakings, and Warranties, in accordance with the provisions of the General Conditions of Contract and Particular Conditions of Contract (refer ITB 43).</p> |
| ITN 42.4 (Additional Clauses) | <p>Failure of the successful Bidder to comply with the requirements of ITB 41 and ITB 42 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security.</p> |
| ITB 43 (Additional Clauses) | <p>Insurance</p> <p>Successful bidder has to obtain necessary & applicable insurance i.e. CAR (Contractor All Risk) Policy and WCI (Workmen Compensation Insurance) as per guidelines of GOI /GOM and other relevant insurances stipulated in Bid Document at his own cost & submit a copy of same within 21 Days from the date of award of this work.</p> <p>Maharashtra Metro Rail Corporation shall be the principal beneficiary in such insurances policy.</p> |

(Toll Kit for using E-Tender Portal of Maha-Metro)

TENDERING PROCEDURE

A] Tender Forms.

- i. Tender Forms can be purchased from the e-Tendering Portal of Maha-Metro, i.e. <https://mahametrorail.etenders.in> after paying Tender Fees via online **mode** as Per the **Tender Schedule**.
- ii. Bidder should have valid class II/III digital signature certificates (DSC) obtain from any certifying authorities.
- iii. Bidder should install the Java and NxtCrypto service available on the Home Page of Download section [URL:- https://mahametrorail.etenders.in](https://mahametrorail.etenders.in)

B] Pre-requisites to participate in the Tenders processed by Maha-Metro:

i. Enrolment of Contractors on Electronic Tendering System:

The Contractors interested in participating in the Tenders of Maha-Metro processed using the Electronic Tendering System shall be required to enroll on the Electronic Tendering System to obtain User ID.

If the information is found to be complete, the enrolment submitted by the Vendor shall be approved automatically.

The Contractors may obtain the necessary information on the process of enrolment either from Helpdesk Support Team or may visit the information published under the link Help manual and tutorials on the Home Page of the Electronic Tendering System.

ii. Obtaining a Digital Certificate:

The Bid Data that is prepared online is required to be encrypted and the hash value of the Bid Data is required to be signed electronically using a Digital Certificate (Class - II or Class -III). This is required to maintain the security of the Bid Data and to establish the identity of the Contractor transacting on the System.

The Digital Certificates are issued by an approved Certifying Authority authorized by the Controller of Certifying Authorities of Government of India through their Authorized Representatives upon receipt of documents required to obtain a Digital Certificate.

Bid data / information for a particular Tender may be submitted only using the Digital Certificate, which is used to encrypt the data / information and sign the hash value during

the Tender Submission stage. In case during the process of preparing and submitting a Bid for a particular Tender, the Contractor loses his/her Digital Signature Certificate (i.e. due to virus attack, hardware problem, operating system problem); he / she may not be able to submit the Bid online.

Hence, the Users are advised to store his / her Digital Certificate securely and if possible, keep a backup at safe place under adequate security to be used in case of need.

In case of online tendering, if the Digital Certificate issued to an Authorized User of a Partnership Firm is used for signing and submitting a bid, it will be considered equivalent to a no objection certificate / power of attorney to that User to submit the bid on behalf of the Partnership Firm. The Partnership Firm has to authorize a specific individual via an authorization certificate signed by a partner of the firm (and in case the applicant is a partner, another partner in the same form is required to authorize) to use the digital certificate as per Indian Information Technology Act, 2000.

Unless the Digital Certificate is revoked, it will be assumed to represent adequate authority of the Authority User to bid on behalf of the Firm for the Tenders processed on the Electronic Tender Management System of Government of Maharashtra as per Indian Information Technology Act, 2000. The Digital Signature of this Authorized User will be binding on the Firm. It shall be the responsibility of Partners of the Firm to inform the Certifying Authority or Sub Certifying Authority, if the Authorized User changes, and apply for a fresh Digital Signature Certificate. The procedure for application of a Digital Signature Certificate will remain the same for the new Authorized User.

The same procedure holds true for the Authorized Users in a Private / Public Limited Company. In this case, the Authorization Certificate will have to be signed by the Director of the Company or the Reporting Authority of the Applicant.

For information on the process of application for obtaining Digital Certificate, the Contractors may visit the section Digital Signature Forms on the Home Page of the Electronic Tendering System.

iii. **Recommended Hardware and Internet Connectivity:**

To operate on the Electronic Tendering System, the Contractors are recommended to use Computer System with at least 1 GB of RAM and broadband connectivity with minimum 512 kbps bandwidth.

iv. **Set up of Computer System for executing the operations on the Electronic Tendering System:**

To operate on the Electronic Tendering System of Maha-Metro, the Computer System of the Contractors is required be set up. The Contractors are required to install Utilities available under the section Downloads on the Home Page of the System.

The Utilities are available for download freely from the above mentioned section. The Contractors are requested to refer to the Help manual and Tutorials available online on the Home Page to understand the process of setting up the System, or alternatively, contact the Helpdesk Support Team on information / guidance on the process of setting up the System.

C) The e-tender portal contains two sections Technical Bid Submission & Financial Bid Submission.

- i. **Technical Bid Section:** - Technical Bid Section shall contain all Document and enclosures as directed in NIT, ITT and EQ. Bidder shall upload the PDF copy of such documents in Technical Section only.
- ii. **Financial Bid Section:** - All prices/Commercial offers/ or any information pertain to commercial offer required by MAHA-METRO from the bidders, shall be filled/ uploaded (If directed by MAHA-METRO) in Financial Bid Section only.
- iii. **No information pertaining to Financial Bid section should be uploaded/disclosed in Technical Bid Section or vice versa.**

D) Steps to be followed by Contractors to participate in the e-Tenders processed by Maha-Metro.

i. Preparation of online Briefcase:

All Contractors enrolled on the Electronic Tendering System of Maha-Metro are provided with dedicated briefcase facility to store documents / files in digital format. The Contractors can use the online briefcase to store their scanned copies of frequently used documents / files to be submitted as a part of their bid response. The Contractors are advised to store the relevant documents in the briefcase before starting the Tender Submission stage.

In case, the Contractors have multiple documents under the same type (e.g. multiple Work Completion Certificates) as mentioned above, the Contractors advised to either create a single .pdf file of all the documents of same type or compress the documents in a single compressed file in .zip or .rar formats and upload the same.

Note: Uploading of documents in the briefcase does not mean that the documents are available to Maha-Metro at the time of Tender Opening stage unless the documents are specifically attached to the Tender during the Tender Submission stage.

ii. Online viewing of Detailed Notice Inviting Tenders:

The Contractors Can View The Detailed **Tender Notice (NIT)** Along With The Time Schedule (Key Dates) For All The Live Tenders Released By Maha-Metro And **Eligibility Criteria (EQ)** On The Home Page of Maha-Metro E-Tendering Portal On <https://mahametrorail.etenders.in> Under The Section Online Tenders. Viewing & Downloading The **NIT & EQ** Is Free of Cost.

iii. Download of Tender Documents:

After going through the NIT & EQ, if bidder finds himself eligible for the bidding, he may purchase the complete bid document via online mode by paying the cost of Tender Document by Debit Card/Credit Card/ Net Banking as described on E-Tender Portal. After paying the cost of the document, bidder may download the complete bid documents.

iv. Online Submission of Bid:

- a. At the stage of EMD, the EMD payment may be either in the form of Cash or Bank Guarantee or combination of both. Bidders are advised to refer the Instruction to Bidders and Bid Data Sheet of the concerning Bid. For detail provision of payment of EMD, bidders are advised to refer concerning clause of Bid Document
- b. For Cash Component Payment of EMD, which bidder has to pay online using any one online pay mode as RTGS, NEFT, Debit Card, Credit Card & Net Banking through payment gateway of E-Tender Portal. For EMD payment, if bidder uses NEFT or RTGS then system will generate a challan (in two Copies) with unique challan No specific to the tender. Bidder will use this challan in his bank to make NEFT/RTGS Payment against the challan.
- c. Bidder should ensure the payment of online EMD, 72 Hours (Excepting Holiday if any) prior to the final submission date of the Bid. *
- d. Bidders have the option to pay EMD either at the initial stage of submission of bid or at the final stage of submission of bid, when all mandatory formats/ documents filled/ uploaded.
- e. If the EMD is in form of Bank Guarantee or part of EMD in form of BG, scan copy of such BG shall be uploaded by bidders in technical section of E-Tender Portal.
- f. Bidder shall download the Complete Bid Document along with all Corrigendum/Addendum/Clarification etc. by logging in with E-Tender Portal using his DSC (i.e. DSC of POA/ Owner) & read the all tender Instruction & clauses carefully.
- g. For submission of Tender Document and Corrigendum, Tick (v) Submission Process has been enabled in Technical section of E-Tender Portal of MAHA-METRO. Bidders have to tick (v) the corresponding checkbox provided in the Technical Section of E-Tendering**

portal as a token of acceptance of these bid documents & corrigendum / Addendums. By clicking the tick (v) the bid documents & corrigendum /addendum shall automatically have attached to offer of bidder. Further bidder may proceed for submission by clicking submit button.

- h. If the bidder has completed the submission process of his bid before due date of submission and in between employer issue a corrigendum, in this circumstances the bidder has to re-submit his bid by “clicking tick (v)” to the new added corrigendum, in case the new corrigendum has any implications to his already submitted bid. Bidder may, at his option, amend his bid accordingly & re-submit it.
- i. Physical Sign & seal of bidder on each page of Bid Documents available online is not required.
- j. All required enclosures as per bid document shall be uploaded in “Technical Envelope” / “Technical Section” of E-Tender portal by using DSC of bidder.
- k. The “Technical Envelope” / “Technical Section” of E-Tender portal has been provided with facilities to upload a file of maximum size of 10 mb only at each entity.
- l. If bidder is desirous to upload a file more than 10mb size, he shall have spilt the file in two or more parts of 10mb or lesser than 10mb each and can upload the same at appropriate **Technical Template** or “**Additional Document**” section of “**Technical Envelope/section**” of E-Tender Portal.

Note:-

- * Realization of NEFT/RTGS payment normally takes 24 hours, so it is advised to make Sure that NEFT/RTGS payment activity should be completed well before time.
- * NEFT/RTGS option will be depend on the amount of EMD.
- * Help File regarding use of e-Payment Gateway can be downloaded from e-Tendering Portal.

v. Short listing of Contractors for Financial Bidding Process:

The Tendering Authority will first open the Technical Bid documents of all Contractors and after scrutinizing these documents will shortlist the Contractors who are eligible for Financial Bidding Process. The shortlisted Contractors will be intimated by email.

vi. Opening of the Financial Bids:

The Contractors may remain present in the Office of the Tender Opening Authority at the time of opening of Financial Bids.

vii. Tender Schedule (Key Dates):

All the online activities are time tracked and the Electronic Tendering System enforces time-locks that ensure that no activity or transaction can take place outside the Start and End Dates and Time of the stage as defined in the Tender Schedule.

At the sole discretion of the Tender Authority, the time schedule of the Tender stages may be extended.

Note: - For details illustrations, please refer or down load the PPT demonstration available on E-Tender portal of <https://mahametrorail.etenders.in>.

Terms and Conditions for Online-Payments

The Terms and Conditions contained herein shall apply to any person ("User") using the services of Maha-Metro, Maharashtra, hereinafter referred to as "Merchant", for making Tender fee and Earnest Money Deposit (EMD) payments through an online Payment Gateway Service ("Service") offered by ICICI Bank Ltd. in association with E Tendering Service provider and Payment Gateway Service provider through MAHA-METRO Maharashtra website i.e. <https://mahametrorail.etenders.in> Each User is therefore deemed to have read and accepted these Terms and Conditions.

Privacy Policy:

The Merchant respects and protects the privacy of the individuals that access the information and use the services provided through them. Individually identifiable information about the User is not willfully disclosed to any third party without first receiving the User's permission, as covered in this Privacy Policy.

This Privacy Policy describes Merchant's treatment of personally identifiable information that Merchant collects when the User is on the Merchant's website. The Merchant does not collect any unique information about the User (such as User's name, email address, age, gender etc.) except when you specifically and knowingly provide such information on the Website. Like any business interested in offering the highest quality of service to clients, Merchant may, from time to time, send email to the User and other communication to tell the User about the various services, features, functionality and content offered by Merchant's website or seek voluntary information from The User.

Please be aware, however, that Merchant will release specific personal information about the User if required to do so in the following circumstances:

- a) In order to comply with any valid legal process such as a search warrant, statute, or court order, or available at time of opening the tender.
- b) if any of User's actions on our website violate the Terms of Service or any of our guidelines for specific services, or
- c) to protect or defend Merchant's legal rights or property, the Merchant's site, or the Users of the site or;
- d) to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the security, integrity of Merchant's website/offers.

