



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.

which shall be paid by the Contractor to the Employer for every week which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate.

The Employer may, without prejudice to any other method of recovery, deduct the amount of delay damages from any sum due, or to become due to the Contractor or from the Performance Security of the Contractor or any other amounts of the Contractor due from the Employer.

Notwithstanding the above, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages stated in the Annexure-I of PC

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.

It is also agreed that recovery of damages under this Sub-Clause shall be without prejudice to the rights of the Employer under this Contract including the right of Termination thereof.

The Parties hereby accept that delays cause loss to the strategic preparedness of the Kochi Metro Rail Limited for whose uses the Works are meant, and that the loss is not susceptible to precise measurement. The Parties hereby agree that the rate of delay damages agreed in this Sub-Clause 8.7 is a reasonable pre-determined amount, and that the delay damages are not by way of penalty.

**8.8. SUSPENSION OF WORK**

**No Change**

The Engineer may at any time instruct the Contractor to suspend progress of part or all of

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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*].

***Replace existing Sub-Clause with the following:***

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

- a) provided for in the Contract, or
- b) necessary for proper execution of Works or by reasons of weather condition or by some default on the part of the Contractor, or
- c) necessary for the safety of Works or any part thereof or
- d) necessary for the safety of adjoining public or other property or safety of the public or workmen or those who have to be at the site or
- e) to ensure safety and to avoid disruption of traffic and utilities, as also to permit fast repairs and restoration of any damaged utilities,
- f) on account of work carried out by the Contractor not in accordance with the directions of the Engineer; or
- g) on account of any other reason which is not attributable to the Employer
- h) Violations of Environment act & laws or causing damage to the environment, flora & fauna of surrounding area.
- i) caused by any orders of by the relevant legally constituted public authorities in the Country

If the suspension of the work is more than 90 days in continuation then the contractor is entitled claim under Sub-Clause 8.4, & 20.1, if the

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	reason of suspension is not attributable to the contractor.
<p><b>8.10. PAYMENT FOR PLANT AND MATERIALS IN EVENT OF SUSPENSION</b></p> <p>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:</p> <p>(a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and</p> <p>(b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.</p>	<b>No Change</b>
<p><b>8.11. PROLONGED SUSPENSION</b></p> <p>If the suspension under Sub-Clause 8.8 [<i>Suspension of Work</i>] 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 [<i>Variations and Adjustments</i>] 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 [<i>Termination by Contractor</i>].</p>	<b>No Change</b>
<p><b>8.12. RESUMPTION OF WORK</b></p> <p>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.</p>	<b>No Change</b>

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**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-Clause 5.6 [*As-Built Documents*] and Sub-Clause 5.7 [*Operation and Maintenance Manuals*].

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.

Unless otherwise stated in the Particular Conditions, the Tests on Completion shall be carried out in the following sequence:

- (a) pre-commissioning tests, which shall include the appropriate inspections and ("dry" or "cold") functional tests to demonstrate that each item of Plant can safely undertake the next stage, (b);
- (b) commissioning tests, which shall include the specified operational tests to demonstrate that the Works or Section can be operated safely and as specified, under all available operating conditions; and
- (c) trial operation, which shall demonstrate that the Works or Section perform reliably and in accordance with the Contract.

During trial operation, when the Works are operating under stable conditions, the Contractor shall give notice to the Engineer that the Works are ready for any other Tests on Completion, including performance tests to demonstrate whether the Works conform with criteria specified in the Employer's Requirements and with the Schedule of

**No Change**



<p>Guarantees.</p> <p>Trial operation shall not constitute a taking-over under Clause 10 [<i>Employer's Taking Over</i>]. Unless otherwise stated in the Particular Conditions, any product produced by the Works during trial operation shall be the property of the Employer.</p> <p>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 each of the Tests on Completion described in sub-paragraph (a), (b) or (c), the Contractor shall submit a certified report of the results of these Tests to the Engineer.</p>	
<p><b>9.2. DELAYED TESTS</b></p> <p>If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.4 [<i>Testing</i>] (fifth paragraph) and/or Sub-Clause 10.3 [<i>Interference with Tests on Completion</i>] shall be applicable.</p> <p>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.</p> <p>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.</p>	<p><b>No Change</b></p>
<p><b>9.3. RETESTING</b></p> <p>If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5</p>	<p><b>No Change</b></p>

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<p>[<i>Rejection</i>] 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.</p>	
<p><b>9.4. FAILURE TO PASS TESTS ON COMPLETION</b></p> <p>If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [<i>Retesting</i>], the Engineer shall be entitled to:</p> <ul style="list-style-type: none"> <li>(a) order further repetition of Tests on Completion under Sub-Clause 9.3;</li> <li>(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 [<i>Failure to Remedy Defects</i>]; or</li> <li>(c) issue a Taking-Over Certificate, if the Employer so requests.</li> </ul> <p>In the event of sub-paragraph (c), the Contractor shall then 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 [<i>Employer's Claims</i>] and Sub-Clause 3.5 [<i>Determinations</i>]</p>	<p><b>Replace the first para of the GCC sub-clause 9.4 with:</b></p> <p>If the Works fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [<i>Retesting</i>], the Engineer shall be entitled to:</p> <ul style="list-style-type: none"> <li>(a) order further repetition of Tests on Completion under Sub-Clause 9.3; or</li> <li>(b) if the failure deprives the Employer of substantially the whole benefit of the Works , reject the Works (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 [<i>Failure to Remedy Defects</i>].</li> </ul>
<p><b>10. EMPLOYER'S TAKING OVER</b></p>	
<p><b>10.1. TAKING OVER OF THE WORKS AND SECTIONS</b></p> <p>Except as stated in Sub-Clause 9.4 [<i>Failure to Pass Tests on Completion</i>], the Works</p>	<p><b>Sub-clause 10.1 (a) of GCC is amended as under:</b></p> <ul style="list-style-type: none"> <li>(a) certify the Contractor's application and enable the Employer to issue the</li> </ul>

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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.

Taking-Over Certificate to the Contractor, stating the date on which the Works or Section/Terminals 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

**Last paragraph of Sub-clause 10.1 of GCC is amended as under:**

If the Employer fails to issue the Taking-Over Certificate or the Engineer fails 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

***Replace the Existing Sub-Clause the following:***

In case the Employer deems it necessary to take over a Part of completed



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 reasonable 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

Permanent works before the stipulated time of completion of whole Works or of any Section/Terminal, he may take over such parts of works for his further use and issue a taking over certificate for such parts. The Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer

After the Employer 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 a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages shall be as per sub-clause 8.7 [Delay damages] and corresponding annexures.

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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 reasonable profit, which shall be included in the

**First sentence in the 2<sup>nd</sup> paragraph of Sub-Clause 10.3 of GCC is amended as under:**

The Employer 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.

**Delete 3<sup>rd</sup> Para (b)** "*Payment of any...in the Contract Price from the Sub-Clause 10.3 Interference with test on completion.*



<p>Contract Price.</p> <p>After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [<i>Determinations</i>] to agree or determine these matters.</p>	
<p><b>10.4. SURFACES REQUIRING REINSTATEMENT</b></p> <p>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.</p>	<p><b>No Change</b></p>
<p><b>11. DEFECTS LIABILITY</b></p>	
<p><b>11.1. COMPLETION OF OUTSTANDING WORK AND REMEDYING DEFECTS</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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).</li> </ul> <p>If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.</p>	<p><b>No Change</b></p>
<p><b>11.2. COST OF REMEDYING DEFECTS</b></p> <p>All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [<i>Completion of Outstanding</i></p>	<p><b>Add</b> the following paragraph at the end of Sub-Clause 11.2:</p> <p>The Contractor shall be responsible for fulfilling the requirements of Sub-Clause</p>

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<p><i>Work and Remedying Defects</i>] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:</p> <ul style="list-style-type: none"> <li>(a) the design of the Works, other than a part of the design for which the Employer is responsible (if any),</li> <li>(b) Plant, Materials or workmanship not being in accordance with the Contract,</li> <li>(c) improper operation or maintenance which was attributable to matters for which the Contractor is responsible (under Sub-Clauses 5.5 to 5.7 or otherwise), or</li> <li>(d) failure by the Contractor to comply with any other obligation.</li> </ul> <p>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.</p>	<p>11.1 [<i>Completion of Outstanding Works and Remedying Defects</i>] prior to the issue of the Performance Certificate.”</p>
<p><b>11.3. EXTENSION OF DEFECTS NOTIFICATION PERIOD</b></p> <p>The Employer shall be entitled subject to Sub-Clause 2.5 [<i>Employer’s Claims</i>] 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 damage. However, a Defects Notification Period shall not be extended by more than two years.</p> <p>If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [<i>Suspension of Work</i>] or Sub-Clause 16.1 [<i>Contractor’s Entitlement to Suspend Work</i>], 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.</p>	<p><b>No Change</b></p>

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**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.

**No Change**

**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

**No Change**



<p>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.</p>	
<p><b>11.6. FURTHER TESTS</b></p> <p>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, including Tests on Completion and/or Tests after Completion. The requirement shall be made by notice within 28 days after the defect or damage is remedied.</p> <p>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 [<i>Cost of Remedying Defects</i>], for the cost of the remedial work.</p>	<p><b>No Change</b></p>
<p><b>11.7. RIGHT OF ACCESS</b></p> <p>Until the Performance Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the operation and performance of the Works, except as may be inconsistent with the Employer’s reasonable security restrictions.</p>	<p><b>No Change</b></p>
<p><b>11.8. CONTRACTOR TO SEARCH</b></p> <p>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 [<i>Cost of Remedying Defects</i>], the Cost of the search plus reasonable profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [<i>Determinations</i>] and shall be included in the Contract Price.</p>	<p><b>Delete the following from sentence from the existing Clause 11.8:</b></p> <p>“Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [<i>Cost of Remedying Defects</i>], the Cost of the search plus reasonable profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [<i>Determinations</i>] and shall be included in the Contract Price.”</p>
<p><b>11.9. PERFORMANCE CERTIFICATE</b></p>	<p><b>Replace existing Sub-Clause 11.9 with the following:</b></p>

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<p>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.</p> <p>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.</p> <p>Only the Performance Certificate shall be deemed to constitute acceptance of the Works.</p>	<p>Performance of the Contractor’s obligations shall not be considered to have been completed until the Employer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed all his obligations under the Contract.</p> <p>The Employer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the warranty period of EVSEs , and after as the Contractor has supplied all the Contractor’s Documents and completed and tested all the Works, including remedying any defects, records, etc.</p> <p>Only the Performance Certificate shall be deemed to constitute acceptance of the Works.</p>
<p><b>11.10. UNFULFILLED OBLIGATIONS</b></p> <p>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.</p>	<p><b>No Change</b></p>
<p><b>11.11. CLEARANCE OF SITE</b></p> <p>Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor’s Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.</p> <p>If all these items have not been removed within 28 days after the Employer receives a copy of the Performance Certificate, the Employer may sell or otherwise dispose of any</p>	<p><b>No Change</b></p>

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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. TESTS AFTER COMPLETION**

**12.1. PROCEDURE FOR TESTS AFTER COMPLETION**

If Tests after Completion are specified in the Contract, this Clause shall apply. Unless otherwise stated in the Particular Conditions, the Employer shall:

- (a) provide all electricity, equipment, fuel, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the Tests after Completion efficiently, and
- (b) carry out the Tests after Completion in accordance with the manuals supplied by the Contractor under Sub-Clause 5.7 [Operation and Maintenance Manuals] and such guidance as the Contractor may be required to give during the course of these Tests; and in the presence of such Contractor's Personnel as either Party may reasonably request.