General

Terms and Conditions for E-Payment on E-Tender Portal

1. Once a User has accepted these Terms and Conditions, he/ she may register on Merchant's website and avail the Services.
2. Merchant's rights, obligations, undertakings shall be subject to the laws in force in India, as well as any directives/ procedures of Government of India, and nothing contained in these Terms and Conditions shall be in derogation of Merchant's right to comply with any law enforcement agencies request or requirements relating to any User's use of the website or information provided to or gathered by Merchant with respect to such use. Each User accepts and agrees that the provision of details of his/ her use of the Website to regulators or police or to any other third party in order to resolve disputes or complaints which relate to the Website shall be at the absolute discretion of Merchant.
3. If any part of these Terms and Conditions are determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth herein, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of these Terms and Conditions shall continue in effect.
4. These Terms and Conditions constitute the entire agreement between the User and Merchant. These Terms and Conditions supersede all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between the User and Merchant. A printed version of these Terms and Conditions and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these Terms and Conditions to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
5. The entries in the books of Merchant and/or the Payment Gateway Service Providers kept in the ordinary course of business of Merchant and/or the Payment Gateway Service Providers with regard to transactions covered under these Terms and Conditions and matters therein appearing shall be binding on the User and shall be conclusive proof of the genuineness and accuracy of the transaction.
6. **Refund for Charge Back Transaction:** In the event there is any claim for/ of charge back by the User for any reason whatsoever, such User shall immediately approach Merchant with his/ her claim details and claim refund from Merchant alone. Such refund (if any) shall be affected only by Merchant via payment gateway or by means of a demand draft or such other means as Merchant deems appropriate. No claims for refund/ charge back shall be made by any User to the Payment Gateway Service Provider(s) and in the event such claim is made it shall not be entertained.

7. In these Terms and Conditions, the term "**Charge Back**" shall mean, approved and settled credit card or net banking purchase transaction(s) which are at any time refused, debited or charged back to merchant account (and shall also include similar debits to Payment Gateway Service Provider's accounts, if any) by the acquiring bank or credit card company for any reason whatsoever, together with the bank fees, penalties and other charges incidental thereto.
8. Refund for fraudulent/duplicate transaction(s): The User shall directly contact Merchant for any fraudulent transaction(s) on account of misuse of Card/ Bank details by a fraudulent individual/party and such issues shall be suitably addressed by Merchant alone in line with their policies and rules.
9. Server Slow Down/Session Timeout: In case the Website or Payment Gateway Service Provider's webpage, that is linked to the Website, is experiencing any server related issues like 'slow down' or 'failure' or 'session timeout', the User shall, before initiating the second payment,, check whether his/her Bank Account has been debited or not and accordingly resort to one of the following options:
 - i. In case the Bank Account appears to be debited, ensure that he/ she does not make the payment twice and immediately thereafter contact Merchant via e-mail or any other mode of contact as provided by Merchant to confirm payment.
 - ii. In case the Bank Account is not debited, the User may initiate a fresh transaction to make payment.However, the User agrees that under no circumstances the Payment Gateway Service Provider shall be held responsible for such fraudulent/duplicate transactions and hence no claims should be raised to Payment Gateway Service Provider No communication received by the Payment Gateway Service Provider(s) in this regard shall be entertained by the Payment Gateway Service Provider.

Limitation of Liability of Merchant/ Payment Gateway

1. Merchant has made this Service available to the User as a matter of convenience. Merchant expressly disclaims any claim or liability arising out of the provision of this Service. The User agrees and acknowledges that he/ she shall be solely responsible for his/ her conduct and that Merchant reserves the right to terminate the rights to use of the Service immediately without giving any prior notice thereof.
2. Merchant and/or the Payment Gateway Service Providers shall not be liable for any inaccuracy, error or delay in, or omission of (a) any data, information or message, or (b) the transmission or delivery of any such data, information or message; or (c) any loss or damage arising from or occasioned by any such inaccuracy, error, delay or omission, nonperformance

or interruption in any such data, information or message. Under no circumstances shall the Merchant and/or the Payment Gateway Service Providers, its employees, directors, and its third party agents involved in processing, delivering or managing the Services, be liable for any direct, indirect, incidental, special or consequential damages, or any damages whatsoever, including punitive or exemplary arising out of or in any way connected with the provision of or any inadequacy or deficiency in the provision of the Services or resulting from unauthorized access or alteration of transmissions of data or arising from suspension or termination of the Services.

3. The Merchant and the Payment Gateway Service Provider(s) assume no liability whatsoever for any monetary or other damage suffered by the User on account of:
 - (i) the delay, failure, interruption, or corruption of any data or other information transmitted in connection with use of the Payment Gateway or Services in connection thereto; and/ or
 - (ii) any interruption or errors in the operation of the Payment Gateway.
4. The User shall indemnify and hold harmless the Payment Gateway Service Provider(s) and Merchant and their respective officers, directors, agents, and employees, from any claim or demand, or actions arising out of or in connection with the utilization of the Services.

The User agrees that Merchant or any of its employees will not be held liable by the User for any loss or damages arising from your use of, or reliance upon the information contained on the Website, or any failure to comply with these Terms and Conditions where such failure is due to circumstance beyond Merchant's reasonable control.

Miscellaneous Conditions:

Any waiver of any rights available to Merchant under these Terms and Conditions shall not mean that those rights are automatically waived.

1. The User agrees, understands and confirms that his/ her personal data including without limitation details relating to debit card/ credit card transmitted over the Internet may be susceptible to misuse, hacking, theft and/ or fraud and that Merchant or the Payment Gateway Service Provider(s) have no control over such matters.
2. Although all reasonable care has been taken towards guarding against unauthorized use of any information transmitted by the User, Merchant does not represent or guarantee that the use of the Services provided by/ through it will not result in theft and/or unauthorized use of data over the Internet.
3. The Merchant, the Payment Gateway Service Provider(s) and its affiliates and associates shall not be liable, at any time, for any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communications line

failure, theft or destruction or unauthorized access to, alteration of, or use of information contained on the Website.

4. The User may be required to create his/ her own User ID and Password in order to register and/ or use the Services provided by Merchant on the Website. By accepting these Terms and Conditions the User agrees that his/ her User ID and Password are very important pieces of information and it shall be the User's own responsibility to keep them secure and confidential. In furtherance hereof, the User agrees to:
 - i. Choose a new password, whenever required for security reasons.
 - ii. Keep his/ her User ID & Password strictly confidential.
 - iii. Be responsible for any transactions made by User under such User ID and Password.

The User is hereby informed that Merchant will never ask the User for the User's password in an unsolicited phone call or in an unsolicited email. The User is hereby required to sign out of his/ her Merchant account on the Website and close the web browser window when the transaction(s) have been completed. This is to ensure that others cannot access the User's personal information and correspondence when the User happens to share a computer with someone else or is using a computer in a public place like a library or Internet cafe.

Debit/Credit Card, Bank Account Details

1. The User agrees that the debit/credit card details provided by him/ her for use of the aforesaid Service(s) must be correct and accurate and that the User shall not use a debit/ credit card, that is not lawfully owned by him/ her or the use of which is not authorized by the lawful owner thereof. The User further agrees and undertakes to provide correct and valid debit/credit card details.
2. The User may make his/ her payment (Tender Fee/Earnest Money deposit) to Merchant by using a debit/credit card or through online banking account. The User warrants, agrees and confirms that when he/ she initiates a payment transaction and/or issues an online payment instruction and provides his/ her card / bank details:
 - i. The User is fully and lawfully entitled to use such credit / debit card, bank account for such transactions;
 - ii. The User is responsible to ensure that the card/ bank account details provided by him/ her are accurate;
 - iii. The User is authorizing debit of the nominated card/ bank account for the payment of Tender Fee and Earnest Money Deposit
 - iv. The User is responsible to ensure sufficient credit is available on the nominated card/ bank account at the time of making the payment to permit the payment of the dues payable or the bill(s) selected by the User inclusive of the applicable Fee.
3. The User agrees that, to the extent required or permitted by law, Merchant and/ or the Payment Gateway Service Provider(s) may also collect, use and disclose personal

information in connection with security related or law enforcement investigations or in the course of cooperating with authorities or complying with legal requirements.

4. The User agrees that any communication sent by the User vide e-mail, shall imply release of information therein/ therewith to Merchant. The User agrees to be contacted via e-mail on such mails initiated by him/ her.
5. In addition to the information already in the possession of Merchant and/ or the Payment Gateway Service Provider(s), Merchant may have collected similar information from the User in the past. By entering the Website, the User consents to the terms of Merchant's information privacy policy and to our continued use of previously collected information. By submitting the User's personal information to us, the User will be treated as having given his/her permission for the processing of the User's personal data as set out herein.
6. The User acknowledges and agrees that his/ her information will be managed in accordance with the laws for the time in force.

Payment Gateway Disclaimer: The Service is provided in order to facilitate payment of Tender Fees/Earnest Money Deposit online. The Merchant or the Payment Gateway Service Provider(s) do not make any representation of any kind, express or implied, as to the operation of the Payment Gateway other than what is specified in the Website for this purpose. By accepting/ agreeing to these Terms and Conditions, the User expressly agrees that his/ her use of the aforesaid online payment service is entirely at own risk and responsibility of the User.

Section-III
Eligibility Criteria

Bidding is opened to all bidders who satisfy the qualification criteria set forth in the bidding documents with respect to their experience and financial capabilities. The contract shall be awarded to contractors as per Maha-Metro policy.

1. The bidding is opened to the Civil/Horticulture contractor having past experience of similar type of work i.e. Development of gardens/Horticulture works/plantation of trees done for Central Government/State Government/Public Sector Undertaking/Urban Local body/ Semi Government/ Autonomous bodies/ Public limited company listed in NSE & BSE, during the preceding three financial Year (i.e. **2017-18, 2018-19, 2019-20**) as under:
 - i. At least **ONE WORK** of similar nature of value of INR **14 Lakhs** or more.
OR
 - ii. **TWO WORKS** of similar nature each of value of INR **9 Lakhs** or more.
OR
 - iii. **THREE WORKS** of similar nature i.e. each of value of INR **7 Lakhs** or more.
2. The completion certificate/ Work Experience certificate from the officer not below the rank of Executive Engineer or Equivalent of the concerned department should be submitted.
3. Average Annual Turnover of last three financial Year (**2017-18, 2018-19, 2019-20**) shall not be less than **Rs.7 Lakhs**.
4. Should have GST Registration Number/Certificate.

Section-IV

SCOPE OF WORK

1. **Location:** Metro "Little Wood" at Ambazari, Nagpur.
2. Contract will remain in force for the period of Twelve Months from the date of issue of LOA.
3. The contractor will have to arrange Water & its transportation, electricity at his own cost also maintenance of pumping unit etc.
4. Replacement of casualties should be done by the contractor at his own cost.
5. Quoted rates shall be inclusive of all taxes. The contractor shall have to pay all prevailing and further taxes, fees, cess, charges, etc. of what so ever nature at his on cost.
6. The quoted rate should be inclusive of transportation.
7. The contractor should have his own garden equipment's includes Secateurs, hedge, shear, water house pipe, the water rose can, Khurpi, Sickle, Spray pump both small & large size presser pump, lawn mower, Garden Roller, etc. for the utility in the garden & sufficient number and minimum 10 labors duly trained for the garden works on his roll throughout the contract period.
8. The contractor shall have to provide the service for the maintenance of gardens for a total period of 12 months from the date of issuance of LOA.
9. Maintenance of 5000 Trees and lawns at Little Wood. The contractor will have to replace casualties, diseased plant, sapling, loss, theft, or damage to landscaping for what so ever reasons at his own cost and restore to the original size, age, height and same type variety of plant to be approved by the officer In-charge. If the contractor fails to make goods, the losses, or damage within the period of 15 days then the same shall be got rectified at the risk and cost of the contractor. The amount shall be recovered from the security deposit.
10. The contractor shall be responsible for all kinds of security of landscape area.
11. For maintenance of trees, landscaping area, the payment shall be on monthly basis as per schedule rates in the contract for every month. The contractor must submit the monthly bills for the same. Maintenance means maintaining the planted trees and surrounding areas in the best standard practices as defined in the design, drawing, and in the BOQ, and as per terms and conditions of the tender document and any changes pertains to this contract shall be certified by Engineers of Maha-Metro.
12. For new development included in the scope of this work for topiary and landscape work, the payment for maintenance period shall start after 12 months from the date of work order for newly executed / developed work on satisfactory maintenance as per the scope of maintenance and terms and conditions of this contract.
13. For maintenance of good landscape minimum 300 Cum. garden soil, 200 Cum manure, insect ides, fungicides, stimulants whatever needed to be provided from time to time for the healthy growth of plants.
14. The contractor shall supply the sufficient number of labours for the work or as directed by the officer in charge time to time for the landscaping area operations.

15. Maha-Metro will not have any responsibility what so ever nature regarding payment to be made to the labors. The contractor is liable to make payments as per Govt. norms.
16. It is the responsibility of the contractor to the carry out all the necessary landscaping work as suggested by the officer in charge / Horticulture Manager.
17. The contractor should appoint one responsible supervisor to supervise the labours to maintain the gardening work as directed by the official in charge of Maha-Metro.
18. In the case the work is not maintained up to the mark & standard, then the proportionate deduction from the bill of the contractor shall be made. For the purpose of calculating the proportional deduction, following formula will be adopted.