The Tests after Completion shall be carried out as soon as is reasonably practicable after the Works or Section have been taken over by the Employer. The Employer shall give to the Contractor 21 days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, these Tests shall be carried out within 14 days after this date, on the day or days determined by the Employer.

If the Contractor does not attend at the time and place agreed, the Employer may proceed with the Tests after Completion, which shall be deemed to have been made in

**No Change**



<p>the Contractor's presence, and the Contractor shall accept the readings as accurate.</p> <p>The results of the Tests after Completion shall be compiled and evaluated by both Parties. Appropriate account shall be taken of the effect of the Employer's prior use of the Works.</p>	
<p><b>12.2. DELAYED TESTS</b></p> <p>If the Contractor incurs Cost as a result of any unreasonable delay by the Employer to the Tests after Completion, 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 reasonable profit, which shall be included in the Contract Price.</p> <p>After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.</p> <p>If, for reasons not attributable to the Contractor, a Tests after Completion on the Works or any Section cannot be completed during the Defects Notification Period (or any other period agreed upon by both Parties), then the Works or Section shall be deemed to have passed this Tests after Completion.</p>	<p><i>Delete the words "plus reasonable profit, which shall be added to the Contract Price" at the end of the first para.</i></p> <p><i>Delete the words "and profit" at the end of the second para.</i></p>
<p><b>12.3. RETESTING</b></p> <p>If the Works, or a Section, fail to pass the Tests after Completion:</p> <ul style="list-style-type: none"> <li>(a) sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall apply, and</li> <li>(b) either Party may then require the failed Tests, and the Tests after Completion on any related work, to be repeated under the same terms and conditions.</li> </ul> <p>If and to the extent that this failure and retesting are attributable to any of the matters listed in sub-paragraphs (a) to (d) of Sub-Clause 11.2 [Cost of Remedying Defects] and</p>	<p><b>No Change</b></p>

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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.

**12.4. FAILURE TO PASS TESTS AFTER COMPLETION**

If the following conditions apply, namely:

- (a) the Works, or a Section, fail to pass any or all of the Tests after Completion,
- (b) the relevant sum payable as non-performance damages for this failure is stated (or its method of calculation is defined) in the Contract, and
- (c) the Contractor pays this relevant sum to the Employer during the Defects Notification Period,

then the Works or Section shall be deemed to have passed these Tests after Completion.

If the Works, or a Section, fail to pass a Test after Completion and the Contractor proposes to make adjustments or modifications to the Works or such Section, the Contractor may be instructed by (or on behalf of) the Employer that right of access to the Works or Section cannot be given until a time that is convenient to the Employer. The Contractor shall then remain liable to carry out the adjustments or modifications and to satisfy this Test, within a reasonable period of receiving notice by (or on behalf of) the Employer of the time that is convenient to the Employer. However, if the Contractor does not receive this notice during the relevant Defects Notification Period, the Contractor shall be relieved of this obligation and the Works or Section (as the case may be) shall be deemed to have passed this Tests after Completion.

If the Contractor incurs additional Cost as a result of any unreasonable delay by the Employer in permitting access to the Works or Plant by the Contractor, either to investigate the causes of a failure to pass a Tests after Completion or to carry out any

*Delete words "plus reasonable profit, which shall be added to the Contract Price" at the end of the third para of sub clause 12.4*

**Delete the words "and profit" at the end of last para of sub-clause 12.4**



adjustments or modifications, 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 reasonable 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.

**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. A Variation shall not comprise the omission of any work which is to be carried out by others.

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, (ii) it will reduce the safety or suitability of the Works, or (iii) it will have an adverse impact on the achievement of the Schedule of Guarantees. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

*Delete the last sentence in the first para*

**Add the following paragraphs after the second paragraph of this Existing Clause 13.1:**

The Employer reserves the right to vary the Scope of Works / Quantities from the whole of Works. Such variations shall be instructed by the Employer. The Contractor shall execute and be bound by such Variations instructed by the Employer.

The price quoted by the Contractor in the Bill of Quantities for Items shall remain firm and fixed irrespective of any factors including variations in quantities instructed by the Employer during the entire period of Contract. The Contract Price shall be adjusted for such changes in quantities.

The Contract price due to such variation shall be within the limits of +/- 25%.



<p><b>13.2. VALUE ENGINEERING</b></p> <p>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.</p> <p>The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [<i>Variation Procedure</i>].</p>	<p><b>No Change</b></p>
<p><b>13.3. VARIATION PROCEDURE</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>(a) a description of the proposed design and/or work to be performed and a programme for its execution,</li> <li>(b) the Contractor’s proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and</li> <li>(c) the Contractor’s proposal for adjustment to the Contract Price.</li> </ul> <p>The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [<i>Value Engineering</i>] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.</p> <p>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.</p> <p>Upon instructing or approving a Variation, the Engineer shall proceed in accordance with</p>	<p><b>Add the following at the end of the existing Sub clause 13.3</b></p> <p>The Engineer shall, as soon as practicable after receipt of proposals under sub-clause 13.3, respond with approval, rejection or comments. If the Engineer instructs or approves a Variation, he shall proceed in accordance with Sub-Clause 3.5 to agree or determine adjustments to the Contract Price, Time for Completion and Schedule of Payments.</p> <p>After receipt of proposal, it will be the prerogative of the Employer, whether to Instruct and proceed ahead with the variation or drop the proposal in part or full. In that case, no cost of preparing and submitting the proposal will be payable to Contractor.</p>

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<p>Sub-Clause 3.5 [<i>Determinations</i>] to agree or determine adjustments to the Contract Price and the Schedule of Payments. These adjustments shall include reasonable profit, and shall take account of the Contractor's submissions under Sub-Clause 13.2 [<i>Value Engineering</i>] if applicable.</p>	
<p><b>13.4. PAYMENT IN APPLICABLE CURRENCIES</b></p> <p>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.</p>	<p><b>Replace the GCC Clause 13.4 and read as under</b></p> <p>Contract shall be awarded in INR only and payment shall also be made to the Contractor in INR only. In case of a successful foreign bidder, all the formalities &amp; procedures required to be followed as per law are to be fulfilled by the concerned foreign Contractor in a timely manner for receiving payment in INR .</p>
<p><b>13.5. PROVISIONAL SUMS</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) Plant, Materials or services to be purchased by the Contractor, for which there shall be included in the Contract Price:             <ul style="list-style-type: none"> <li>(i) the actual amounts paid (or due to be paid) by the Contractor, and</li> <li>(ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any)</li> </ul> </li> </ul>	<p><b>Not Applicable to this Contract</b></p>

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stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Appendix to Tender 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*].

**Add the following at the end of the existing sub clause 13.6**

Man-hour rate for eligible extra works:

Single composite average labor man-hour rate, including overtime if any, supervision, use of tools and tackles and other site expenses and incidentals, consumables for carrying out any major rework / repairs / rectification / modification /, if found due will be at the Local Market Rates prevalent and published by Government of Kerala.



**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.

**Delete the existing Sub –Clause 13.7 and Replace with:**

In case the Government imposes any new tax/ levy on the output services/ goods / work after the award of work, the same shall be reimbursed by Employer at actual. All necessary documents as required by Employer shall have to be provided by the contractor. However, in the event of delay in work execution solely attributable to the contractor the new taxes/ levies imposed during the delay period shall not be reimbursed to the contractor.

In case any tax/levy/duty etc. becomes applicable after the date of bidder's offer, the bidder/ Contractor must convey its impact on his price duly substantiated by documentary evidence in support of the same before opening of the Price Bid. Claim for any such impact after opening the price bid will not be considered by KMRL for reimbursement of tax or reassessment of offer.

**13.8. ADJUSTMENTS FOR CHANGES IN COST**

In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data included in the Appendix to Tender. 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

**This Clause is not applicable in this Contract**



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:

$$P_n = a + b \frac{L_n}{L_o} + c \frac{E_n}{E_o} + d \frac{M_n}{M_o} + \dots$$

Where:

"P<sub>n</sub>" 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 Appendix to Tender;

"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<sub>n</sub>", "E<sub>n</sub>", "M<sub>n</sub>", ... 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<sub>o</sub>", "E<sub>o</sub>", "M<sub>o</sub>", ... 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" (stated in the table) 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 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 the lump sum Accepted Contract Amount and be

**Add the following before sub clause (a)**

The Contract Price shall be the amount mentioned in Letter of Award inclusive of all taxes and GST/IGST and be subject to adjustments in accordance with the

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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 a Schedule are estimated quantities and are not to be taken as the actual and correct quantities of the Works which the Contractor is required to execute; and
- (d) any quantities or price data which may be set out in a Schedule shall be used for the purposes stated in the Schedule and may be inapplicable for other purposes.

However, if any part of the Works is to be paid according to quantity supplied or work done, the provisions for measurement and evaluation shall be as stated in the Particular Conditions. The Contract Price shall be determined accordingly, subject to adjustments in accordance with the Contract.

Contract.

- i. The base price quoted shall be inclusive of all applicable taxes, royalties, levies, cess, charges, fee etc. require to be paid under the Contract or as required by the applicable laws or as required by the laws of India excluding GST/IGST and bid prices shall not be adjusted for any of these costs except for GST/IGST
- ii. The prices quoted by the Tenderer are subject to price adjustment during the performance of the Contract in accordance with the provisions of Clause 13 of Conditions of Contract
- iii. Transportation, packing, forwarding, driving / installation and other charges if any, shall also be included in the quoted price.
- iv. The rates of GST as applicable in India are to be indicated separately in the BOQ as published in e-tender portal in the respective columns. GST/IGST rate and amount applicable shall be shown separately along with HSN/SAC code and if exempted, with appropriate exemption notification document
- v. Contract price will be total price inclusive of all taxes and GST/IGST.
- vi. In case any bidders make arithmetical errors or quote with a different percentage or omit to quote, the same will be corrected as per the percentage applicable against the quoted HSN/SAC in the financial bid. In case no HSN/SAC is provided the quoted rate shall be deemed as inclusive of applicable GST/IGST. If the total corrected value exceeds the total quoted value in the financial bid, then the base price will be adjusted so as to maintain the originally quoted amount inclusive of taxes. It may be noted that KMRL Water Metro project Works is not entitled for any relaxation in GST/IGST rate that are applicable for certain other Govt. projects.
- vii. The tax liability as per GST Act rests with the contractor, ambiguity if any



regarding the percentage for that particular work or Services Accounting Code (SAC)/HSN etc. shall be cleared along with clarification during Pre-Tender Meeting.

viii. Any change in rate of tax (any upward/downward/exemption, etc.) by Government of India after submission of price bid would be admissible subject to proof of such change of rate provided by supplier to KMRL for the respective HSN/SAC code declared by the party in the financial bid and the payment of the same. Any increase, shall be reimbursed by KMRL at actuals on submission of documentary evidence of remittance of tax to the Government. Any liability arising on account of error in classification of HSN/SAC code in the financial bid will be only on the tenderer and will not be borne by KMRL.

ix. Lowest offer will be decided based on the overall lowest amount calculated with the basic price along with GST.

x. Invoice as per GST Act should be furnished prior to every running account/final bills.

xi. The GSTIN of Kochi Metro Rail Ltd is 32AAECK5274H1ZL

xii. GST shall be paid on the quoted/corrected base value as per GST law in India after submission of appropriate GST invoices with GSTIN by the Contractor and GSTIN of Kochi Metro Rail Ltd - 32AAECK5274H1ZL.

Under GST law the contractor shall also comply regarding filing of all the returns to the GST network/government departments within the stipulated time every month or such other period as required by the Government. If the contractor does not comply with any of the GST laws and procedures and if KMRL incurs any liability on this account or does not get the input credit from the GST Network/Government as goods and/or service receiver due to the contractor's failure to comply with the procedures of filing / uploading of data/submissions of

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documents etc in time then all such liability including the input credit of the GST lost by KMRL and the penalties and interest incurred by KMRL would be the liability of the contractor and the same shall be recovered either by recovery from security deposits / any other amount payable by the contractor to KMRL or through direct payment. The contractor shall submit the copy of latest filed return - GSTR1 along with the invoice. The rates quoted by the Contractor in the Bill of Quantities for the individual Items shall remain firm & fixed till the completion of the Contract. In accordance with Sub-Clause 13.1, the Employer may vary / reduce the quantities of Items if so decided by the Employer. If it is instructed by the Employer to reduce the quantity of these items, the Contract Price shall be adjusted in proportion with the Rate quoted in the Bill of Quantity for these items.

The Employer reserves the right to optionally procure/order the execution of up to 12 additional quantity of EVSE Module and its related infrastructure with same scope and technical specifications as per Section VII and Section VIII, within the Time for Completion period by issuing Notice(s) to Proceed at quoted price/rates which shall remain firm and fixed during the Contract. The quantity, terminal name and the time for completion of optional Items / Boat chargers and associated works installation for each terminal shall be mentioned in such Notice(s) to Proceed. The Contract Price shall be adjusted in proportion with the Price quoted in the Bill of Quantity for these items.

**14.2. ADVANCE PAYMENT**

The Employer shall make an advance payment, as an interest-free loan for mobilisation and design, 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 Appendix to Tender.

**Delete the existing Sub-Clause and replace with the Following:**

An interest free Advance payment of not exceeding 20% of the (Twenty Percentage) of the Accepted Contract Amount will be paid. Such advance shall be paid in one installment i.e. 20% (Twenty percent) in one instalment in INR.

The advance amount shall be paid after the following:

1. Contractor submits the Performance Security as per tender



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

The Engineer shall issue an Interim Payment Certificate for the 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 an entity and from within a country (or other jurisdiction) approved by the Employer, 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 may 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.

The advance payment shall be repaid through percentage deductions in Payment Certificates. Unless other percentages are stated in the Appendix to Tender:

- (a) deductions shall commence in the Payment Certificate in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds ten per cent (10%) of the Accepted Contract Amount less Provisional Sums; and
- (b) deductions shall be made at the amortisation rate of one quarter (25%) of the amount of each Payment Certificate (excluding the advance payment and deductions and repayments of retention) in the currencies and proportions of the advance payment, until such time as the advance payment has been repaid.

requirements

- 2. Both parties sign the Agreement,
- 3. Contractor submits Advance Payment Bank Guarantee (Single BG) for the amount equal to 110% of the advance amount [i.e. 110% of 20% of Accepted Contract Amount] issued by Scheduled Bank in India and valid initially till 90 days beyond the Contractual completion period with a claim period of 1 (one) year over and above the validity period of the BG.

The Contractor shall raise the invoice for the advance after the respective conditions as described above are fulfilled and payment shall be made within 15 working days after issuance of first Notice to Proceed and receipt of Invoice from the Contractor.

**Repayment of Mobilization advance:**

The advance paid shall be recovered completely calculated on prorata basis based on the number of the EVSEs (i.e. Total Advance Paid/24 x No. of EVSEs) when their first milestones are achieved and invoiced by the way of deduction of the calculated amount from the Invoice amount, until the entire advance amount is recovered. If the advance payment has not been repaid / adjusted prior to the issue of the Taking-Over Certificate for the whole of the Permanent 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/Bank.

If the Contractor fails to pay back the balance advance amount, It shall recover



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 payable by the Contractor to the Employer.

the amount through Advance Bank Guarantee with interest as per the following paragraph.

**Interest in case of delay in repayment of Advances**

Should there be delay in the progress and completion of Works, as a result of which it is not possible to recover the advance and interest thereon, before the date of completion stipulated in the Contract, then the interest to be charged from the Contractor on the remaining portion of the advance beyond the original completion date specified in the Contract, shall be the State Bank of India 1 year MCLR plus 3% per annum or 12% per annum, whichever is higher up to the date of actual recovery affected by the KMRL.

If the contract is terminated due to default of the Contractor, the 'Mobilization Advance' would be deemed as interest bearing advance at an interest rate equal to the State Bank of India 1 year MCLR, prevailing on the date of issue of Notice of Invitation of Bids plus 3% per annum or 12% per annum, whichever is higher, to be compounded quarterly.

The interest will be calculated from the first day of the month in which an advance is paid to the Contractor and it will be calculated up to the last day of the month in which the recovery is made. Interest for the month would be calculated on the month principal outstanding on the first day on the month.

**14.3. APPLICATION FOR INTERIM PAYMENT CERTIFICATES**

The Contractor shall submit a Statement in six copies to the Engineer after the end of the period of payment stated in the Contract (if not stated, 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 relevant report on progress in accordance with Sub-Clause 4.21 [*Progress Reports*].

**Replace the Sub-Clause 14.3 with the following:**

The Contractor shall submit application (RA Bill) of Interim Payment Certificate with the measurements of the executed work jointly reviewed, agreed and accepted which will then be verified & certified by the Engineer.

The value of works shall be calculated for the quantities of Items executed using the corresponding unit rates for the Items in the BOQ / Contract. While

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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 sub-paragraphs (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 Appendix to Tender 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 Appendix to Tender;
- (d) any amounts to be added and deducted for the advance payment and 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.

submitting the Interim Payment Application / RA Bill, the certificate issued by the Engineer for successful completion of the milestone(s) shall be included as the main supporting document apart from other details like sketches, approvals, etc. as applicable.

The Interim Payment Applications shall be prepared and submitted for the Items of Works executed and milestones completed as per **Annexure-II of PCC**. Interim payment Application shall be submitted once in a Calendar month covering milestones completed for the corresponding Items of Works as per Annexure-II of PCC

The Contractor shall submit the RA Bill in three copies to the Employer in a form approved by the Employer, showing in detail the amounts to which the Contractor submits the statement, together with supporting documents which shall include the relevant report on progress of work under the Contract.

All paper copies shall bear the original signatures of the Contractor. If the monthly Statement and supporting details are found in order, the Engineer shall forward the same to the Employer, with Interim Payment Certificate, as per clause 14.6, for making payment to the Contractor, otherwise return back the Statement with all supporting documents to the Contractor for rectification and resubmission.

While submitting the Statement all supporting details like measurements, sketches, drawings, approvals, calculations etc. shall be submitted with the Statement so that executed works can be verified by the Engineer as well as by the Employer..

- a) All bills raised should specifically state the amount of GST/IGST charged separately.
- b) The Contractor shall submit the Invoice as per GST Act in Three (3) paper

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copies to the Employer after the end of each month, 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].

**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 the Schedule of Payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Sub-Clause 14.3 [Application for Interim Payment Certificates];
- (b) Sub-Clause 14.4 [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 than that on which the 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 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.

**Delete this Sub-Clause 14.4 and substitute with the following:**

Refer Particular Conditions of Contract (PCC) pertaining to sub-clause 14.3 & 14.7 of General Conditions of Contract (GCC) and **Annexure-II** of GCC/PCC.



**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 Appendix to Tender, 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 Appendix to Tender 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

**THIS CLAUSE IS NOT APPLICABLE IN THIS CONTRACT**





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 Appendix to Tender 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 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, issue to the Employer an Interim Payment

No Change



Certificate which shall state the amount which the Engineer fairly determines to be due, with supporting particulars.