* No. of days not maintained as per standard x Rate per day for the full area of the landscaping maintenance x Percentage of the area not maintained properly with respect to full maintenance area in the contract. Or Rs. 3500/- day whichever is more. If the total non-maintained period exceeds 60 days, the contract shall be terminated & S.D. will be forfeited.
19. The contractor is responsible to maintain the landscape and must ensure cleanliness in landscape premises daily.
20. The contractor will be solely responsible to ensure and follow the labour laws and minimum wages act.
21. The work will be strictly executed as per the directions of the officer In-charge of Maha-Metro.
22. 24 hours' security on the landscape shall be the contractor's responsibility.
23. All tools equipment, lawn mower machines, hose pipes etc. Required for the work of maintenance in good condition & should be provided by the contractor at his own cost.
27. The contractor has to submit fortnightly work done report & get it approved from official in charge of Maha-Metro on the basis of combine fortnightly report monthly payment will be made after the contractor raises the bill.
28. Existing pipe line / valve repairing / replacement in landscape site for irrigation purposes is contractor's responsibility.
29. The contractor has to make the arrangement of water supply at his own cost including watering by water Catchment & other equipment required for watering i.e. pump, pipe, etc. at his own cost.
30. Contractor has to carry out weeding operation throughout the landscaping site three time in a month.
31. Application of F.Y.M. / fertilizes, insecticide, & Catchment silt once in month. It should be shown to officer In-charge / Horticulture Manager before application.

32. The contractor should have own electric / diesel operated lawn mower machine.
33. The contractor has to carry out the work as directed by the officer in-charge at landscaping site
 - a. Cleaning & weeding operation.
 - b. Cutting of unwanted branches of trees & shrubs.
 - c. Shaping plants fortnightly.
 - d. Earthing up to the plants fortnightly.
 - e. Loosening of soil to plant and flowerbed.
 - f. Cutting of dead and diseased branches.
 - g. Lawn moving operation to all lawns at the interval of two weeks.
 - h. Disposal of dry/fallen leaves etc.
34. Penalty to the extent of payment already made shall be recovered or deducted for non-maintenance of various sizes of each topiary work.
35. For carrying out the work on roadsides and divider necessary precautionary boards, barricades as required should be provided for safety of workers, vehicles and road users.
36. Potted plants
The executing potted plants beds to be maintained with minor alternation (if required) by planting summer and winter seasonal plants. Seeds / seedlings should be provided by the contractor.
37. Preparation of seasonal flower beds plants, seeds, etc shall be at contractors cost and directed by officer in charge.
38. **AREAS FOR MAINTENANCE WORK**
Little wood plantation at Ambazari, Nagpur.
NOTE: All above-mentioned scope of works is indicative and not exhaustive. Maha-Metro reserves the right to add/ delete any work under the scope of work. However, the contractor has to properly maintain the plantation of trees etc.

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General Condition of Contract

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General Conditions

1. General Provisions

1.1 Definitions

In the Conditions of Contract (“these Conditions”), which include Particular Conditions, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

1.1.1.1 “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.

1.1.1.2 “Contract Agreement” means the contract agreement referred to in Sub-Clause 1.6 [Contract Agreement].

1.1.1.3 “Letter of Acceptance” means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

1.1.1.4 “Letter of Tender” means the document entitled letter of tender or letter of bid, which was completed by the Contractor and includes the signed offer to the Employer for the Works.

1.1.1.5 “Specification” means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.

1.1.1.6 “Drawings” means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Employer in accordance with the Contract.

1.1.1.7 “Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document

may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 “Tender” means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.

1.1.1.9 “Bill of Quantities”, “Daywork Schedule” and “Schedule of Payment Currencies” mean the documents so named (if any) which are comprised in the Schedules.

1.1.1.10 “Contract Data” means the pages completed by the Employer entitled contract data which constitute Part A of the Particular Conditions.

1.1.2 Parties and Persons

1.1.2.1 “Party” means the Employer or the Contractor, as the context requires.

1.1.2.2 “Employer” means the person named as employer in the Contract Data and the legal successors in title to this person.

1.1.2.3 “Contractor” means the person(s) named as contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).

1.1.2.4 “Engineer” means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Contract Data, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [Replacement of the Engineer].

1.1.2.5 “Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor’s Representative], who acts on behalf of the Contractor.

1.1.2.6 “Employer’s Personnel” means the Engineer, the assistants referred to in Sub-Clause 3.2 [Delegation by the Engineer] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer’s Personnel.

1.1.2.7 “Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilizes on Site, who may include the staff, labour and other employees of the Contractor and of each

Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

1.1.2.8 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.

1.1.2.9 “DB” means the person or three persons appointed under Sub-Clause 20.2 [Appointment of the Dispute Board] or Sub-Clause 20.3 [Failure to Agree on the Composition of the Dispute Board]

1.1.2.10 “FIDIC” means the Federation Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.

1.1.2.11 “Bank” means the financing institution (if any) named in the Contract Data.

1.1.2.12 “Borrower” means the person (if any) named as the borrower in the Contract Data.

1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 “Base Date” means the date 28 days prior to the latest date for submission of the Tender.

1.1.3.2 “Commencement Date” means the date notified under Sub-Clause 8.1 [Commencement of Works].

1.1.3.3 “Time for Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Contract Data (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.

1.1.3.4 “Tests on Completion” means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.5 “Taking-Over Certificate” means a certificate issued under Clause 10 [Employer’s Taking Over].

1.1.3.6 “Tests after Completion” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification after the Works or a

Section (as the case may be) are taken over by the Employer.

1.1.3.7 “Defects Notification Period” means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], which extends over 365 days except if otherwise stated in the Contract Data (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections]..

1.1.3.8 “Performance Certificate” means the certificate issued under Sub-Clause 11.9 [Performance Certificate].

1.1.3.9 “Day” means a calendar day and “year” means 365 days.

1.1.4 Money and Payments

1.1.4.1 “Accepted Contract Amount” means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.

1.1.4.2 “Contract Price” means the price defined in Sub-Clause 14.1 [The Contract Price], and includes adjustments in accordance with the Contract.

1.1.4.3 “Cost” means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.

1.1.4.4 “Final Payment Certificate” means the payment certificate issued under Sub-Clause 14.13 [Issue of Final Payment Certificate].

1.1.4.5 “Final Statement” means the statement defined in Sub-Clause 14.11 [Application for Final Payment Certificate].

1.1.4.6 “Foreign Currency” means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.

1.1.4.7 “Interim Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment], other than the Final Payment Certificate.

- 1.1.4.8 “Local Currency” means the currency of the Country.
- 1.1.4.9 “Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment].
- 1.1.4.10 “Provisional Sum” means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].
- 1.1.4.11 “Retention Money” means the accumulated retention moneys which the Employer retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].
- 1.1.4.12 “Statement” means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate.
- 1.1.5 Works and Goods**
- 1.1.5.1 “Contractor’s Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
- 1.1.5.2 “Goods” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
- 1.1.5.3 “Materials” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.
- 1.1.5.4 “Permanent Works” means the permanent works to be executed by the Contractor under the Contract.
- 1.1.5.5 “Plant” means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Employer and relating to the construction or operation of the Works.
- 1.1.5.6 “Section” means a part of the Works specified in the Contract Data as a Section (if any).

1.1.5.7 “Temporary Works” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 “Works” mean the Permanent Works and the Temporary Works, or either of them as appropriate.

1.1.6 Other Definitions

1.1.6.1 “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

1.1.6.2 “Country” means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

1.1.6.3 “Employer’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Employer.

1.1.6.4 “Force Majeure” is defined in Clause 19 [Force Majeure].

1.1.6.5 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

1.1.6.6 “Performance Security” means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].

1.1.6.7 “Site” means the places where the Permanent Works are to be executed, including storage and working areas, and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

1.1.6.8 “Unforeseeable” means not reasonably foreseeable by an experienced contractor by the Base Date.

1.1.6.9 “Variation” means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].

1.1.6.10 “Notice of Dissatisfaction” means the notice given by either Party to the other under Sub-Clause 20.4

[Obtaining Dispute Board's Decision] indicating its dissatisfaction and intention to commence arbitration.

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;
- (c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and
- (e) the word "tender" is synonymous with "bid" and "tenderer" with "bidder" and the words "tender documents" with "bidding documents"

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

In these Conditions, provisions including the expression "Cost plus profit" require this profit to be one-twentieth (5%) of this Cost unless otherwise indicated in the Contract Data.

1.3 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Contract Data; and
- (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Data. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall

send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

1.4 Law and Language

The Contract shall be governed by the law of the country or other jurisdiction stated in the Contract Data.

The ruling language of the Contract shall be that stated in the Contract Data.

The language for communications shall be that stated in the Contract Data. If no language is stated there, the language for communications shall be the ruling language of the Contract.

1.5 Priority of Documents

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- (a) the Contract Agreement (if any),
- (b) the Letter of Acceptance,
- (c) the Letter of Tender,
- (d) the Particular Conditions
- (e) these General Conditions
- (f) the Specification,
- (g) the Drawings, and
- (h) the Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

1.6 Contract Agreement

The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

1.7 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- (a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.8 Care and Supply of Documents

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.9 Delayed Drawings or Instructions

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

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

Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

1.10 Employer's Use of Contractor's Documents

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

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

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

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a

third party by (or on behalf of) the Employer for purposes other than those permitted under this Sub-Clause.

1.11 Contractor's Use of Employer's Documents

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

1.12 Confidential Details

The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.

Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

1.13 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Particular Conditions:

- (a) the Employer shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or to be) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- (b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.

1.14 Joint and Several Liability

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated 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.

1.15 Inspections and Audit by the Bank

The Contractor shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.

2. The Employer

2.1 Right of Access to the Site

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Contract Data. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure,

plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Contract Data, the Employer shall give the Contractor right of access to, and possession of, the Site within such times as required to enable the Contractor to proceed without disruption in accordance with the programme submitted under Sub-Clause 8.3 [Programme].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

2.2 Permits, Licences or Approvals

The Employer shall provide, at the request of the Contractor, such reasonable assistance as to allow the Contractor to obtain properly:

- (a) copies of the Laws of the Country which are relevant to the Contract but are not readily available, and
- (b) any permits, licences or approvals required by the Laws of the Country:
 - (i) which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws],
 - (ii) for the delivery of Goods, including clearance through customs, and
 - (iii) for the export of Contractor's Equipment when it is removed from the Site.

2.3 Employer's Personnel

The Employer shall be responsible for ensuring that the Employer's Personnel and the Employer's other contractors on the Site:

- (a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
- (b) take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

2.4 Employer's Financial Arrangements

The Employer shall submit, before the Commencement Date and thereafter within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price punctually (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment]. Before the Employer makes any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

In addition, if the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of the Borrower having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension, the Employer shall provide reasonable evidence in his notice of the extent to which such funds will be available.

2.5 Employer's Claims

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause 4.20 [Employer's Equipment and Free-Issue Materials], or for other services requested by the Contractor.

The notice shall be given as soon as practicable and no longer than 28 days after the Employer became aware, or should have become aware, of the event or circumstances giving rise to the claim. A

notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

3. The Engineer

3.1 Engineer's Duties and Authority

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Employer shall promptly inform the Contractor of any change to the authority attributed to the Engineer.

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

- (a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;
- (b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;

- (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and
- (d) any act by the Engineer in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Employer before taking action under the following Sub-Clauses of these Conditions:

- (a) Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost.
- (b) Sub-Clause 13.1: instructing a Variation, except;
 - (i) in an emergency situation as determined by the Engineer, or
 - (ii) if such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Contract Data.
- (c) Sub-Clause 13.3: Approving a proposal for Variation submitted by the Contractor in accordance with Sub Clause 13.1 or 13.2.
- (d) Sub-Clause 13.4: Specifying the amount payable in each of the applicable currencies

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

instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.

3.2 Delegation by the Engineer

The Engineer may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation. These assistants may include a resident engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Engineer shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [Determinations].

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

- (a) any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;
- (b) if the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

3.3 Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

The Contractor shall comply with the instructions given by the Engineer or 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 confirmation 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).

3.4 Replacement of the Engineer

If the Employer intends to replace the Engineer, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection.

3.5 Determinations

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

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars, within 28 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].

4. The 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 of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country as defined by the Bank.

The Contractor shall be responsible for the adequacy, stability and safety of all Site 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 Plant 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 specification of the Permanent Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements 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 shall design any part of the Permanent Works, then unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Engineer to add 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, if applicable, operation and maintenance manuals in accordance with the Specification 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 taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

4.2 Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the Contract Data and denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to the Employer. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor, and shall be in the form annexed to the Particular Conditions, as stipulated by the Employer in the Contract Data, or in another form approved by the Employer.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract.

The Employer shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.

Without limitation to the provisions of the rest of this Sub-Clause, whenever the Engineer determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation, or as a result of a Variation, amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Engineer's request promptly increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.

4.3 Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Engineer for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked in terms of Sub-Clause 6.9 [Contractor's Personnel], or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Engineer's prior consent, and the Engineer shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [Instructions of the Engineer].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Engineer has received prior notice signed by the

Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

4.4 Subcontractors

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
- (b) the prior consent of the Engineer shall be obtained to other proposed Subcontractors;
- (c) the Contractor shall give the Engineer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
- (d) each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Employer]..

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor.

Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from the Country to be appointed as Subcontractors.

4.5 Assignment of Benefit of Subcontract

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall

have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

4.6 Co-operation

The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:

- (a) the Employer's Personnel,
- (b) any other contractors employed by the Employer, and
- (c) the personnel of any legally constituted public authorities,

who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to suffer delays and/or to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Engineer in the time and manner stated in the Specification.