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 Appendix to Tender. 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],

**Replace sub clause 14.7 with below**

The Contractor shall be paid 70% of the RA Bill amount within 30 working days of receipt of RA Bill by the Employer along with all supporting documents. The balance amount due to the Contractor shall be arrived at after scrutiny & certification of the Contractor's RA Bill / invoice and affecting other deductions & recoveries as applicable for payment and the balance amount shall be



<p>whichever is later;</p> <p>(b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; and</p> <p>(c) the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate.</p> <p>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.</p>	<p>paid/adjusted along with the next RA Bill payment to the Contractor. The deductions applicable shall be;</p> <ol style="list-style-type: none"> <li>a) Deduction of 5 % of the RA bill amount as Retention Money.</li> <li>b) Deduction of requisite amount of RA Bill as adjustment in accordance with Clause 14.2 towards the Advance payment made by the Employer</li> <li>c) Deductions, other than pursuant to Sub-clause 8.7 of any amount which may have become due and payable by the Contractor to the Employer.</li> <li>d) Deduction of amounts included in previous statements.</li> <li>e) Deduction of Income Tax as per the relevant provisions of the Income Tax Act and or as per the advice of the Income Tax Authority.</li> <li>f) If any adverse comments regarding the workmanship or the quality of the work done in the previous bill is made by the Engineer, then appropriate and suitable amount shall be recovered from successive bills.</li> <li>g) Referring to Environment /Safety /Health Specifications of the Contract, unresolved non-compliance at the date of payment shall suspend 2 % of the payment of the Interim Payment Certificate until settlement of the non-compliance. Such payment suspension does not grant any Contractor's entitlement specified in Clauses 14.8 and 16 of the General Conditions of Contract from the interim payment certificate.</li> </ol> <p>From the gross amount payable, recovery such as TDS, taxes would be made. All bills raised should specifically state the amount of taxes charged separately. All payments shall be subject to TDS provisions in force from time to time. The Bidders are expected to submit certificates from competent authorities for lesser / non-deduction of TDS. If any adverse comments regarding the workmanship or the quality of the work done in the previous bill is made by the Engineer, then appropriate and suitable amount shall be recovered from successive bills.</p>
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\*Add:  
KfW Reimbursement Clause

It is obligatory to use all standard forms as specified in the KfW's guidelines for all reimbursements, guarantees or other payments to the employer. KfW's standard forms for advance payment bond and performance bond are included in this bidding document.

Reimbursement payments shall be made to KfW to the following bank account:

Account holder: KfW Entwicklungsbank  
Account number: 38 000 000 00  
Branch code (BLZ): 500 204 00  
Account number (IBAN): DE53 5002 0400 3800 0000 00  
SWIFT/BIC: KFWIDEFF

Payment to be made for the account of...XXXX (insert name of the beneficiary and the beneficiary's country)

**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, and shall be paid in such

**This Clause is not applicable in this Contract**



<p>currency.</p> <p>The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.</p>	
<p><b>14.9. PAYMENT OF RETENTION MONEY</b></p> <p>When the Taking-Over Certificate has been issued for the Works, and the Works have passed all specified tests (including the Tests after Completion, if any), 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, the relevant percentage of the first half of the Retention Money shall be certified and paid when the Section passes all tests.</p> <p>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, the relevant percentage 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.</p> <p>However, if any work remains to be executed under Clause 11 [<i>Defects Liability</i>] or Clause 12 [<i>Tests after Completion</i>], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.</p> <p>The relevant percentage for each Section shall be the percentage value of the Section as stated in the Appendix to Tender. If the percentage value of a Section is not stated in the Appendix to Tender, no percentage of either half of the Retention Money shall be released under this Sub-Clause in respect of such Section.</p>	<p><b>Replace the GC Sub-Clause 14.9 with the provisions as under:</b></p> <p>KMRL shall release the retention money as below:</p> <ol style="list-style-type: none"> <li>1. 50% of the retention money shall be paid by the Employer after completion of Works and issuance of last taking over certificate by the Employer.</li> <li>2. Balance retention amount shall be released by the Employer subject to the following; <ul style="list-style-type: none"> <li>a) Contractor has submitted Final Bill</li> <li>b) Defect Notification Period as per contract has expired.</li> <li>c) Contractor has furnished 'No Claim Certificate' in specified format.</li> <li>d) Contractor has carried out the works required to be carried out by him during the period of Defect Notification Period and all expenses incurred by KMRL on carrying out such works is included for adjustment from the retention money refundable.</li> <li>e) The Employer reserves the right to consider releasing the retention amount against submission of retention BG/s in a format approved by the Employer.</li> </ul> </li> </ol>
<p><b>14.10. STATEMENT AT COMPLETION</b></p>	<p><b>No CHANGE</b></p>

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Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six 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, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

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

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require and shall make 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".

**No CHANGE**



<p>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 [<i>Obtaining Dispute Adjudication Board's Decision</i>] or Sub-Clause 20.5 [<i>Amicable Settlement</i>], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.</p>	
<p><b>14.12. DISCHARGE</b></p> <p>When submitting the Final Statement, the Contractor shall submit a written discharge which confirms that the total of the Final Statement represents full and final settlement of all 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.</p>	<p><b>No CHANGE</b></p>
<p><b>14.13. ISSUE OF FINAL PAYMENT CERTIFICATE</b></p> <p>Within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 14.11 [<i>Application for Final Payment Certificate</i>] and Sub-Clause 14.12 [<i>Discharge</i>], the Engineer shall issue, to the Employer, the Final Payment Certificate which shall state:</p> <p>(a) the amount which is finally due, and</p> <p>(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.</p> <p>If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-</p>	<p><b>No CHANGE</b></p>

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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.

**No CHANGE**

**14.15. CURRENCIES OF PAYMENT**

The Contract Price shall be paid in the currency or currencies named in the Appendix to Tender. Unless otherwise stated in the Particular Conditions, 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 Appendix to Tender, except as otherwise agreed by both

**No CHANGE**





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 Appendix to Tender shall be made in
- (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 Appendix to Tender, 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;
- the currencies and proportions specified in the Appendix to Tender;
- (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



<p>sums otherwise payable to the Contractor in other currencies; and (e) if no rates of exchange are stated in the Appendix to Tender, they shall be those prevailing on the Base Date and determined by the central bank of the Country.</p>	
<p><b>15. TERMINATION BY EMPLOYER</b></p>	
<p><b>15.1. NOTICE TO CORRECT</b> 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.</p>	<p><b>No CHANGE</b></p>
<p><b>15.2. TERMINATION BY EMPLOYER</b> 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,</p>	<p><b>No CHANGE</b></p>

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(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.

**No CHANGE**

**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 design, 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

**Delete the Sub-Clause 15.4 and substitute with the following:**

"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 actions in accordance with the following sub-paragraphs (i), and (ii) are completed;
  - (i) encash and forfeit the whole of the amounts of Performance Security and Retention Money and take possession of Plant and Materials delivered to Site, for which payment has been made by



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.

- the Employer;
- (ii) encash and appropriate the bank guarantee for the Advance Payment to recover the outstanding amount, if any, of the Advance Payment and / or other outstanding amount; and/or
  - (c) withhold further payments to the Contractor until the costs of design, 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;
  - (d) 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].
  - (e) Any outstanding amounts against the Contractor shall immediately become due and payable by the Contractor to the Employer. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor

The Parties hereby agree that the damages stated in sub-paragraph (d) above are genuine pre-estimate of the losses suffered by the Employer and are not by way of penalty”

**15.5. EMPLOYER’S ENTITLEMENT TO TERMINATION**

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

**NO CHANGE**



arrange for the Works to be executed by another 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 19.6 [Optional Termination, Payment and Release].

**16. SUSPENSION AND TERMINATION BY CONTRACTOR**

**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.

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,

**Delete Clause (b) of para 4**

**Add new paragraph**

"The Bank has no legal obligations towards the Contractor and is not obliged to inform the Contractor about suspension of disbursements or any other circumstances or conduct."



under Sub-Clause 8.4 [Extension of Time for Completion], and  
(b) payment of any such Cost plus reasonable 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 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,
- (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

***Replace the existing Sub-Clause with the provisions as under;***

The Contractor shall be entitled to terminate the Contract if:

- (a) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (b) 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]),
- (c) 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,
- (d) the Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment],
- (e) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- (f) 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.
- (g) the Contractor does not receive the Engineer’s instruction recording the

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<p>applicable Laws) has a similar effect to any of these acts or events.</p> <p>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.</p> <p>The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.</p>	<p>agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].</p> <p>In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract.</p> <p>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, 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.</p> <p>The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.</p>
<p><b>16.3. CESSATION OF WORK AND REMOVAL OF CONTRACTOR'S EQUIPMENT</b></p> <p>After a notice of termination under Sub-Clause 15.5 [Employer's Entitlement to Termination], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:</p> <ul style="list-style-type: none"> <li>(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,</li> <li>(b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and</li> <li>(c) remove all other Goods from the Site, except as necessary for safety, and</li> </ul>	

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leave the Site.			
<p><b>16.4. PAYMENT ON TERMINATION</b></p> <p>After a notice of termination under Sub-Clause 16.2 [<i>Termination by Contractor</i>] has taken effect, the Employer shall promptly:</p> <ul style="list-style-type: none"> <li>(a) return the Performance Security to the Contractor,</li> <li>(b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and</li> <li>(c) pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.</li> </ul>		<p><b>Delete sub-paragraph (c) of Sub-Clause 16.4</b></p>	
<p><b>17. RISK AND RESPONSIBILITY</b></p>			
<p><b>17.1. INDEMNITIES</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>(a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, 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</li> <li>(b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss: <ul style="list-style-type: none"> <li>(i) arises out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, and</li> </ul> </li> </ul>		<p><b>Replace the Sub Clause 17.1 with the Following:</b></p> <p>The Contractor shall indemnify and hold harmless the Employer (KMRL), the Engineer, the Other Designated Contractors, representatives and employees from and against all actions, suits, proceedings, claims, damages, losses, expenses and demands of every nature and description, by reasons of any act or omissions of the Contractor, his representative or his employees in the execution of the Works, including professional services provided by the Contractor.</p> <p>These indemnification obligations shall include but not be limited to claims, damages, losses, damage proceedings, charges and expenses which are attributable to:</p> <ul style="list-style-type: none"> <li>i. Sickness, or disease, or death of, or injury to any person; and</li> <li>ii. loss of, or damage to, or destruction of any property (other than the</li> </ul>	
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<p>(ii) is attributable to any negligence, wilful act or breach of the Contract by the Contractor, the Contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.</p> <p>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 [<i>Insurance Against Injury to Persons and Damage to Property</i>].</p>	<p>Works) including consequential loss of use; and</p> <p>iii. loss, damage or costs arising from the carriage of Plant and Materials and/or ownership or chartering of marine vessels by the Contractor, or any sub-contractor of any tier.</p> <p>The Contractor shall also indemnify and save harmless the Employer from and against all claims and proceedings on account of infringements of patents rights, design, trademark name etc. as detailed out in the technical specification.</p> <p>All sums payable by way of compensation under these conditions shall be consider reasonable compensation payable to the employer without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained.</p> <p>The decision of the Engineer as to compensation claimed shall be final and binding.</p>
<p><b>17.2. CONTRACTOR'S CARE OF THE WORKS</b></p> <p>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 [<i>Taking Over of the Works and Sections</i>]) 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.</p> <p>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.</p> <p>If any loss or damage happens to the Works, Goods or Contractor's Documents during</p>	<p><b>No CHANGE</b></p>

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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 below are:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (b) rebellion, terrorism, 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 and other employees of the Contractor and Subcontractors,
- (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, if any, and

**No CHANGE**



<p>(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 preventative precautions.</p>	
<p><b>17.4. CONSEQUENCES OF EMPLOYER’S RISKS</b></p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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], reasonable profit on the Cost shall also be included.</li> </ul> <p>After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [<i>Determinations</i>] to agree or determine these matters.</p>	<p><b><i>Replace the existing Sub-Clause 17.4 with the provisions as under:</i></b></p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) payment of any such Cost, which shall be included in the Contract Price.</li> </ul> <p>After receiving this further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.</p>
<p><b>17.5. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS</b></p> <p>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.</p>	<p><b>No CHANGE</b></p>

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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 Employer's Requirements, or
  - (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.
- (b) a result of any Works being used by the Employer:

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 Contractor's design, manufacture, construction or execution of the Works, (ii) the use of Contractor's Equipment, or (iii) the proper use of the Works.

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**

**No CHANGE**



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 under Sub-Clause 16.4 [*Payment on Termination*] and Sub-Clause 17.1 [*Indemnities*].

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 [*Employers Equipment and Free-Issue Material*], Sub-Clause 17.1 [*Indemnities*] and Sub-Clause 17.5 [*Intellectual and Industrial Property Rights*], shall not exceed the sum stated in the Particular Conditions or (if a 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.

**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 consistent with the details annexed to the Particular Conditions.

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

***Add the following at the end of Sub-Clause 18.1:***

**"2<sup>nd</sup> and 3<sup>rd</sup> Sentence under 1<sup>st</sup> paragraph of Sub-clause 18.1 is replaced as under:**

The insuring Party shall be the Contractor. The Contractor shall submit draft terms of the insurances in line with the Contractual provisions within five days from the of date of LOA issued by the Employer. The Contractor shall proceed to submit the Insurances after the approval of the draft terms by the Employer in accordance with the timelines mentioned in the Contract Data. The terms of Insurances (once and as approved by the Employer) shall take precedence over the provisions of this Clause. The insurances shall mention the Project Name as per the Contract.



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 Appendix to Tender (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.

**Add the following at the end of Sub-Clause 18.1:**

“The insurances provided by the Contractor pursuant to Sub-Clauses 18.2, 18.3, 18.4 & 18.5 shall be obtained from an insurance company within India and acceptable to the Employer.

Insurance to cover risks within India as well Marine and transit insurances shall invariably be effected with an Indian Insurance Company.

The Insurance policy(ies) shall be jointly insured in the name of the Employer and the Contractor.

It shall be the exclusive responsibility of the CONTRACTOR to lodge and pursue any or all claims in respect of the insurances.

In default by the contractor to effect or maintain insurance as required to effect and maintain under the Contract, the Employer shall be entitled (but without obligation to do so) to take out/or pay the premium for any such policy(ies) and deduct the premium(s) and other costs and expenses incurred in this behalf by the Employer from the monies for the time due or payable or becoming due or payable to the Contractor.

Following Add on covers shall be covered in the policy;

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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.

1. Owners' Surrounding Property
2. Maintenance Period Extension (Extended Maintenance Cover)
3. Automatic Reinstatement Clause
4. Clearance and Removal of Debris/ Debris Removal limit per occurrence
5. Cover for offsite storage / fabrication
6. Third Party Liability Cover with Cross Liability required during Maintenance period
7. Waiver of Subrogation Clause
8. Air Freight
9. Cover of Extra Charges for Overtime, Night Work, Work on Public Holidays, Express Freight including Air Freight/ Expediting cost including Air Freight & Express Freight
10. Design Defect Liability as per Munich Re wording
11. Additional/Increased Custom duty
12. Loss minimisation expenses
13. Professional Fees
14. Waiver of Contribution clause (between Principal and the Contractor only)
15. 50:50 Clause
16. 72 Hours Clause
17. Nominated Loss Adjuster's Clause
18. On Account Payment Clause
19. Put to Use Clause
20. Public Authorities Clause
21. Earthquake
22. STFI
23. Terrorism
24. Testing Period (if Testing is required)

**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

**Add the following new sub-paragraph after sub-paragraph (e) of 4<sup>th</sup> paragraph of Sub-Clause 18.2:**

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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] and Clause 12 [Tests after Completion]).

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 between the Parties for the sole purpose 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 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 Appendix to Tender (if an amount is not so stated,

"(f) shall cover collision and other risks to works/operation on, under, in or through the sea, since the Site where work or part of the works is to be executed is sea/river side."

**Add the following paragraph after sub-paragraph (e) of 4<sup>th</sup> paragraph of Sub-Clause 18.2**

**Details of Deductible Excess**

**Normal Period** – 5% of claim amount subject to a minimum of Rs 25,000/-

Maintenance Period – NIL

AOG Perils – 5% of claim amount subject to minimum of Rs 1,00,000/-

Theft & Burglary – NIL

Fire & Explosion – NIL



- 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 sub-paragraph (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*]),

**Add the following at the end of Sub-Clause 18.3:**

The Contractor shall at all times indemnify and keep indemnified the Employer and its officers, servants, agents from and against all third party claims whatsoever (including but not limited to property loss and damage,



<p>which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.</p> <p>This insurance shall be for a limit per occurrence of not less than the amount stated in the Appendix to Tender, with no limit on the number of occurrences. If an amount is not stated in the Appendix to Tender, this Sub-Clause shall not apply.</p> <p>Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:</p> <ul style="list-style-type: none"> <li>(a) shall be effected and maintained by the Contractor as insuring Party,</li> <li>(b) shall be in the joint names of the Parties,</li> <li>(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</li> <li>(d) may however exclude liability to the extent that it arises from:             <ul style="list-style-type: none"> <li>(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,</li> <li>(ii) damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects, and</li> <li>(iii) a cause listed in Sub-Clause 17.3 [<i>Employer's Risks</i>], except to the extent that cover is available at commercially reasonable terms.</li> </ul> </li> </ul>	<p>personal accident, injury or death of/or to property or person of any Sub-contractor and/or the servants/agents of the Contractor or any Sub-contractor(s) and/or the Employer) arising out of any act or omission of the Contractor and the Contractor shall at his own cost and initiative at all times up to the successful conclusion of the defect notification period, take out and maintain all insurable liabilities under this Clause, including but not limited to third party insurance and liabilities under the Motor Vehicles Act, Worker's Compensation Act, Fatal Accidents Act, Personal Injuries Insurance Act, Emergency Risk Insurance Act and/or other Industrial Legislation from time to time in force in India with Insurance Company(ies) approved by the Employer, and such policy(ies) shall be of not lesser limit than the limits hereunder specified with reference to the matters hereunder specified, namely.</p> <ul style="list-style-type: none"> <li>a. Employees Compensation Insurance in accordance with Sub-Clause 18.4.</li> </ul> <p>The minimum amount of the insurance shall be Rs 3,00,000/- (INR 3 Lakhs) for any one incident with number of incidents limited to 10% of the Accepted Contract Amount. This shall be separate policy.</p>
<p><b>18.4. INSURANCE FOR CONTRACTOR'S PERSONNEL</b></p> <p>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.</p>	<p><b>Add the following at the end of Sub-Clause 18.4:</b></p> <p>The Contractor shall take Employees Compensation Insurance to the limit to which compensation may be payable under the laws of the Republic of India.</p>

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<p>The Employer and the Engineer shall also be indemnified under the policy of insurance, 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.</p> <p>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.</p>	
<p><b>Sub-Clause 18.5</b> <b>Insurance of Floating Craft/Equipment</b> <b>(New Sub-Clause)</b></p>	<p><b>Add new Sub-Clause 18.5 as follows:</b></p> <p>"In addition to the provisions of Clause 18, the Contractor is required to ensure that all floating Craft/Equipment used by him for the purpose of the Works are insured against all marine risks appropriate to their respective uses and shall confirm that such insurances effected provide full cover to the satisfaction of the Employer."</p>
<p><b>19. FORCE MAJEURE</b></p>	
<p><b>19.1. DEFINITION OF FORCE MAJEURE</b></p> <p>In this Clause, "Force Majeure" means an exceptional event or circumstance:</p> <ul style="list-style-type: none"> <li>(a) which is beyond a Party's control,</li> <li>(b) which such Party could not reasonably have provided against before entering into the Contract,</li> <li>(c) which, having arisen, such Party could not reasonably have avoided or overcome, and</li> <li>(d) which is not substantially attributable to the other Party.</li> </ul>	<p><b>No CHANGE</b></p>

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<p>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:</p> <ul style="list-style-type: none"> <li>(i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,</li> <li>(ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,</li> <li>(iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,</li> <li>(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</li> <li>(v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.</li> </ul>	
<p><b>19.2. NOTICE OF FORCE MAJEURE</b></p> <p>If a Party is or will be prevented from performing any of its 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.</p> <p>The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.</p> <p>Notwithstanding any other provision of this Clause, Force Majeure shall not apply to</p>	<p><b>No CHANGE</b></p>

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obligations of either Party to make payments to the other Party under the Contract.		
<p><b>19.3. DUTY TO MINIMISE DELAY</b></p> <p>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.</p> <p>A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.</p>		<b>No CHANGE</b>
<p><b>19.4. CONSEQUENCES OF FORCE MAJEURE</b></p> <p>If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [<i>Notice of Force Majeure</i>], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [<i>Contractor's Claims</i>] to:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(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 the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.</li> </ul> <p>After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [<i>Determinations</i>] to agree or determine these matters.</p>	<p><b>Delete the following words from the first para of the existing sub clause 19.4</b></p> <p>“and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [<i>Contractor's Claims</i>] to: ”</p> <p>Delete sub para (b) from the existing sub clause 19.4</p>	
<p><b>19.5. FORCE MAJEURE AFFECTING SUBCONTRACTOR</b></p> <p>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</p>		<b>No CHANGE</b>

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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) any other Cost or liability which in the circumstances was reasonably 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

**No CHANGE**



<p>connection with the Works at the date of termination.</p>	
<p><b>19.7. RELEASE FROM PERFORMANCE UNDER THE LAW</b></p> <p>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:</p> <p>(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</p> <p>(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.</p>	<p><b>No CHANGE</b></p>
<p><b>20. CLAIMS, DISPUTES AND ARBITRATION</b></p>	
<p><b>20.1. CONTRACTOR'S CLAIMS</b></p> <p>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.</p> <p>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</p>	<p><b>Replace existing sub clause with the below</b></p> <p>If the Contractor intends to claim any additional payment under any clause of these Conditions, the contractor shall give notice to the Engineer as soon as possible and in any event within 28 days of the start of the event giving rise to the claim.</p> <p>The Contractor shall keep such contemporary records to substantiate any claim, either on the Site or at any other location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer shall, on receipt of such notice, inspect such records and may instruct the Contractor to keep further</p>

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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

contemporary records. The Contractor shall permit the Engineer to inspect all such records, and shall (if instructed) submit copies to the Engineer.