4.7 Setting Out

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this e.

4.8 Safety Procedures The Contractor shall:

- (a) comply with all applicable safety regulations,
- (b) take care for the safety of all persons entitled to be on the Site,
- (c) use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons,
- (d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [Employer's Taking Over], and
- (e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

4.9 Quality Assurance 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 details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.10 Site Data The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions

at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data, which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

To the extent which was practicable (taking account of cost and time), 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. To the same extent, the Contractor shall 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 relevant matters, including (without limitation):

- (a) the form and nature of the Site, including sub-surface conditions,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
- (d) the Laws, procedures and labour practices of the Country, and
- (e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

4.11 Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

- (a) have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount, and
- (b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [Site Data].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

4.12 Unforeseeable Physical Conditions

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing

the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Engineer as soon as practicable.

This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Engineer may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under Sub-Clause 20.1 [Contractor's Claims] to:

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

Upon receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical

conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Engineer shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence.

4.13 Rights of Way and Facilities

Unless otherwise specified in the Contract the Employer shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.

4.14 Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

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.

4.15 Access Route

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- (b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- (c) the Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;

- (d) the Employer does not guarantee the suitability or availability of particular access routes; and
- (e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

4.16 Transport of Goods

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- (b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- (c) the Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.

4.17 Contractor's Equipment

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

4.18 Protection of the Environment

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

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

4.19 Electricity, Water and Gas

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require for his construction activities and to the extent defined in the Specifications, for the tests.

The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Specification. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.

4.20 Employer's Equipment and Free-Issue Materials

The Employer shall make the Employer's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Specification. Unless otherwise stated in the Specification:

- (a) the Employer shall be responsible for the Employer's Equipment, except that
- (b) the Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.

The Employer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. The Employer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Engineer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer shall immediately rectify the notified shortage, defect or default.

After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer of liability for any shortage, defect or default not apparent from a visual inspection.

4.21 Progress Reports

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in three copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. 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 Taking-Over Certificate for the Works.

Each report shall include:

- (a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
- (b) photographs showing the status of manufacture and of progress on the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,
 - (ii) Contractor's inspections,
 - (iii) tests, and
 - (iv) shipment and arrival at the Site;
- (d) the details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
- (e) copies of quality assurance documents, test results and certificates of Materials;
- (f) list of notices given under Sub-Clause 2.5 [Employer's Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];

- (g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

4.22 Security of the Site

Unless otherwise stated in the Particular Conditions:

- (a) the Contractor shall be responsible for keeping unauthorised persons off the Site, and
- (b) authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer or the Engineer, as authorised personnel of the Employer's other contractors on the Site.

4.23 Contractor's Operations on Site

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

4.24 Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to

prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

5. Nominated Subcontractors

5.1 Definition of "nominated Subcontractor"

In the Contract, "nominated Subcontractor" means a Subcontractor:

- (a) who is stated in the Contract as being a nominated Subcontractor, or
- (b) whom the Engineer, under Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

5.2 Objection to Nomination

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Engineer as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Employer agrees in writing to indemnify the Contractor against and from the consequences of the matter:

- (a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- (b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or

- (c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
 - (i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract;
 - (ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities, and
 - (iii) be paid only if and when the Contractor has received from the Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

5.3 Payments to nominated Subcontractors

The Contractor shall pay to the nominated Subcontractor the amounts shown on the nominated Subcontractor's invoices approved by the Contractor, which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

5.4 Evidence of Payments

Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Engineer may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:

- (a) submits this reasonable evidence to the Engineer, or
- (b)
 - (i) satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and
 - (ii) submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

then the Employer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the

nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Employer, the amount which the nominated Subcontractor was directly paid by the Employer.

6. Staff and Labour

6.1 Engagement of Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, feeding, transport, and, when appropriate, housing.

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.

6.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

6.3 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

6.4 Labour Laws

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

6.5 Working Hours

No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Contract Data, unless:

- (a) otherwise stated in the Contract,
- (b) the Engineer gives consent, or
- (c) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.

6.6 Facilities for Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

6.7 Health and Safety

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.

HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local

community, to promote early diagnosis and to assist affected individuals.

The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Subcontractors and any other Contractor's or Employer's personnel employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to, of Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labour.

The Contractor shall include in the programme to be submitted for the execution of the Works under Sub-Clause 8.3 an alleviation programme for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation programme shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the programme shall detail the resources to be provided or utilised and any related sub-contracting proposed. The programme shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this programme shall not exceed the Provisional Sum dedicated for this purpose.

**6.8 Contractor's
Superintendence**

Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

**6.9 Contractor's
Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- (a) persists in any misconduct or lack of care,
- (b) carries out duties incompetently or negligently,
- (c) fails to conform with any provisions of the Contract, or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

**6.10 Records of
Contractor's
Personnel and
Equipment**

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

**6.11 Disorderly
Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

6.12 Foreign Personnel

The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that

these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.

The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

6.13 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

6.14 Supply of Water

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

6.15 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

6.16 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel.

6.17 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

6.18 Festivals and Religious Customs

The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.

6.19 Funeral Arrangements

The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.

6.20 Prohibition of Forced or Compulsory Labour

The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.

6.21 Prohibition of Harmful Child Labour

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the Country have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

6.22 Employment Records of Workers

The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].

6.23 Workers' Organisations

In countries where the relevant labour laws recognise workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall

engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce.

6.24 Non-Discrimination and Equal Opportunity

The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

7. Plant, Materials and Workmanship

7.1 Manner of Execution

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

- (a) in the manner (if any) specified in the Contract,
- (b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and
- (c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Engineer for consent prior to using the Materials in or for the Works:

- (a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost, and
- (b) additional samples instructed by the Engineer as a Variation.

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

7.3 Inspection

The Employer's Personnel shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- (b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

7.4 Testing

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Engineer may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the

tests shall then be deemed to have been made in the Engineer's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

7.5 Rejection

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

If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer.

7.6 Remedial Work

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

- (a) 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, and
- (c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).

If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay to the Employer all costs arising from this failure.

7.7 Ownership of Plant and Materials

Except as otherwise provided in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

- (a) when it is incorporated in the Works;
- (b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

7.8 Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

- (a) natural Materials obtained from outside the Site, and
- (b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

8. Commencement, Delays and Suspension

8.1 Commencement of Works

Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's notification recording the agreement of both Parties

on such fulfilment and instructing to commence the Work is received by the Contractor:

- (a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;
- (b) delivery to the Contractor of reasonable evidence of the Employer's financial arrangements (under Sub-Clause 2.4 [Employer's Financial Arrangements]);
- (c) except if otherwise specified in the Contract Data, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works
- (d) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

If the said Engineer's instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor].

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

8.2 Time for Completion

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- (a) achieving the passing of the Tests on Completion, and
- (b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

8.3 Programme

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is

inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- (a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- (b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
- (c) the sequence and timing of inspections and tests specified in the Contract, and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
 - (ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [Variation Procedure].

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

8.4 Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1

[Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- (a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- (c) exceptionally adverse climatic conditions,
- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5 Delays Caused by Authorities

If the following conditions apply, namely:

- (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,
- (b) these authorities delay or disrupt the Contractor's work, and
- (c) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].

8.6 Rate of Progress

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme],

other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Engineer may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.

Additional costs of revised methods including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor.

8.7 Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject to notice under Sub-Clause 2.5 [Employer's Claims] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Contract Data, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Contract Data.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

8.8 Suspension of Work

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

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the

Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

8.9 Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [Suspension of Work].

8.10 Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- (b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

8.11 Prolonged Suspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

8.12 Resumption of Work

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Engineer an instruction to this effect under Clause 13 [Variations and Adjustments].

9. Tests on Completion**9.1 Contractor's Obligations**

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Contractor's General Obligations].

The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

9.2 Delayed Tests

If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Engineer or the Contractor

may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4 Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Engineer shall be entitled to:

- (a) order further repetition of Tests on Completion under Sub-Clause 9.3;
- (b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects]; or
- (c) issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations].

10. Employer's Taking Over

10.1 Taking Over of the Works and Sections

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Engineer shall, within 28 days after receiving the Contractor's application:

- (a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in

accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or

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

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

10.2 Taking Over of Parts of the Works

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

The Employer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

- (a) the part which is used shall be deemed to have been taken over as from the date on which it is used,
- (b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and
- (c) if requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such Cost plus profit, which shall be included in the Contract Price. After receiving this

notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.

If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages], and shall not affect the maximum amount of these damages.

10.3 Interference with Tests on Completion

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

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

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

**10.4 Surfaces
Requiring
Reinstatement**

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

11. Defects Liability

**11.1 Completion of
Outstanding
Work and
Remedying
Defects**

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- (b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

**11.2 Cost of
Remedying
Defects**

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) any design for which the Contractor is responsible,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and Sub-Clause 13.3 [Variation Procedure] shall apply.

**11.3 Extension of
Defects
Notification
Period**

The Employer shall be entitled subject to Sub-Clause 2.5 [Employer's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the

Contractor. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

11.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Employer may (at his option):

- (a) carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or
- (c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

11.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

11.6 Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

11.7 Right of Access

Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer's reasonable security restrictions.

11.8 Contractor to Search

The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Cost of the search plus profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [Determinations] and shall be included in the Contract Price.

11.9 Performance Certificate

Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

11.10 Unfulfilled Obligations

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

11.11 Clearance of Site

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after receipt by the Contractor of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

12. Measurement and Evaluation

12.1 Works to be Measured

The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- (a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and
- (b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

12.2 Method of Measurement

Except as otherwise stated in the Contract and notwithstanding local practice:

- (a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- (b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

12.3 Evaluation

Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work.

Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

However, a new rate or price shall be appropriate for an item of work if:

- (a)
 - (i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule,
 - (ii) this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount,
 - (iii) this change in quantity directly changes the Cost per unit quantity of this item by more than 1%, and
 - (iv) this item is not specified in the Contract as a “fixed rate item”;

or

- (b)
 - (i) the work is instructed under Clause 13 [Variations and Adjustments],

- (ii) no rate or price is specified in the Contract for this item, and
- (iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned work commences.

12.4 Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- (a) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
- (b) the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
- (c) this cost is not deemed to be included in the evaluation of any substituted work;

then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

13. Variations and Adjustments

13.1 Right to Vary

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (i) the Contractor cannot readily obtain

the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each Variation may include:

- (a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- (b) changes to the quality and other characteristics of any item of work,
- (c) changes to the levels, positions and/or dimensions of any part of the Works,
- (d) omission of any work unless it is to be carried out by others,
- (e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- (f) changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves a Variation.

13.2 Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].

If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- (a) the Contractor shall design this part,
- (b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply, and

- (c) if this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
 - (i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and
 - (ii) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

13.3 Variation Procedure

If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and
- (c) the Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Engineer instructs or approves otherwise in accordance with this Clause.

13.4 Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the

Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

13.5 Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct:

- (a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or
- (b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:
 - (i) the actual amounts paid (or due to be paid) by the Contractor, and
 - (ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Contract Data shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.6 Daywork

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- (a) the names, occupations and time of Contractor's Personnel,
- (b) the identification, type and time of Contractor's Equipment and Temporary Works, and
- (c) the quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [Application for Interim Payment Certificates].

13.7 Adjustments for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the **Base Date**, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

13.8 Adjustments for Changes in Cost

In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local and foreign currencies included in

the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

$P_n = a + b L_n / L_o + c E_n / E_o + d M_n / M_o + \dots$ where:

“ P_n ” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “ n ”, this period being a month unless otherwise stated in the Contract Data ;

“ a ” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“ b ”, “ c ”, “ d ”, ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“ L_n ”, “ E_n ”, “ M_n ”, ... are the current cost indices or reference prices for period “ n ”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

“ L_o ”, “ E_o ”, “ M_o ”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined

by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

In cases where the “currency of index” is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the Country, of this relevant currency on the above date for which the index is required to be applicable.

Until such time as each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

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

The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

14. Contract Price and Payment

14.1 The Contract Price

Unless otherwise stated in the Particular Conditions:

- (a) the Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;
- (b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];
- (c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
 - (i) of the Works which the Contractor is required to execute, or

- (ii) for the purposes of Clause 12 [Measurement and Evaluation]; and
- (d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.

**14.2 Advance Payment
(Not applicable)**

The Employer shall make an advance payment, as an interest-free loan for mobilization and cash flow support, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the Contract Data.

Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Contract Data, this Sub-Clause shall not apply.

The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by a reputable bank or financial institution selected by the Contractor and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

Unless stated otherwise in the Contract Data, the advance payment shall be repaid through percentage deductions from the interim

payments determined by the Engineer in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:

- (a) deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
- (b) deductions shall be made at the amortisation rate stated in the Contract Data of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Employer], except for Sub-Clause 15.5 [Employer's Entitlement to Termination for Convenience], payable by the Contractor to the Employer.

14.3 Application for Interim Payment Certificates

The Contractor shall submit a Statement in two copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports].

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

- (a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in subparagraphs (b) to (g) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause

13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];

- (c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;
- (d) any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];
- (e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];
- (f) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and
- (g) the deduction of amounts certified in all previous Payment Certificates.

14.4 Schedule of Payments

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];;
- (b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and
- (c) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement

Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 Plant and Materials intended for the Works

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].