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

If the Contractor fails to comply with this Sub-Clause, he shall not be entitled to claim any additional payment nor extension of time of completion.

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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 such time.

Each Payment Certificate shall include such amounts for any claim as have 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.

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.

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.

**20.2. APPOINTMENT OF THE DISPUTE ADJUDICATION BOARD**

Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*]. The Parties shall jointly appoint a DAB by the date 28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DAB in accordance with Sub-Clause 20.4.

The DAB shall comprise, as stated in the Appendix to Tender, either one or three

**Not Applicable to this contract**



suitably qualified persons ("the members"). If the number is not so stated and the Parties do not agree otherwise, the DAB shall comprise three persons.

If the DAB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman.

However, if a list of potential members is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DAB.

The agreement between the Parties and either the sole member ("adjudicator") or each of the three members shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may appoint a suitably qualified person or persons to replace any one or more members of the DAB. Unless the Parties agree otherwise, the appointment will come into effect if a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment. The replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DAB (including each member) shall expire when the DAB has given its decision on the dispute referred to it under Sub-Clause 20.4 [*Obtaining Dispute Adjudication Board's Decision*], unless other disputes have been



<p>referred to the DAB by that time under Sub-Clause 20.4, in which event the relevant date shall be when the DAB has also given decisions on those disputes.</p>	
<p><b>20.3. FAILURE TO AGREE DISPUTE ADJUDICATION BOARD</b></p> <p>If any of the following conditions apply, namely:</p> <ul style="list-style-type: none"> <li>(a) the Parties fail to agree upon the appointment of the sole member of the DAB by the date stated in the first paragraph of Sub-Clause 20.2 [Appointment of the Dispute Adjudication Board]</li> <li>(b) either Party fails to nominate a member (for approval by the other Party) of a DAB of three persons by such date,</li> <li>(c) the Parties fail to agree upon the appointment of the third member (to act as chairman) of the DAB by such date, or</li> <li>(d) the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,</li> </ul> <p>then the appointing entity or official named in the Appendix to Tender shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DAB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.</p>	<p><b>Not Applicable to this contract</b></p>
<p><b>20.4. OBTAINING DISPUTE ADJUDICATION BOARD'S DECISION</b></p> <p>If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any</p>	<p><b>Not Applicable to this contract</b></p>

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certificate, determination, instruction, opinion or valuation of the Engineer, then after a DAB has been appointed pursuant to Sub-Clause 20.2 [*Appointment of the Dispute Adjudication Board*]and 20.3 [*Failure to Agree Dispute Adjudication Board*], either Party may refer the dispute in writing to the DAB for its decision, with a copy to the other Party. Such reference shall state that it is given under this Sub-Clause.

For a DAB of three persons, the DAB shall be deemed to have received such reference on the date when it is received by the chairman of the DAB.

Both Parties shall promptly make available to the DAB all information, access to the Site, and appropriate facilities, as the DAB may require for the purposes of making a decision on such dispute. The DAB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference or the advance payment referred to in Clause 6 of Appendix – General Conditions of Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. However, if neither of the Parties has paid in full the invoices submitted by each Member pursuant to Clause 6 of the Appendix – General Conditions of Dispute Adjudication Agreement, the DAB shall not be obliged to give its decision until such invoices have been paid in full. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DAB’s decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference or such payment, then either Party may, within 28 days after

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<p>this period has expired, give notice to the other Party of its dissatisfaction.</p> <p>In either event, this notice of dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Adjudication Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute Adjudication Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Sub-Clause.</p> <p>If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.</p>	
<p><b>20.5. AMICABLE SETTLEMENT</b></p> <p>Where 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, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.</p>	<p>(a) <b>GCC Clause 20.5 is deleted.</b></p>
<p><b>20.6. ARBITRATION</b></p> <p>Unless settled amicably, any dispute in respect of which the DAB's decision (if any) has not become final and binding shall be finally settled by international arbitration. Unless otherwise agreed by both Parties:</p> <p>(a) the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce,</p> <p>(b) the dispute shall be settled by three arbitrators appointed in accordance with</p>	<p><b>Replace existing sub clause with the below</b></p> <p>In case of any dispute or differences arising out of this agreement then the same shall be settled amicably between the parties by way of mutual discussion or negotiation. If such discussion or negotiation, could not resolve the issue within 30 days from the date of commencement of such discussion or negotiation then the same shall be referred to a Sole Arbitrator to be appointed from the Panel of Arbitrators maintained by KMRL. If any dispute is raised by the contractor and arbitration clause is invoked, the Employer shall within 30 days of such invocation, submit to the contractor a panel having not less than 4 Arbitrators,</p>

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<p>these Rules, and</p> <p>(c) the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].</p> <p>The arbitrator(s) 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 DAB, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.</p> <p>Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB to obtain its decision or to the reasons for dissatisfaction given in its notice of dissatisfaction. Any decision of the DAB shall be admissible in evidence in the arbitration.</p> <p>Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any arbitration being conducted during the progress of the Works.</p>	<p>from which the Contractor shall chose one as Sole Arbitrator. Arbitration shall be conducted under the provisions of the Arbitration and conciliation Act, 1996. Venue and seat of the arbitration shall be Ernakulam. Language of the proceedings shall be English. Award of the sole arbitration shall be final and binding upon the parties.</p>
<p><b>20.7. FAILURE TO COMPLY WITH DISPUTE ADJUDICATION BOARD’S DECISION</b></p> <p>In the event that:</p> <p>(a) neither Party has given notice of dissatisfaction within the period stated in Sub-Clause 20.4 [<i>Obtaining Dispute Adjudication Board’s Decision</i>],</p> <p>(b) the DAB’s related decision (if any) has become final and binding, and</p> <p>(c) a Party fails to comply with this decision,</p> <p>then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [<i>Arbitration</i>].Sub-Clause 20.4 [<i>Obtaining Dispute Adjudication Board’s Decision</i>] and Sub-Clause 20.6 [<i>Amicable Settlement</i>] shall</p>	<p><b>Not Applicable to this contract</b></p>

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not apply to this reference.	
<p><b>20.8. EXPIRY OF DISPUTE ADJUDICATION BOARD’S APPOINTMENT</b></p> <p>If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DAB in place, whether by reason of the expiry of the DAB’s appointment or otherwise:</p> <p>(a) Sub-Clause 20.4 [<i>Obtaining Dispute Adjudication Board’s Decision</i>] and Sub-Clause 20.6 shall not apply, and</p> <p>(b) the dispute may be referred directly to arbitration under Sub-Clause 20.6 [<i>Arbitration</i>].</p>	<p><b>Not Applicable to this contract</b></p>
<p><b>Sub Clause 20.9 Interest on Arbitration</b> <b>(New Clause)</b></p>	<p><b>Add New Sub Clause 20.9 after Sub-Clause 20.8</b></p> <p>Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period, till the date on which the award is made.</p>
<p><b>Sub Clause 20.10 Suspension of Work on account of Arbitration</b> <b>(New- Sub Clause)</b></p>	<p><b>Add New Sub Clause 20.10 after New Sub-Clause 20.9</b></p> <p>The reference to Conciliation / Arbitration shall proceed notwithstanding that the works shall not then be or be alleged to be complete, provided always that the obligations of the Employer, Engineer and the Contractor shall not be altered by reasons of arbitration being conducted during the progress of the Works. Neither party shall be entitled to suspend the work or part of the work to which the dispute relates on account of arbitration and payments to the Contractor shall continue to be made in terms of the Contract.</p>
<p><b>Sub Clause 20.11 Finalization of Arbitral Award</b></p>	<p><b>Add New Sub Clause 20.11 after New Sub-Clause 20.10</b></p>

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<b>(New- Sub Clause)</b>	Parties do hereby agree that the award of the arbitrator shall be final and binding upon the parties.
<b>21. OTHER GENERAL CLAUSES ( NEW CLAUSE)</b>	
<b>21.1. TRAINING OF CONTRACTORS EMPLOYEES</b>	The Contractor shall provide a training / workshop on Safety, Health and Environment (SHE) to all its workers / employees / subcontractors of 12 hours at the time of induction. Before posting any of his workers / staff / employees/ subcontractors, the Contractor shall give a certificate that the said person had undergone the requisite SHE training. Noncompliance of the above will invoke penalties as per conditions of contract on SHE.
<b>21.2. MAINTAINING THE SITE</b>	<p>In general, the cleanliness, lighting, safety, security, drinking water, first aid etc. will be the responsibility of the civil contractor as specified in the interface document.</p> <p>The Contractor shall be responsible for maintaining the site. The daily sweeping and cleaning of the area under his possession/work shall be his responsibility.</p> <p>In case of repeated aberrations notices by the Engineer, a minimum penalty of Rs. 5000/- shall be imposed for each instance.</p>
<b>21.3. ENVIRONMENTAL MONITORING PROGRAMME</b>	The Environmental Monitoring Programme and mitigation measures during construction stage shall be as specified in Section-XIII [QSHE Manual] of the RFP document.

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**Annexure-I to Particular Conditions of Contract**  
**Delay Damages**

Milestones	Description	Time for Completion	Delay Damages
1.	Delay in Time for Completion	Refer SI No. 4 of Contract Data, Part A of PCC and Sub-clause 1.1.3.3 and 8.1 & 8.2 of GCC/PCC	Delay Damages shall at the rate of 0.75 % of Contract Price applicable per calendar week of delay or part thereof

**Note:**

- i) The Delay Damages as stated above shall be applicable for each terminal.
- ii) Total of Delay Damages as stated above shall not exceed ten percent (10%) of the Contract Price.