If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules, this Sub-Clause shall not apply.

The Engineer shall determine and certify each addition if the following conditions are satisfied:

- (a) the Contractor has:
 - (i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
 - (ii) submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

- (b) the relevant Plant and Materials:
 - (i) are those listed in the Schedules for payment when shipped,
 - (ii) have been shipped to the Country, en route to the Site, in accordance with the Contract; and
 - (iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

- (c) the relevant Plant and Materials:
 - (i) are those listed in the Schedules for payment when delivered to the Site, and
 - (ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Engineer's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6 Issue of Interim Payment Certificates

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, deliver to the Employer and to the Contractor an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Engineer on the Statement if any.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Contract Data. In this event, the Engineer shall give notice to the Contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although:

- (a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

- (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

14.7 Payment

The Employer shall pay to the Contractor:

- (a) the first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;
- (b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and
- (c) the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor].

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

14.8 Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

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

14.9 Payment of Retention Money

When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

However, if any work remains to be executed under Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].

Unless otherwise stated in the Particular Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the

Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.

14.10 Statement at Completion

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer two copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:

- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- (b) any further sums which the Contractor considers to be due, and
- (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

14.11 Application for Final Payment Certificate

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, two copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

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

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 28 days from receipt

of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the “Final Statement”.

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Board’s Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

14.12 Discharge

When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

14.13 Issue of Final Payment Certificate

Within 28 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall deliver, to the Employer and to the Contractor, the Final Payment Certificate which shall state:

- (a) the amount which he fairly determines is finally due, and
- (b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.14 Cessation of Employer’s Liability

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the

Works, except to the extent that the Contractor shall have included an amount expressly for it:

- (a) in the Final Statement and also
- (b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

14.15 Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

- (a) if the Accepted Contract Amount was expressed in Local Currency only:
 - (i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;
 - (ii) payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and
 - (iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) payment of the damages specified in the Contract Data, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- (c) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (d) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover

the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and

- (e) if no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

15. Termination by Employer

15.1 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 to remedy it within a specified reasonable time.

15.2 Termination by Employer

The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct],
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) without reasonable excuse fails:
 - (i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
 - (ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) for doing or forbearing to do any action in relation to the Contract, or

- (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

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

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

15.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Employer may:

- (a) proceed in accordance with Sub-Clause 2.5 [Employer's Claims],
- (b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- (c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

15.5 Employer's Entitlement to Termination for Convenience

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor].

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 16.4 [Payment on Termination].

15.6 Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days' notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [Termination by Employer].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor's Personnel].

For the purposes of this Sub-Clause:

- (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of

- value to influence improperly the actions of another party;¹
- (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;²
 - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;³
 - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;⁴
 - (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 1.15 [Inspections and Audits by the Bank].

16. Suspension and Termination by Contractor

¹ “Another party” refers to a public official acting in relation to the procurement process or contract execution]. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

² “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

³ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non-competitive levels.

⁴ “Party” refers to a participant in the procurement process or contract execution.

16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or the Employer fails to comply with Sub-Clause 2.4 [Employer's Financial Arrangements] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer's Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

16.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1

[Contractor's Entitlement to Suspend Work] in respect of a failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements],

- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Employer's Claims]),
- (d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.
- (h) the Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under

Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

16.3 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [Employer's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works,
- (b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4 Payment on Termination

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Employer shall promptly:

- (a) return the Performance Security to the Contractor,
- (b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and
- (c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

17. Risk and Responsibility

17.1 Indemnities

The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the

Employer, the Employer's Personnel, or any of their respective agents, and

- (b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].

17.2 Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Employer's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate

has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

17.3 Employer's Risks

The risks referred to in Sub-Clause 17.4 [Consequences of Employer's Risks] below, insofar as they directly affect the execution of the Works in the Country, are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war, within the Country,
- (c) riot, commotion or disorder within the Country by persons other than the Contractor's Personnel,
- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- (f) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract,
- (g) design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible, and
- (h) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventive precautions.

17.4 Consequences of Employer's Risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 [Employer's Risks], Cost plus profit shall be payable.

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

17.5 Intellectual and Industrial Property Rights

In this Sub-Clause, “infringement” means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and “claim” means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- (a) an unavoidable result of the Contractor’s compliance with the Contract, or
- (b) a result of any Works being used by the Employer:
 - (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
 - (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel)

shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.6 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Employer's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employer's Equipment and Free-Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in the Contract Data, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

17.7 Use of Employer's Accommodation/Facilities

The Contractor shall take full responsibility for the care of the Employer provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

18. Insurance

18.1 General Requirements for Insurances

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Contract Data (calculated from the Commencement Date), submit to the other Party:

- (a) evidence that the insurances described in this Clause have been effected, and
- (b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers

informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Employer's Claims] or Sub-Clause 20.1 [Contractor's Claims], as applicable.

The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country.

18.2 Insurance for Works and Contractor's Equipment

The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause

occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Particular Conditions, insurances under this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,
- (c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Employer's Risks],
- (d) shall also cover, to the extent specifically required in the bidding documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Employer's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Contract Data (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- (e) may however exclude loss of, damage to, and reinstatement of:
 - (i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
 - (ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,

- (iii) a part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage, and
- (iv) Goods while they are not in the Country, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

If, more than one year after the Base Date, the cover described in subparagraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.5 [Employer's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3 Insurance against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Contract Data, with no limit on the number of occurrences. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

- (a) shall be effected and maintained by the Contractor as insuring Party,
- (b) shall be in the joint names of the Parties,
- (c) shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract, and
- (d) may however exclude liability to the extent that it arises from:

- (i) the Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,
- (ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and
- (iii) a cause listed in Sub-Clause 17.3 [Employer's Risks], except to the extent that cover is available at commercially reasonable terms.

18.4 Insurance for Contractor's Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The insurance shall cover the Employer and the Engineer against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19. Force Majeure

19.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2 Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

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

19.3 Duty to Minimise Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19.4 Consequences of Force Majeure

If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the

Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].

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

19.5 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

19.6 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials

shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;

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

19.7 Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

20. Claims, Disputes and Arbitration

20.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the

Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to

agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer to arbitrator.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

20.5 Amicable Settlement

Where a Notice of Dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 20.4 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

20.6 Arbitration

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

- (a) if the contract is with foreign contractors,
 - (i) for contracts financed by all participating Banks except under sub-paragraph (a) (2) below: international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules

of arbitration of such institution; or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules

(b) if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence nor did arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

**20.7. Sub-Clause
Arbitration**

If the efforts to resolve all or any of the disputes through conciliation fails, then such dispute or differences, whatsoever arising between the parties, arising out of touching or relating to construction/ manufacture, measuring operation or effect of the Contract or the breach thereof shall be referred to Arbitration in accordance with the following provisions:

a. Matters to be arbitrated upon shall be referred to a sole Arbitrator if the total value of the claim is up to Rs.5 million and to a panel of three Arbitrators if total value of claims is more than Rs.5 million. The Employer shall provide a panel of three

arbitrators which may also include NMRCL officers for the claims up to Rs.5 million and a panel of five Arbitrators which may also include NMRCL officers for claims of more than Rs.5 million. The Contractor shall have to choose the sole Arbitrator from the panel of three and/or one Arbitrator from the panel of five in case three Arbitrators are to be appointed. The Employer shall also choose one Arbitrator from this panel of five and the two so chosen will choose the third arbitrator from the panel only. The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/ demand of appointment of Arbitrator from either party. Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence nor did arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in Nagpur only. The language of proceedings that of documents and communication shall be English.

- 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.

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. The award shall be made claim wise and will be a speaking award.

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.

**20.10 Sub-Clause:
Interest on
Arbitration
Award**

**20.1 Sub-Clause:
Arbitration from
Time to Time**

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

- Where recourse to a Court is to be made in respect of any matter, the jurisdiction of court shall be: High Court of Judicature at Bombay – Nagpur Bench, Nagpur.
- 20.12 Sub-Clause: Jurisdiction of courts**
- 20.13 Sub-Clause: Suspension of Work on Account of Arbitration**
- 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.
- 20.14 Sub-Clause: Notice of Contractor**
- a. All notices to the Contractor, shall be served by post or telex or telefax or by hand to the Contractor or his authorized representatives. In case of notices delivered by post, they will be deemed to have been delivered after 7 days of dispatch.
 - b. The Contractor shall, on award of the Contract, furnish to the Engineer, the name, designation, address and telephone, telex and telefax numbers and e-mail address of his representative referred above.
- 20.15 Sub-Clause: Notice to Employer & 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.
- 20.16 Sub-Clause: Change of address**
- Parties to the contract may change the nominated address by employer with a notice to all concerned.
- 21 Layout of work:**
- Layout of the work will be done by the Contractor in consultation with the Engineer of Maha-Metro, of the Department or his representative. Some permanent marks should however be established to indicate the demarcation of the structure or any component thereof made to this permanent marks in measurement books and drawing, signed by the contractor and the Maha-Metro officer. Responsibility regarding layout will be joint.
- 22. Inspection of work**
- The contractor shall inform the Engineer-in-charge in writing when any portion of the work is ready for inspection giving him

sufficient notice to enable him to inspect the same without affection the further progress of the work.

The contractor shall provide at his cost necessary ladders and such arrangements as are considered safe by the Engineer-in-charge for proper inspection of all parts of the work.

The contractor shall extend his full co-operation and make all necessary arrangements When needed for carrying out inspection of the work or any part of the work by the local representatives, M.L.A's, M.Ps and officers and dignitaries/delegates of various Maha-Metro/Government departments, local bodies, private sectors etc. No compensation shall be paid to the contractor on this account.

23. Precaution to be taken by contractor:

23.1 The work shall be carried out by the contractor. Without causing damage to the existing Government property and/or private property. If any such damage are caused, the contractor shall pay for restoration of (the properly to the original conditions, and any other consequent damages.)

23.2 In the event of an occurrence of an accident, involving serious injured or death of any person, at site of work or quarry or at any place in connection with the work the same shall be reported in writing within twenty-four hours of the occurrence to the Engineer-in-charge and the commissioner of Workmen's compensation.

24. Clearance of site on completion of works:

The contractor after completion of work shall clean the site of all debris and remove all unused materials other than those supplied by the department and all plant and machinery, equipment's, tools etc., belonging to him within one month from the date of completion of the work, or otherwise the same will be removed by the department at his cost or disposed off as per departmental procedure. Incase the material is disposed of by department, the sale proceeds will be credited to the 'contractor's account after deducting the cost of sale incurred. However, no claim of contractor regarding the price of amount credited will be entertained afterwards.

25. Removal of Constructional plant with prior permission:

All constructional plant, provided by the contractor shall when brought on the site be deemed to be exclusively intended for

the construction and the contractor shall not remove the same or any part thereof (Save of the purpose of moving it from one part of the site to another) without the consent in writing of the Engineer-in-charge who shall record the reasons for withholding the consent

26. Restrictions because of local traffic:

As there is Local traffic by the side of construction, the contractor will have to take proper precautions such as proper barricading, fencing, lighting, information and cautionary boards for safe and smooth flow of traffic, and keeping the concerned authorities informed about the work in progress.

27. Completion Certificate:

27.1 The work shall not be considered to have been completed in accordance with the terms of the contract until the Engineer-in-charge shall have certified in writing to that effect. No approval of material or workmanship or approval of part of work during the progress of execution shall bind the Engineer-in-charge or in any way prevent him from even rejecting the work which is claimed to be completed and to suspend the issue of his certificate of completion until such alteration and modification or reconstruction have been effected at the cost of the contractor as shall enable him to certify that the work has been completed to his satisfaction.

27.2 After the work is completed the contractor shall give notice of such-completion to the Engineer-in-charge and within 30 days of receipt of such a notice the Engineer-in-charge shall inspect the work and if there is no defect in the work, shall furnish the contractor with a certificate indicating the date of completion. However, if there are any defects which in the opinion of the Engineer-in-charge are rectifiable he shall inform the contractor the defects noticed. The contractor after rectification of such defects shall then inform then inform the Engineer-in-charge and Engineer-in charge on his part shall inspect the work and issue the necessary completion certificate within 30 days if the defects are rectified to his satisfaction, and if not, he shall inform the contractor indicating defects yet to be rectified. The time cycle as above, shall continue.

27.3 In case defects noticed by the Engineer-in-charge which in his opinion are not rectifiable but otherwise work is acceptable at reduced payment, work shall be treated as completed. In such cases completion certificate shall be issued by the Engineer-in-charge within 30 days indicating the un-rectifiable defects for which specified reduction in payment is being made by him.

- 27.4 The issue of completion certificate shall not be linked up with the site clearance completion of work.
- 27.5 Should the part of construction be put to use any stage prior to date of issue of completion certificate, the maintenance period of that part of the work shall be reckoned from the date of actual use of the facility.

28. Safety measures and Amenities:

The contractor shall take all necessary precautions for the safety of the workers and preserving their health while working on such jobs as required special protection and precaution where ever required. The contractor shall also comply with the directions issued by the Engineer-in-charge in this behalf from time to time at all times.

The following are some of the requirement (The list is not exhaustive)

- i) Providing protective footwear to workers in situations like mixing and placing of mortar or concrete, in quarries and place where the work is to be done under too much wet conditions as also for, movements over surfaces infested with oyster growth.
- ii) Providing protective hardware to working in quarries etc. to protect them against accidental fall of materials from above.
- iii) Providing handrails at the edge of the floating platforms, barges walkways, ladder etc.
- iv) Providing workmen with safety belts, ropes etc. when working on any masts cranes, cribs, hoists, dredgers etc.
- v) Taking necessary steps towards training the workers concerned on the use of machinery before they are allowed to handle ii independently and taking all necessary precautions in and around the areas where machines, hoists and similar units are working. Wherever required, the persons handling the machinery shall have requisite licenses, certificate etc.

- vi) Preventing over loading and overcrowding of floating and land based machinery and equipment.
- vii) Providing life belts to all men working at such situations from where they may accidentally fall into water or on the ground, . Equipping the coats with adequate numbers of life buoys etc.
- viii) Avoiding bare live wires etc. as would cause electrocutions.
- ix) Making platforms, staging and temporary structures sufficiently strong and not causing the workmen and supervisory staff to work under risks.
- x) Providing sufficient first-aid trained staff and equipment to be available quickly at the worksite to render immediate first-aid treatment in case of accident due to suffocation, drowning and other injuries.
- xi) Taking the all necessary precautions wherever divers are engaged on work.
- xii) Providing full length gum boots, leather hand gloves, leather jackets with fireproof aprons to cover the chest and back reaching up to knees plain goggles for the eyes to the labour working with hot asphalt handling, vibrators in cement concrete and also where use of any or all these items is, essential in the interest of health and well-being of the labourers in the opinion of the Engineer-in-charge.

29. Payment:

The contractor must understand clearly that the rates quoted are for completed work and include all cost due to labour, all leads and lifts involved and if further necessitated scaffolding plants, supervision., service works, power etc. and to include all to cover the cost of night and round the clock work as and when required and no claim for additional payment beyond the prices or rates quoted will be entertained and the bidders will not be entitled subsequently to make any claim on the ground of any representation or on any promise by any person (whether tender in the employment of any Maha-Metro or not) or on the ground of any failure on his part to obtain all necessary information for the purpose of making his tender and fixing the several prices and rates

therein relieve Mm from any risks or liabilities arising out of or consequence upon the submission of the tender.

One running payments in a month is permitted. Running bill shall be submitted by the contractor by the 10th day of the month. The R.A. bill will be submitted to the **Engineers of Maha-Metro, Maha-Metro.**

30. Claims of extra work

30.1 Claims for extra work shall be registered within 30 days of occurrence of the event. However, bills for these claims along with supporting data details may be submitted subsequently.

30.2 Bills for extra work or for any claim shall be paid separately apart from the interim bills for the main work. The payment of bills for the main work shall not be withheld for want of decision on the extra/claims not covered in the schedule of items for extra work.

Section -VI

Particular Conditions

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Part A - Contract Data

| SN | Conditions | Sub-Clause | Data |
|----|--|---------------|--|
| 1 | Employer's name and address | 1.1.2.2 & 1.3 | Maharashtra Metro Rail Corporation Limited (Nagpur Metro Rail Project) "Metro Bhawan", East High Court Road (VIP Road) In Front Of Dr. Ambedkar College, Near Dikshabhoomi Nagpur- MH 440010, Telefax: 0712 – 2554217 Website: www.metrotrainagpur.com |
| 2 | Contract | 1.1.1 | Tender no: N1-Misc-33/2020 |
| 2 | Engineer's name and address | 1.1.2.4 & 1.3 | Employer shall nominate |
| 3 | Bank's name | 1.1.2.11 | Maha-Metro from equity |
| 4 | Borrower's name | 1.1.2.12 | Maharashtra Metro Rail Corporation through Government of India & Government of Maharashtra. from equity |
| 5 | Time for Completion | 1.1.3.3& 8.2 | Refer to Table: Summary of Sections below i.e. 12 (Twelve) Months from the date of issue of LOA |
| 6 | Defects Notification Period (Defect Liability Period) | 1.1.3.7 | 12 (Twelve) months date of issuance of LOA. Note: Defect liability & maintenance period is twelve month and both will operate concurrently. During the Defects Liability Period the Contractor shall rectify/ replace the defective works without claiming any cost for the defective works fulfill his obligations during the Defects Liability Period as laid down in GC and Scope of Works. |
| 7 | Sections | 1.1.5.6 | Little wood plantation at Ambazari |
| 8 | Country | 1.1.6.2 | India |
| 9 | Site | 1.1.6.7 | Little wood plantation at Ambazari, District-Nagpur Maharashtra |
| 10 | Adverse Climatic Conditions | 1.1.6.11 | "Climatic Conditions" is defined as follows: <i>Rainfall – Moderate</i> <i>Winter – Moderate</i> <i>Summer – Extreme</i> <i>Not prone to earthquake historically (Seismic Zone II)</i> |
| 11 | Electronic transmission systems | 1.3 | Electronic transmission shall be in the form of scanned copy of original documents uploaded appropriately at Technical Envelope. In case of Price Bid, only the format provided in Section-VIII: (Financial Bid & BOQ) of the bid document in to be filled in terms of percentage Above/ below/At Par. |

| SN | Conditions | Sub-Clause | Data |
|----|--|------------|--|
| 12 | Governing Law | 1.4 | Acts and Laws of India |
| 13 | Ruling language | 1.4 | English |
| 14 | Language for communications | 1.4 | English |
| | Priority of Documents | 1.5 | <p>The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:</p> <p>(a) the Letter of Acceptance (LOA) along with all annexures & corrigendum, Addendum (If any).</p> <p>(b) the corrigendum's & addendums</p> <p>(c) the Letter of Tender and BOQ & Financial Bid,</p> <p>(d) the scope of work & Specification,</p> <p>(e) the Particular Conditions</p> <p>(f) the General Conditions</p> <p>(i) the Drawings, and</p> <p>(i) the Schedules and any other documents forming part of the Contract.</p> <p>If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.</p> |
| 15 | Contract Agreement | 1.6 | Signing of the Contract by the Employer is subject to provision of a compliant Performance Security by the Contractor |
| 16 | Care and Supply of Documents | 1.8 | Documents to be supplied by the Contractor or the Employer under the Contract shall also be provided in digital form. |
| 17 | Time for access to the Site | 2.1 | Refer to Table: Summary of Sections below |
| 18 | Engineer's Duties and Authority | 3.1 | <p>The Engineer shall obtain the specific approval of the Employer before taking the following actions:</p> <p><i>[The Employer may decide to limit the authority of the Engineer by selecting one or several of the options below:]</i></p> <ul style="list-style-type: none"> – issuing a Variation for substantial technical modifications, increase of the Accepted Contract Amount or extension of time; – proceeding to Determination under clause 3.5 of the GCC; – issuing Interim Payment Certificate under clause 14.6 of the GCC; and – Issuance of a Taking over Certificate under clauses 10.1 and 10.2 of the GCC. |

| SN | Conditions | Sub-Clause | Data |
|----|--|------------|--|
| 19 | Delegation by the Engineer | 3.2 | Delegation by the Engineer is subject to the provisions of the contract between the Employer and the Engineer. |
| 20 | Contractor's General Obligations | 4.1 | <ul style="list-style-type: none"> • Shop drawings to be approved by the Engineer prior to starting the Works; • As-built drawings to be approved by the Engineer prior to taking over of the Works; and • Operation and maintenance manuals. |
| 21 | Performance Security (PBG) | 4.2 | <p>The performance security will be in the form of a Bank guarantee for the amount(s) of 10% (Ten Percent) of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount, issued from scheduled commercial bank of Indian or Foreign origin having business office in India. (Bank Guarantee Issued by Cooperative Bank is not acceptable)</p> <p>In the event of variations during the execution of the contract, which result in payments to the Contractor over and above the contract price, the Performance Security shall be adjusted in accordance with clause 4.2 of GC.</p> <p>The PBG is to be submitted by successful bidder within 21 (Twenty One) days from the issue of LOA.</p> |
| 22 | Contractor's Representative | 4.3 | Prior consent and approval of the Employer is required for replacing the Contractor's representative. |
| 23 | Subcontractors | 4.4 | Prior consent and approval of the Employer is required for other proposed Subcontractors. |
| 24 | Unforeseeable Physical Conditions | 4.12 | This provision applies if unforeseeable physical condition continues for more than a period of 60 days in continuation. Contractor shall be entitled to claim as per clause 8.4 & 20.1 both it is further clarified that if this unforeseeable conditions remains less than 60 days then the contractor are entitle to claim time extension only under sub-clause 8.4. |
| 25 | Electricity, Water and Gas | 4.19 | <p>The following is added to the existing clause:</p> <p>The Contractor shall make his own arrangement of electricity, Water and gas or any other source of energy required at his own cost and arrangement/sources. MAHA-METRO shall not make available such facilities for the contractor.</p> |
| 26 | Employer's Equipment | 4.20 | The Employer will not provide any tools, plant, equipment and machinery or materials under the Contract. |
| 27 | Progress reports | 4.21 | Refer to Scope of Works |
| 28 | Rates of Wages and Conditions of Labour | 6.2 | <p>Full compliance of statutory requirements apart, the Contractor shall pay rates of wages.</p> <p>The Contractor shall make himself aware of all labour regulations and their impact on the cost and build up the same in the Contract Price. During the Contract Period no extra amount in this regard shall be payable to the Contractor, for whatsoever reason including any revision of</p> |

| SN | Conditions | Sub-Clause | Data |
|----|-----------------------------|------------|---|
| | | | <p>rates payable to the labour due to revision of rates payable in Minimum Wages Act.</p> <p>Labour provided by the Contractor, either directly or through sub-contractors, for the exclusive use of the Employer or the Engineer, shall, for the purpose of this Sub-Clause, be deemed to be employed by the Contractor.</p> <p>In the event of default being made in the payment of any money in respect of wages of any person employed by the Contractor or any of its sub-contractors of any tier in and for carrying out of this Contract and if a claim therefore is filed in the office of the Labour Authorities and proof thereof is furnished to the satisfaction of the Labour Authorities, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to the said Labour Authorities and any sums so paid shall be recoverable by the Employer from the Contractor.</p> |
| 29 | Labor Laws | 6.4 | <p>(a) In dealing with labour and employees, the Contractor and his Sub-Contractors (including piece rate and petty Contractors) shall comply fully with all laws and statutory regulations pertaining to engagement, payment and upkeep of the labour in India.</p> <p>(b) The Contractor shall have a Labour Welfare Organisation which shall be responsible for labour welfare and compliance with prevalent labour laws, statutes and guidelines. In this context, the Contractor is also required to familiarize himself with MAHA-METRO's Labour Welfare Fund Rules as specified in PC or elsewhere in the Contract and comply with the same.</p> <p>(c) The Contractor shall prepare and submit compliance reports of adherence to labour laws as and when desired by the Engineer.</p> <p>(d) The Contractor will ensure to open bank accounts for each worker employed by him and his sub-contractors and all the payments to workers will be released through bank accounts.</p> <p>(e) The Contractor shall, if required by the Employer, deliver to the Engineer or to his office; a return in detail, in such form and at such intervals as the Employer may prescribe, showing the number of labour employed in different categories by the Contractor or his subcontractors on the Site.</p> |
| 30 | Normal working hours | 6.5 | The Contractor, if required, shall carry out work during night hours or in shifts in exceptional circumstances. The |

| SN | Conditions | Sub-Clause | Data |
|----|---|----------------|--|
| | | | Contractor shall not be entitled to any increase in the Accepted Contract Amount on account of night/shift working. |
| 31 | Testing | 7.4 | The Engineer shall give the Contractor not less than one (1) working day notice of the Engineer's intention to attend the tests. |
| 32 | Commencement of Works | 8.1 | The Commencement Date shall be: Date given in LOA or Employer's Notice to Proceed |
| 33 | Extension of time | 8.4 | Granting any extension of time is subject to the Engineer's determination in accordance with sub-clause 3.5 – Determinations. |
| 34 | Delay damages for the Works | 8.7 & 14.15(b) | Delay damages is applicable as specified corresponding to the key dates in the table given Sr. no 31 of contract data of RFP. |
| 35 | Maximum amount of delay damages | 8.7 | Maximum 10 % of the Awarded Contract Price. Engineer can impose delay damage as per his discretion in event of non compliance of contractual obligation or delay in maintenance as instructed by engineer. |
| 36 | Measurement and Evaluation | 12 | Shall be done and certified by Engineers. |
| 37 | Right to Vary | 13.1 | Additional work, plant, material or services not related to the Permanent Works shall not be entitled to a Variation. |
| 38 | Variation Procedure | 13.3 | Prior consent of the Employer is required on any proposed Variation issued for substantial technical modifications, additional cost or extension of time. Such Variation shall be consolidated in a signed Amendment to Contract. Variation of duration of maintenance period shall be as per discretion & requirement of Maha-Metro. The rate of accepted work shall remain unchanged in case of variation in duration of maintenance. Contractor shall be paid as per accepted rate and in proportion to work done in event of variation of duration of maintenance period. |
| 39 | Provisional Sums | 13.5.(b)(ii) | <i>Not applicable</i> |
| 40 | Adjustments for Changes in Legislation | 13.7 | Taxes prior to Base date i. e. 28 days prior to latest date of submission of Bid is deemed to be inclusive of price quoted by Bidder. Any change in legislation of any kind of Taxes by GoI or GOM, after Base Date shall be accounted for separately and It is applicable both way (Reimbursement & Deduction) |
| 41 | Adjustments for Changes in Cost | 13.8 | Refer PC Part B – Clause no. 52 |