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**ANNEXURE-II to Particular Conditions of Contract**

**SCHEDULE OF PAYMENTS**

Payment shall be made for the actual quantity of Items executed as per the following schedule

**A - Schedule of Payment for EVSE module (SI 1.01 of e-BoQ), Electrical infrastructure including Transformer (SI 2.01 of e-BoQ), and LT Switch Board (SI 2.02 of e-BoQ), Items - Supply and Installation**

Cost Centre	Item of Work	Payment percentage
A-01	Supply and delivery of Item to the project site and on completion of physical verification by the Employer/representative	75.00%
A-02	Installation of the Item	15.00%
A-03	Testing and Commissioning of the Item	10.00%
	<b>Total</b>	<b>100%</b>

**B - Schedule of Payment for cables / Cable trays / Earthing Materials (including all other items not listed in schedule A above) - Supply and Installation:**

Cost Centre	Item of Work	Payment percentage
B-01	Supply and delivery of Items to the project site and on completion of physical verification by the Employer/representative	80.00%
B-02	Installation of Item	20.00%
	<b>Total</b>	<b>100%</b>

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KOCHI METRO RAIL LTD  
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**SECTION-XII**  
**(Contract Forms)**

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**Form-A Notification of Award**

**LETTER OF AWARD**

*[letter head paper of the Employer]*

Ref. No. ....

Dated:.....

M/s .....

PH : .....

FAX : .....

E-mail : .....

ATTN: Mr. .... (Designation - .....

**SUB: Letter of Acceptance (LOA) – “NAME OF THE JOB/PROJECT”**

**REF: 1) E-Tender ID No. .... dated .....**

**2) Bid Ref No. .... dated ..... submitted by M/s ..... against subject above referred E-Tender**

Dear Sir,

With reference to your Bid submission Ref. No. .... dated ..... against Tender referred for the subject Works and having been qualified for the subject works, we are pleased to issue this Letter of Acceptance (LOA) with the approval of the Competent Authority for “Name of the Job/Project” subject to the following terms and conditions:

**1.0 SCOPE OF WORK**

Scope of work, specifications and all terms and conditions under this contract shall be as detailed in various sections of the Tender Document including Amendments/ Corrigendum without any deviations.

**2.0 ACCEPTED CONTRACT AMOUNT**

The Accepted Contract Amount is Rs. .... (Rupees ..... only) based on Priced Bill of Quantities (BOQ) enclosed as **Annexure I** and terms & conditions of the Tender Document including Amendments/Corrigendum. All other stipulations made by you in your bid / correspondence exchanged prior to issue of LOA shall be treated as null and void and deemed to have been unconditionally withdrawn by you.

**3.0 TAXES AND DUTIES**

The Accepted Contract Amount mentioned above is inclusive of all taxes and duties but excluding GST/IGST. GST/IGST shall be paid by the Employer at actual as per GST/IGST law in India after submission of appropriate GST/IGST invoices with GSTIN by the Contractor.

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**4.0 TIME FOR COMPLETION**

The Time for completion of this work shall be ..... Months as per Clause 8.2 of SCC of the tender document including Amendments/Corrigendum (if any).

**5.0 PERFORMANCE SECURITY BANK GUARANTEE**

You are required to deposit a Performance Security Bank Guarantee for an amount of Rs ..... (Rupees ..... only) within Twenty One (21) days from the date of this LOA as per tender conditions including Amendments/Corrigendum (if any).

**6.0 NOTICE TO PROCEED (Delete/Change as/ if not applicable)**

The Employer shall issue you a separate Notice To Proceed to commence the Works at Site for ..... as per Annexure II of Section-XI PCC and GCC of the Tender Document including Amendments/Corrigendum thereof (if any).

**7.0 SIGINING OF AGREEMENT**

You are requested to execute the Agreement with the Employer as per Clause 41 of ITB of Tender Documents within Twenty Eight (28) days from date of LOA. Non-judicial stamp paper for Contract Agreement shall be submitted to the Employer within seven (7) days from date of this LOA pursuant to Clause 41.3 of ITB of the Tender Document.

You are hereby requested to return a copy of Letter of acceptance/ Letter of Award (LOA) duly signed and stamped by the authorized signatory, within five (5) days from the date of LOA as your acceptance of LOA.

Yours faithfully,

**For and on behalf of**

**Read and Unconditionally Accepted By**

**Signature:**

**Signature:**

**Date:** .....

**Date:** .....

**Name:** .....

**Name:** .....

**Designation:** xxxx

**Designation:** xxxx

**M/s Kochi Metro Rail Limited**

**M/s xxxx**

**Enclosure- Bill of Quantities (Annexure I)**

*Note : - This is a sample format and may be subject to changes by the Employer as deemed necessary.*

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**Form-B**

**AGREEMENT**

This agreement is executed on this the ----- day of -----, 20XX

between

**Kochi Metro Rail Ltd.**, a Joint Venture Company of Government of India & Government of Kerala, incorporated under the Companies Act, 1956, for setting up of Metro Rail Project at Kochi, having its registered Office at 4th Floor, JLN Metro Station, Kaloor, Kochi – 682017 [hereinafter called “**the Employer**” which the expression shall unless otherwise repugnant to the context shall means and include all its successors and permitted assigns], represented by its-----, Shri----- on the FIRST PART

**and**

-----, -----, ----- hereinafter called “**the Contractor**” ” [which the expression shall unless otherwise repugnant to the context shall means and include all its successors and permitted assigns], represented by its-----, Shri----- on the OTHER PART.

For the purpose of this agreement both Employer and contractor are collectively called ‘Parties’ and in individually called ‘Party’.

WHEREAS the employer has floated a Tender vide No: ----- dated ----- for the “-----” (herein after referred as “Work”) and the contractor turned out- to be the successful bidder, and

WHEREAS the employer has issued the Letter of Award No: ----- dated ----- to the contractor in compliance with the tender conditions and whereas the parties have decided to reduce their understanding into writing.

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

**Clause 1 Words and Expression**

In this Contract, all the words and expressions shall have the same meanings as are respectively assigned to them in the conditions of contract in the Tender documents hereinafter referred to

**Clause 2 The Contract Documents,**

The following documents shall be deemed part of this agreement.

1. The Letter of Award (LOA).
2. The Letter of Bid and Appendix to Bid (including the signed Statement of Integrity)
3. The Particular Conditions
4. The General Conditions;
5. The Technical Specifications

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6. The Drawings;
7. Declaration of Undertaking and
8. The completed Schedules and any other documents forming part of the contract including tender documents,

All of the foregoing documents, together with this Agreement, are referred to herein as the Contract. Also incorporated into the Contract, and made part hereof, are all codes, standard specifications, and similar requirements that are referred to therein. In case of any discrepancy or ambiguity with documents mentioned above, this agreement shall have priority over all other documents.

**Clause 3 Obligations of the Contractor:**

That the Contractor agrees to perform efficiently and faithfully all of the Works related to -----  
-----which is described in the Tender Notification No: -----and those works requisite for or incidental to the successful completion of the Works and in carrying out all duties and obligations imposed by the Contract.

That the Contractor agrees to confirm to the provisions of all statutes relating to the work and the regulations of local authorities concerned. The Contractor agrees to give all notices required by relevant Statutes or regulations and to pay all fees and taxes payable to any authority in respect thereof. The Contractor further agrees to comply with or cause to be complied with following statutory provisions and rules in respect of Personnel employed by them directly or through Sub- Contractors.

That the Contractor agrees to follow all the relevant statutes religiously and in particular the provisions of a) The Contract Labour (Regulation & Abolition) Act 1970 and the related Rules, b) The minimum wages Act 1948 and the related rules c) The payment of wages Act 1936 and the related rules, d) The Employees' Provident Fund & Miscellaneous provisions Act 1952, e) The Employees State Insurance Act 1948, f) Employees Compensation Act 1923 g) Payment of Bonus Act 1965 h) The Building and other Construction Workers Welfare Cess Act. 1996 i) Maternity Benefit Act, 1961 j) Payment of Gratuity Act, 1972 k) Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979, l) Equal Remuneration Act, 1976 m) The Industrial Disputes Act 1947, n) Child Labour (Prohibition and Regulation) Act, 1986 o) Petroleum Act, 1934 and its related Rules p) Motor Vehicles Act, 1989 and its Rules q) Batteries (Management and Handling) Rules, 2001 r) Indian Electricity Rules, 1956 s) Environment (Protection) Rules, 1986 t) Hazardous Waste Management Rules, 2016 u) Solid Waste Management Rules, 2016 v) E-Waste(Management & Handling Rules), 2016, w) Gas Cylinder Rules, 2016 etc. and other statutes in general.

That the Contractor agrees to ensure the license for engaging labour is obtained from the appropriate government under the relevant Act/s and is live during the contractual period, and to have their own PF and ESI Codes and also to comply with the relevant Acts. Contractor agrees to maintain proper records of PF, EDLI, Pension, ESI contribution, administrative charges etc., wherever applicable and shall produce proof of

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deductions as well as remittances regularly. Contractor shall issue wage slips to his employees and shall maintain relevant registers and forms for inspection by various statutory authorities and the company Officials even at short notice. Contractor agrees to furnish proper Returns to the concerned statutory authorities and provide a copy of the same to KMRL.

That the Contractor agrees that it shall be solely responsible for non-payment / delayed payment of wages / DA, Bonus, contributions under EPF & MP Act, ESI Act etc. In case, the contractor fails to make payment of wages to his employees or remittance of contribution to the concerned authorities & a claim is made against KMRL for what so ever reason, the performance guarantee /other dues/ running bills under the contract can be utilized by KMRL to discharge such liability of the contractor, and the Contractor shall be liable to pay KMRL such amount thus paid. Contractor shall also be responsible for complying with provisions of Income Tax, Service Tax etc. as applicable to him.

**Clause 4 Obligations of the Employer:**

The Employer agrees, subject to the terms and conditions of the Contract, to pay the Contractor the amount specified, and at the rates and terms and in the manner set forth in the Contract.

**Clause 5 Contract Price and Completion Time:**

The Employer agrees to pay for the total cost of the Works and the Contractor agrees to accept the sums mentioned below in the following currencies, to be the total cost for the Work carried out by him as part of his obligations, responsibilities and liabilities under and according to the provisions and obligations imposed on him by the Contract.

Total Amount for Priced Bill of Quantities in all sections: -

(i) Indian Rupees ----- (Rs. -----/-); including the GST

The Contractor shall complete whole of the Works within ----- months from ----- . The Defect Liability Period is -----months from the date mentioned in the Taking Over Certificate for whole of the Works.

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.

The contractor has paid the performance security as per tender conditions vide ----- for an amount of Rs -----/- (Rupees -----Only).

**Clause 6 Integration**

The Employer and the Contractor agree that this Contract Agreement, together with the other Contract Documents, expresses all of the agreements, understandings, promises, and covenants of the parties, and integrates, combines, and supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether written or oral and no modification or alteration of the Contract Documents shall be

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valid or binding on either party, unless expressed in writing and executed with the same formality as this Contract Agreement, except as may otherwise be specifically provided in the Contract Documents.