| SN | Conditions | Sub-Clause | Data |
|----|---|------------------------------------|--|
| 42 | Contract Price | 14.1 (a) 14.1(b) 14.1(d) | No change The following taxes, duties and fees exemptions apply to the Contract: Refer PC Part B If requested by the Engineer, the breakdown of all unit prices shall also be submitted by the Contractor within 28 days from the Commencement Date. Refer PC Part B |
| 43 | Total advance payment (Not applicable) | 14.2 | An interest free Advance payment of 10% (Ten Percentage) of the Accepted Contract Amount payable in two installments - 5% (Five percent) in first installment and 5% (Five percent) in second installment - in the currencies and proportions in which the Accepted Contract Amount is payable. The first installment shall be paid after the award of Letter of Acceptance, submission of the Performance Security, undertaking and Guarantees, Advance Payment Bank Guarantee @ 110% of required advance amount issued from scheduled commercial bank of Indian or Foreign origin (excluding cooperative bank) having business office in India and signing of the Contract Agreement. The second installment shall be paid after satisfactory utilization of the first installment. The Contractor shall be required to submit the ' Utilization Certificate ' duly verified & endorsed by " Engineer " for all Advances received by them from the Employer under the Contract. |
| 44 | Repayment amortization rate of advance payment | 14.2(b) | The repayment amortization rate (%) shall be as under: The recovery of the above Advance Payment shall be done in respective currencies and shall commence when 20% of the original contract value of the work has been paid in respective currencies (in addition to the Mobilization advance) and shall be recovered by deduction of 25% of the amount of each Interim Payment, until the total of the mobilization advance is recovered. |
| 45 | Percentage of Retention | 14.3 | 0% (Zero percentage) |
| 46 | Limit of Retention Money | 14.3 | The aggregate amount of the Performance Security and the Retention Money shall not exceed 10% (ten percent) of the Accepted Contract Amount |
| 47 | Plant and Materials | 14.5(b)(i) | As directed by Engineers |
| | | 14.5(c)(i) | As directed by Engineers |
| 48 | Minimum Amount of Interim Payment Certificates | 14.6 | No restriction |

| SN | Conditions | Sub-Clause | Data |
|----|--|------------|---|
| 49 | Payment | 14.7 | The Employer shall pay to the Contractor the amount certified in each Interim Payment Certificate. Each interim payment certificate will have two components; (a) Value of the work/goods/services (without taxes/ duties levies/ cess/GST etc.). (b) Taxes/ duties levies/cess/GST etc. shall be met from domestic funding. |
| 50 | Publishing source of commercial interest rates for financial charges in case of delayed payment | 14.8 | Not Applicable |
| 51 | Currencies of Payment | 14.15 | The Contract Price shall be paid in the currency(ies) named in the Contract i.e., INR (Indian National Rupees) |
| 52 | Corrupt or Fraudulent Practices | 15.6 | This clause is deleted and replaced with Appendix 1 to Particular Conditions of Contract. |
| 53 | Insurance cover for Contractor's All Risk (CAR) and other requirements as specified in the GC | 18 | 100% of the Total Contract Price |
| 54 | Periods for submission of insurance: a. evidence of insurance. b. relevant policies | 18.1 | 14 days from Commencement Date 28 days from Commencement Date |
| 55 | Minimum amount of third party insurance | 18.3 | INR 1.0 (One) lakh for any one incident, with no. of incidents unlimited |
| 56 | Definition of Force Majeure | 19.1 | Following is added to existing GCC clause Epidemic, Pandemic, shutdown or lockdown by Govt. authorities / Govt. Order |

| SN | Conditions | Sub-Clause | Data |
|----|---|------------|--|
| 57 | Consequences of Force Majeure | 19.4 | <p>Replace the GC Sub-Clause 19.4 with the provisions as under:</p> <p>If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:</p> <p>(c) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and</p> <p>(d) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iii) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) and (iii), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].</p> <p>After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.</p> |
| 58 | Termination, Payment and Release | 19.6 | Determination by the Engineer shall be done in accordance with sub-clause 3.5 Determination. |
| 59 | Date by which the Dispute Board shall be appointed | 20.2 | Not applicable in this contract |
| 60 | The Dispute Board shall be comprised of | 20.2 | Constitution of dispute board is not applicable in this contract. The disputes may be resolved as per ADR methods i.e., mutual settlement/ negotiations etc. |
| 61 | List of potential DB sole members | 20.2 | Not applicable |
| 62 | Appointment (if not agreed) to be made by | 20.3 | After failure of negotiation/ conciliations of mutual settlements the issues may be referred for arbitration. |
| 63 | Rules of arbitration | 20.6(a) | Rules of Arbitration in accordance with the Arbitration and Conciliation Act 1996 along with its further amendments. |
| | | 20.6(b) | Place of Arbitration: Nagpur |
| 64 | Failure to Comply with Dispute Board's Decision | 20.7 | Not Applicable. |

| SN | Conditions | Sub-Clause | Data |
|---------------------------|----------------------------|------------|--|
| 65 | Contractor's Claims | 20.1 | The dispute board is not applicable in this contract. The disputes may be resolved as per ADR methods i.e., mutual settlement/ negotiations/ conciliations etc. |
| Additional clauses | | | |
| 66 | General | | <p>The quoted rates shall be total rate for the completed item of work as per the specifications and shall be inclusive of all incidental charges such as lifts, leads for materials, Water for construction etc. The rates for excavation are inclusive of the fine edge of excavated pit beyond foundations.</p> <p>(a) The bidders must obtain on his own responsibility and his own expenses all the information which may be necessary for the purpose of making a tender and for entering into a contract and must consider and satisfy himself with all local conditions, sites and quarries, means of accesses, the nature of rock, material to be met with in all execution and all materials pertaining to work.</p> <p>(b) Specifications of item stipulated for other sub works, shall be made applicable, where relevant.</p> |
| 67 | Outline of Works | | <p>(a) The work will be of maintenance of planted trees as per layout plan attached to tender documents. The contractor has to work anywhere within Maha-Metro Limits.</p> <p>(b) The items of work and their approximate quantities are given in Financial Bid Section-VIII of the tender.</p> |
| 68 | Unit | | The rates quoted for each item are for units mentioned in Section VIII Financial bid against each item. |
| 69 | Site Conditions: - | | <p>a. It shall be presumed that the Contractor has satisfied himself as to the nature and location of the, general and local conditions, particularly those bearing on transport handling of materials, availability of labour, weather conditions and has estimated the cost and quoted his rates accordingly. MAHA-METRO will bear no responsibility for lack of such acquaintance with site conditions and consequences thereof.</p> <p>b. Set of tender documents and conditions (up to a maximum of three sets) at the discretion of the Executive Director (Procurement) will be supplied to the Contractor after acceptance of tender.</p> |

| SN | Conditions | Sub-Clause | Data |
|----|---|------------|--|
| 70 | Extras, Omissions and Discrepancies: - | | In all cases of the omissions, doubts or discrepancies in the dimensions in the drawing and items of works, reference shall be made to the Engineer –in-charge/ Engineers of Maha-Metro whose elucidation and elaboration shall be considered final. |
| 71 | Bidder's Offer | | <p>a. The bidder should study the tender carefully and quote the offer accordingly. The offer quoted by the bidder in the tender shall be treated as final. There shall not be any negotiations on the offer quoted by him except in the case of negotiations with L1 (i.e. lowest bidders).</p> <p>b. MAHA-METRO has right to modify the quantities mentioned in Financial bid of Sub work.</p> |

Section-VII

Bid & Contract Form

The Bid (complete in all respects) must be submitted in One Sealed Envelopes as explained below:

| S. No. | Items | Content | Remarks |
|--------|---------------|---|--|
| 1. | Annexure 1 | Letter of Proposal | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 2. | Annexure 2 | Bidders Information | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 3. | Annexure 3 | Bidder Declaration | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 4. | Annexure 4 | Declaration (Proprietor) | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 5. | Annexure 5 | Power of Attorney | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 6. | Annexure 6 | Undertaking for Bidding Documents | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 7. | Annexure 7 | Undertaking for compliance of Labour Law | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 8. | Annexure 8 | Form of Agreement | At the time of agreement. |
| 9. | Annexure 9 | Form of performance Guarantee | After award of work |
| 10. | Annexure-10 | Statement of Annual Turnover | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 11. | Annexure-11 | Declaration | To be submitted with technical bid on e-tender portal of Maha-Metro |
| 12. | Annexure-12 | Proforma For Submission Of Past Contractual Performance | To be submitted with technical bid on e-tender portal of Maha-Metro |
| 13. | Annexure-13 | Form of Declaration for non-engagement of any agent, middleman or intermediary | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 14. | Annexure-14 | Agency Policy - Corrupt and Fraudulent Practices | To be submitted with technical bid on e-tender portal of Maha-Metro. |
| 15. | Annexure-15 | All pages of Bid document to signed and sealed by authorized representative of agency | To be submitted with technical bid on e-tender portal of Maha-Metro |
| 16. | Bid Documents | Certificate of Incorporation/ Registration/ shop act registration/ Any legal registration certificate of bidding entity | To be submitted with technical bid on e-tender portal of Maha-Metro |
| 17. | | GST Registration Certificate | To be submitted with technical bid on e-tender portal of Maha-Metro |

| | | | |
|-----|--|-------------------------------------|---|
| 18. | | Income Tax Registration Certificate | To be submitted with technical bid on e-tender portal of Maha-Metro |
|-----|--|-------------------------------------|---|

Annexure-1**Letter of Proposal****(On Applicant's letter head) (Date and Reference)**

To,
(Name & address of Employer)

Name of Work:

Dear Sir,

With reference to your Bid documents/Tender Notification dated _____, I/we, having examined all relevant document and understood their contents, hereby submit our Proposal for "*(Name of Work)*". The proposal is unconditional and unqualified.

1. All information provided in the Proposal and in the Appendices, is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as Agency/ for the aforesaid work.
3. I/We shall make available to the Employer any additional information it may deem necessary or required for supplementing or authenticating the Proposal.
4. I/We acknowledge the right of the Employer to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. I/We certify that in the last three years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or supply contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. I/We declare that:
 - (a) I/We have examined and have no reservations to the Bid Document, including any Addendum issued by the Employer;
 - (b) I/We do not have any conflict of interest i.e. Bidder is not part of General Consultant for MAHA-METRO;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, in respect of any tender or request for proposal issued by or any agreement entered into with the Employer or any other Public-Sector enterprise or any government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select

- the Bidder, without incurring any liability to the Bidders in accordance with Item No. 5 – General Terms and Conditions of the Bid Document.
8. Deleted.
 9. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicated or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Supply or which relates to a grave offence that outrages the moral sense of the community.
 10. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
 11. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/Employees.
 12. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Employer and/ or the Government of Maharashtra in connection with the selection of Bidder or in connection with the Selection Process itself in respect of the above- mentioned work.
 13. Deleted.
 14. I/We agree and understand that the proposal is subject to the provisions of the Bid Document. In no case, shall I/we have any claim or right of whatsoever nature if the Supply is not awarded to me/us or our proposal is not opened or rejected.
 15. I/We agree to keep this offer valid for 45 days (Forty-Five) from the proposal due date specified in the Bid documents.
 16. Power of Attorney in favor of the authorized signatory to sign and submit this proposal and document is attached herewith in Annexure-6.
 17. In the event of my/our firm/ being selected as the Bidder, I/we agree to enter into an Agreement in accordance with the form at Annexure-08 of the Bid documents. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
 18. I/We have studied Bid Document and all other document carefully and also surveyed the Project site. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any document or information provided to us by the Employer or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Supply.
 19. I/We, agree and undertake to abide by all the terms and conditions of the Bid Document. In witness thereof, I/we submit this proposal under and in accordance with the terms of the Bid Document.

Yours faithfully,
(Signature, name and designation of the authorized
signatory) (Name and seal of the Bidder)

Annexure – 2**Bidders Information**

| | | |
|----|--|--|
| 1 | Name of Work: | |
| 3 | Name of Company or Firm: | |
| 4 | Legal status (e.g. incorporated private company, unincorporated business, partnership etc., along with a copy of relevant registration certificate): | |
| 5 | Country of incorporation: | |
| 6 | Year of Incorporation: | |
| 7 | Year of commencement of business: | |
| 8 | Registered address: | |
| 9 | Principal place of business: | |
| 10 | GSTIN No. (Attach documentary proof also) | |
| 11 | PAN No. | |
| 12 | Authorized person contract details Name: Designation: Phone No:- E-mail address:- | |

Annexure-3

Bidder's Declaration: -

1. I/We undertake to abide all conditions of Bid Document of Tender No. N1-Misc 34/2020
2. I/We had gone through the detail specifications included in the Bid & fully conversant with the specifications laid down for concerned items.
3. I / We hereby Bid for execution of work specified in this Bid Document.

Bidder's Signature.

Annexure - 4**DECLARATION (Authorised Signatory)
(If bidder is sole & Proprietorship firm)**

1. I, _____ Son/Daughter of Shri. _____ Proprietor of M/s _____ competent to sign the declaration and execute this bid and agreement in event of award.
2. I have carefully read and understood all the terms and conditions of the tender which are fully acceptable to me.
3. The information / documents furnished along with the above tender are true and authentic to the best of my knowledge and belief. I/we, am/ are well aware of the fact that furnishing of any false information/fabricated document would lead to rejection of my tender & forfeiture of my Bid Security /EMD besides liabilities towards prosecution under appropriate law.

(Signature of Proprietor)

Full Name:

Date:

Place:

Seal:

Note:

1. The above declaration can also be made on the letterhead of Bidder.

Annexure-5

Format for Power of Attorney

(Applicable if the bidder a Partnership firm/ Private limited company or Limited company)

(To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place of execution. Foreign companies submitting Bid are required to follow the applicable law in their country)

(Power of Attorney to be provided by the Bidder Company/ Bidder in favour of its representative as evidence of authorized signatory's authority)

Know all men by these presents, we (name and address of the registered office of the Bidding Company or Bidder) do hereby constitute, appoint and authorize Mr./Ms.....S/o..... (name and residential address) who is presently employed with us and holding the position of as our Attorney to do in our name and our behalf all or any of the acts, deeds or things necessary or incidental to submission of our Bid for '.....' [Name of the work] for Nagpur Metro Rail Project in response to the Bid (Tender No.)issued by Maharashtra Metro Rail Corporation Limited (the Employer) including signing and submission of the Bid and all other document related to the bidding, including but not limited to undertakings, letters, certificates, acceptances, clarifications, guarantees or any other document which the Company may require us to submit and also signing and executing the Contract Document. The aforesaid Attorney is further authorized for making representations to the Company or any other authority, and providing information / responses to the Company, representing us in all matters before the Company, and generally dealing with the Company in all matters in connection with our Bid till the completion of the bidding process as per the terms of the Bidding Document and further till the Contract is entered into with the Company and thereafter till the expiry of the Contract.

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

All the terms used herein but not defined shall have the meaning ascribed to such terms under the Bidding Document.

Signed by the within named [Insert the name of the executant company] through the hand of

Mr.....

Duly authorized by the Board to issue such Power of Attorney by board resolution Dt.....

(Copy enclosed)

Dated this day of Accepted..... Signature of the executant)

(Name, designation and address of the executant)

Attested

.....

(Signature of the executant)

(Name, designation and address of the executant)

.....

Signature and stamp of Notary of the place of execution

Common seal of has been affixed in my/our presence pursuant to Board of Director's Resolution dated.....

WITNESS:

- 1. (Signature) Name Designation
- 2. (Signature) Name Designation

Notes:

- 1. The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter document of the executant(s) and the same should be under common seal of the executant affixed in accordance with the applicable procedure. Further, the person whose signatures are to be provided on the power of attorney shall be duly authorized by the executant(s) in this regard.
- 2. In the event, power of attorney has been executed outside India, the same needs to be duly notarized by a notary public of the jurisdiction where it is executed.
- 3. Also, wherever required, the executant(s) should submit for verification the extract of the charter document and document such as a board resolution / power of attorney, in favour of the person executing this power of attorney for delegation of power hereunder on behalf of the executant(s).

Annexure-6

Undertaking for Bidding Documents

We hereby confirm that, we have downloaded the complete set of Bid Documents issued by MAHA-METRO. We confirm that the Bidding Documents has not been edited or modified by us. In case, it is observed by MAHA-METRO that the Bidding Documents have been edited or modified, we agree for the rejection of our Bid by MAHA-METRO.

Company/Firm Name

Name

Signature

Postal address

E-mail ID

Phone Fax

Annexure-7**Undertaking for compliance of Labour Law
(PF, ESIC, Minimum Wages etc.)**

I/We _____ (Name of bidding firm/entity), represented by
Mr./Smt/Ms _____ (AADHAR No,
_____ (Copy enclosed) hereby confirm that we will
be solely responsible for all statutory compliance of various labours & insurance law i.e. PF &
ESIC , minimum wages etc of Govt. of India / Govt. of Maharashtra.

Maha-Metro shall not be a party or shall not be responsible, if any issue of non-compliance of
any labour law arises during this work or thereafter.

Authorised Signatory

Name:-

Bidding / Firm / Entity

Seal

Date

Annexure-08

Form of Contract Agreement

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (hereinafter “the Employer”), of the one part, and _____ of _____ (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as _____ should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein, in the sum of [*insert Contract Price or Ceiling in words and figures, expressed in the Contract currency (ies)*] (hereinafter called “the Contract Price”).

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - (i) the Letter of Acceptance
 - (ii) the Letter of Bid and Appendix to Bid (including the signed Statement of Integrity)
 - (iii) the addenda Nos _____(if any)
 - (iv) the Particular Conditions
 - (v) the General Conditions;
 - (vi) the Technical Specifications
 - (vii) the Drawings; and
 - (viii) the completed Schedules and any other documents forming part of the contract,
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy 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 Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ on the day, month and year specified above.

Signed by _____ (for the Employer)

Signed by _____ (for the Contractor)

In presence of

Witness

Annexure-9

PERFORMANCE SECURITY

(Demand Guarantee)

Beneficiary:_____

Date:_____

PERFORMANCE GUARANTEE No.:_____

Guarantor:_____

We have been informed that_____ (hereinafter called "the Applicant") has entered into Contract No. ___ dated _____ with the Beneficiary, for the execution of _____ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, waiving all objections and defences under the aforementioned contract, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____),¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s first demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant has failed to duly perform the aforementioned contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the Day of, 2...², and any demand for payment under it must be received by us at this office indicated above on or before that date.

[Signature]

- 2 *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency (cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*
- 3 *Insert the date twenty-eight days after the expected completion date as described in Clause 7. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

Annexure-10**Average Annual Turnover Certificate****Name of Bidder:**

| Sr.No. | Amount of Work done during each of last Three Year | Total Amount Per Year | Remark |
|--------|--|-----------------------|--------|
| 1 | 2017-2018 | | |
| 2 | 2018-2019 | | |
| 3 | 2019-2020 | | |
| | Total Amount : | | |
| | Average Annual Turnover: | | |

Note: - Details are to be furnished in this format and submitted in technical section. The bid will be treated as non – responsive if the format is not filled up and submitted.

Annexure-11**// DECLARATION //**

Name of Work: _____

I/We hereby declare that I/We have made myself/ourselves thoroughly conversant with the local conditions regarding all materials such as Electrical Materials & stones murum, sand etc. and labour on which I have based my/our rates for this work. The specifications and lead for this work have been carefully studied and understood by me/us before submitting the tender. I/We undertake to use only the best materials approved by the Engineers of Maha-Metro of the work or his duly authorized representative before starting the work and to abide by his decision.

I hereby undertake to pay the laborers engaged on the work as per Minimum Wages Act. 1948 applicable to the Zone concerned.

Contractor's Signature.

Annexure-12**PROFORMA FOR SUBMISSION OF PAST CONTRACTUAL
PERFORMANCE**

(Affidavit on non-judicial stamp paper of ` 100/- duly attested by Notary/ Magistrate)

This is to certify that We, M/s _____, in submission of this offer confirms that:

- i) We have not made any misleading or false representation in the forms, statements and attachments in proof of the qualification requirements.
- ii) We do not have records of poor performance such as abandoning the work, not properly completing the contract, inordinate delay in completion, litigation history or financial failures.
- iii) Business has never been banned with us by the central / State Government Department/ Public Sector Undertaking or Enterprise of Central / State Government or any Urban Local Body.
- iv) We have submitted all the supporting documents and furnished all the relevant details as per prescribed format.
- v) The information and documents submitted with the tender by us are correct and we are fully responsible for the correctness of the information and documents submitted by us.
- vi) We understand that in case any statement/information/document furnished by us is found to be incorrect or false, our EMD in full will be forfeited.

**SEAL, SIGNATURE AND NAME OF THE
BIDDER SIGNING THE DOCUMENT**

Annexure-13***Form of Declaration for non-engagement of any agent, middleman or intermediary***

[We hereby declare / We hereby jointly and severally]@ declare that the submission of this Bid confirms that no agent, middleman or any intermediary has been, or will be engaged to provide any services, or any other item or work related to the award and performance of this Contract. We further confirm and declare that no agency commission or any payment, which may be construed as an agency commission, has been, or will be paid and that the Bid price does not include any such amount. We acknowledge the right of the Employer, if it finds to the contrary, to declare our Bid to be non-compliant and if the Contract has been awarded to declare the Contract NULL and VOID.

SIGNATURE OF THE BIDDER

(In case of a partnership, joint venture or consortium, to be submitted by each constituent member)

Annexure-14**Agency Policy - Corrupt and Fraudulent Practices**

The Employer, the Implementing Agency and the contractors, suppliers or consultants must observe the highest standard of ethics during contract procurement and performance.

By signing the Statement of Integrity (form available as Appendix to Letter of Bid) the contractor, supplier or consultant declares that (i) *“it did not engage in any practice likely to influence the contract award process to the Employer's detriment, and that it did not and will not get involved in any anti-competitive practice”*, and that (ii) *“the negotiation, the procurement and the performance of the contract did not and shall not give rise to any act of corruption or fraud”*.

Moreover, the Agency requires including in the Bidding Documents and Agency-financed contracts a provision requiring that bidders and contractors, suppliers and consultants will permit the Agency to inspect their accounts and records relating to the procurement and performance of the Agency-financed contract, and to have them audited by auditors appointed by the Agency.

The Agency reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- reject a proposal for a contract award if it is established that during the selection process the bidder that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;
- declare mis-procurement when it is established that, at any time, the Employer, the contractor, the supplier, the consultant or its representatives have engaged in acts of corruption, fraud or anti-competitive practices during the contract procurement or performance without the Employer having taken appropriate action in due time satisfactory to the Agency to remedy the situation, including by failing to inform the Agency at the time they knew of such practices.

The Agency defines, for the purposes of this provision, the terms set forth below as follows:

(a) Corruption of a public officer means:

- the act of promising, offering or giving to a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity; or
- the act by which a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such public officer to act or refrain from acting in his official capacity.

(b) A *“public officer”* shall be construed as meaning:

- any person who holds a legislative, executive, administrative or judicial mandate (within the State of the Employer) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;

- any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
 - any other person defined as a public officer by the national laws of the Employer.
- (c) Corruption of a private person means:
- the act of promising, offering or giving to any person other than a public officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or
 - the act by which any person other than a public officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations.
- (d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.
- (e) Anti-competitive practices means:
- any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply.
 - any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it.
 - any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

Section-VIII
Financial Bid

Tender No. N1 Misc-34/2020, Date: 15/09/2020.

Name of Work: - Annual maintenance of 6000 Trees and 3000 bamboo plantation at Little wood extension near Kamalanagar on Amravati road for the year 2020-2021.

| Sr. No | Description | Quantity | Unit | Rate | Amount |
|---|--|-----------------|-------------|----------------------------|---------------------|
| 1 | Maintenance of 5000 plants of NMRCL at Ambazari lack area including replacement of plants of similar catogory of height 3' - 5' whichever necessary, applying fertilizer, insecticides, watering through drip system including maintenance of water source, maintenance of lawn and chain link fencing etc. (As per terms & conditions) | 12 | Month | 1,37,279.00 | 16,47,348.00 |
| | | | | Total Amount in Rs. | 16,47,348.00 |
| (Rupees Sixteen Lakhs Forty Seven Thousand Three Hundred Forty Eight only) | | | | | |

Note.

- 1 I/We have seen Specifications and details provided in the bid document.
- 2 I/We had gone through the detail specifications included in the tender & fully Conversant with the specifications laid down for concerned items along with IS Code.
- 3 I/ We agree to carry out the work as per detail specifications.
- 4 I/ We hereby tender for execution of work specified in Financial bid at **below/ Above/ At Par** of the estimated Rates in Schedule of rates on the work to be carried.

Contractor's Signature.

Section IX: Detail of Monthly Activity Chart

Name of Work: Annual maintenance of 5000 Trees and Lawns at Little wood plantation at Ambazari for the year 2020-2021.

| Sr. No | Activities | Unit | Monthly Requirement |
|---------------|---|-------------|----------------------------|
| 1 | Replacement of trees of height 3'-5' of similar species | Per month | 10 |
| 2 | Providing fertilizer (DAP) to root zone of plants (Rate as per Market Rate) | Kg | 100 |
| 3 | Providing insecticide/fungicide to plants (Rate as per market rate) | Lit | 5 |
| 4 | Electrical pumping operation/maintenance & maintenance of civil structures | | |
| | A)Electric Bill (500 unit) monthly | Unit | 500 |
| | B)Operator monthly salary | Days | 30 |
| | C) Petrol for Bush cutter/Trimmer | Ltr | 50 |
| | | | |
| 5 | Labours | | |
| | A)Weeding of grass, trimming, branches, applying soil, manure fertilizer (2 Labours per day) | Nos | 60 |
| | B)Spraying inseticides (1 Labour per day) | Nos | 30 |
| | C)Maintenance of Drip system (1 Labour per day) | Nos | 30 |
| | D)Maintenance of Lawn & Shrubs (1 Labours per day) Mali | Nos | 30 |