**Clause 7 Governing Law**

This Contract is enforceable and construed under the applicable laws of the Republic of India.

**Clause 8 Indemnity**

The Contractor shall indemnify KMRL against all claims and losses if it suffers under various labour laws, statutes or any civil or criminal law in connection with employees deployed by him or the work undertaken by him. The liability for any compensation on account of injury sustained by any employee of the contractor will be exclusively that of the contractor. KMRL shall not be responsible for any losses, damages to the contractor or to his employees. The contractor shall have full control over his employees including the right to appoint, determine service conditions, discipline, discharge, dismissal etc. The Contractor shall be solely responsible for any claim arising out of employment or termination of employment of his employees and for their statutory payments. Contractor shall also ensure that workmen follow all rules and regulations related to safety and security. The Contractor shall abide by all the labour and other laws applicable to Contract labour / worker under this Contract and shall at all time keep KMRL Indemnified against all losses, claims, prosecutions under any law.

**Clause 9 Arbitration**

In case of any dispute or differences arising out of this agreement then the same shall be settled amicably between the parties by way of mutual discussion or negotiation. If such discussion or negotiation, could not resolve the issue within 30 days from the date of commencement of such discussion or negotiation then the same shall be referred to a Sole Arbitrator to be appointed from the Panel of Arbitrators maintained by KMRL. If any dispute is raised by the contractor and arbitration clause is invoked, the Employer shall within 30 days of such invocation, submit to the contractor a panel having not less than 4 Arbitrators, from which the Contractor shall chose one as Sole Arbitrator. Arbitration shall be conducted under the provisions of the Arbitration and conciliation Act, 1996. Venue and seat of the arbitration shall be Ernakulam. Language of the proceedings shall be English. Award of the sole arbitration shall be final and binding upon the parties.

**Clause 10 Jurisdiction of Court**

Subject to above mentioned arbitration clause, any dispute or differences arising out of this agreement shall fall under the exclusive jurisdiction of court at Ernakulum.

**Clause 11**

All other terms and conditions mentioned in the other documents forming part of the contract shall be complied with by the parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be signed their respective names as of the day and year first above written.

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**KOCHI METRO RAIL LTD**  
**(WATER METRO PROJECT)**



**For Kochi Metro Rail Limited**

**For Contractor**

**Authorised Signatory**

**Authorised Signatory**

**Witnesses:**

- 1.
- 2.

**Note: - This is a sample format and may be subject to changes by the Employer as deemed necessary.**

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**Form-C**

**Performance Security**

(To be printed on Non-judicial stamp paper of appropriate value)

This Deed of Guarantee made this the --- day of 20XX by ----- (Name of the Bank), having its registered office at -----, and one of its branches at ----- (Address of the Branch) (hereinafter called the Guarantor) in favour of Kochi Metro Rail Ltd, ----- (hereinafter called the beneficiary).

WHEREAS M/s. \_\_\_\_\_ (Name of the Contractor) having their address/ registered Office at \_\_\_\_\_ (Address of the Contractor's registered Office) (hereinafter called the "Contractor") was awarded contract for (supply / Erection / Supply & Erection / Work/others- specify the purpose) of \_\_\_\_\_ (Name of the material / equipment / work/others- specify) by Kochi Metro Rail Limited , the "Beneficiary" and

WHEREAS a performance guarantee of Rs. -----/- has to be submitted by the Contractor, before undertaking the contract and

WHEREAS the Contractor has requested the Guarantor for issuing a Bank Guarantee for Rs. \_\_\_\_\_ (Amount as stipulated) valid till \_\_\_\_\_ (mention here date of validity of this Guarantee which will be ----- days beyond the contract period) towards Performance guarantee amount payable to the Beneficiary, and

WHEREAS the Guarantor has agreed to issue such Bank Guarantee to the Beneficiary as hereunder mentioned:

We, \_\_\_\_\_ (Name of the Bank and address of the Branch giving the Bank Guarantee) having our registered Office at \_\_\_\_\_ (Address of Bank's registered Office) hereby give this Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ and do hereby irrevocably undertake to pay immediately on demand, through our designated Branch in Kochi, without requiring any previous notice and without any demur, reservation, recourse, contest or protest and without referring to any other sources including the Contractor and without the beneficiary having to substantiate its demand, to the beneficiary a sum not exceeding Rs. \_\_\_\_\_ (amount as stipulated) (Rupees \_\_\_\_\_) (in words) on behalf of the Contractor. Guarantor agrees that any demand in writing made by the authorised officials of the Beneficiary shall be conclusive as regards the amount due and payable by the Guarantor under this Guarantee.

We, \_\_\_\_\_ (Name of the Bank) further undertake to pay without demur the aforesaid amount in lump sum on demand or such part there of as the beneficiary may demand from time to time irrespective of the fact whether the said contractor admits or denies such claim or questions correctness in any court, Tribunal or Arbitration proceedings or before any authority. The aforesaid guarantee will remain in force and we shall be liable under the same irrespective of any concession or time being granted by the beneficiary to the contractor and this guarantee will remain in full force irrespective of any change of terms, conditions or stipulation or any variation in the terms of the said contract.

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We, \_\_\_\_\_ (Name of the Bank) further agree with the beneficiary that the beneficiary will have the fullest liberty without our consent and without in any manner affecting our obligations hereunder to vary any of the terms and conditions of the contract or to extend the time for performance of the contract by the contractor or to postpone any of the powers exercisable by the beneficiary or to forbear or enforce any of the terms and conditions of the contract and that we shall not be relieved from our liability by reasons of any such variation or extension or forbearance or postponement or omission or by any indulgence by the beneficiary to the contractor or by any such matter whatsoever which under the law relating to sureties would, but for this provision, have resulted in relieving us.

This Bank Guarantee shall be valid and binding on this Bank upto and inclusive of \_\_\_\_\_ (mention here the date of validity of Bank Guarantee), unless extended on demand by the beneficiary. The Guarantee shall not be terminated or affected by liquidation or winding up or insolvency or change in constitution of the Contractor or for any other reason. This guarantee shall not be terminated by the guarantor under any circumstances including change in the constitution of the Bank and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alterations made, given, conceded in the contract with or without our knowledge or with or without consent by or between the Contractor and the beneficiary.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, for account of KMRL (project executing agency).

NOT WITHSTANDING anything contained hereinbefore, our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ (amount as stipulated) (Rupees \_\_\_\_\_ (in words)). Our Guarantee shall remain in force till \_\_\_\_\_ (--- days after the date of validity of the contract). Unless demands or claims under this Bank Guarantee are made to us in writing on or before \_\_\_\_\_ (date should be at least one year over and above the validity period of BG), all rights of Beneficiary under this Bank Guarantee shall be forfeited and we shall be released and discharged from all liabilities there under.

**Place:**

**Signature of the Bank's Authorized**

**Date:**

**Signatory with Official Seal**

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**Form-D**

**Advance Payment Bank Guarantee**

(To be printed on Non-judicial stamp paper of appropriate value)

This Deed of Guarantee made this the --- day of 20XX by ----- (Name of the Bank), having its registered office at -----, and one of its branches at ----- (Address of the Branch) (the Guarantor) in favour of Kochi Metro Rail Ltd, ----- (hereinafter called the beneficiary).

**WHEREAS**

1. M/s. \_\_\_\_\_ (Name of the Vendor/Contractor) having their address/ registered Office at \_\_\_\_\_ (Address of the Contractor’s registered Office) (hereinafter called the “Vendor/Contractor”) was awarded contract (hereinafter referred as “Contract”) for (supply / Erection / Supply & Erection / Work/others- specify the purpose) of \_\_\_\_\_ (Name of the material / equipment / work/others- specify) by the beneficiary and
2. In compliance with the provisions of said Contract, the beneficiary has to make an advance payment of Rs..... (Rupees ... only) against issuance of an advance payment guarantee for Rs.-----/- by a Bank, which the beneficiary can invoke if the vendor/contractor fails to duly perform the aforementioned contract or has used the advance payment for purposes other than the costs of mobilization in respect of the Works.
3. The Vendor/Contractor has requested us (Name of the Bank) \_\_\_\_\_ (Address), which the expression shall unless otherwise repugnant to the context or meaning thereof include all its successors, administrators, representatives and permitted assignees, (herein after referred to as “the Guarantor” ) to issue an irrevocable bank guarantee in favour of the beneficiary, Kochi Metro Rail Ltd.
4. For effecting this advance payment, the Guarantor hereby guarantee to the effect that, we irrevocably under-take to pay the beneficiary merely on demand by the beneficiary, through our designated Branch in Kochi, without any previous notice and without any demur and without recourse to the Vendor/Contractor and without referring to any other source, an amount not exceeding Rs \_\_\_\_\_ (Rupees \_\_\_\_\_ only). Any such demand made by Beneficiary on the bank shall be conclusive and binding, absolute and unequivocal notwithstanding any difference between the Beneficiary and the Vendor/ Contractor or any

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- dispute or disputes raised /pending before any court, Tribunal Arbitrator or any other authority.
5. This guarantee will not be discharged due to the change in the constitution of the Bank or the CONTRACTOR(S).
  6. This guarantee will become invalid three months after the completion of the \_\_\_\_\_ (scope of work) by the CONTRACTOR under the said Contract or as soon as this Letter Of Guarantee has been returned to us, whichever the latest, however, on \_\_\_\_\_ unless a claim has been lodged with us under this guarantee before that date.
  7. The beneficiary shall have the fullest liberty without affecting in any way the liability of the bank under this guarantee from time to time to extend the time of performance by the CONTRACTOR. The Bank shall not be released from its liability under these presents by any exercise of the beneficiary of the liberty with reference to the matter aforesaid.
  8. The Bank also agrees that the beneficiary shall be entitled at his option to enforce this guarantee against the Bank as a Principal Debtor, in the first instance notwithstanding any other Security or Guarantee that it may have in relation to the CONTRACTOR`s liabilities.
  9. The Bank further agrees that the decision of the beneficiary as to the failure on the part of the CONTRACTOR to fulfil the Contractual obligations stipulated in the said Contract and/or to the amount payable by the Bank to the beneficiary shall be final conclusive and binding. This guarantee is revocable only with the written consent of the beneficiary.
  10. This guarantee shall remain in force upto and including \_\_\_\_\_ and shall be extended from time to time for such period as may be desired by M/s. \_\_\_\_\_ on whose behalf this guarantee has been given.
  11. This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.
  12. In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main, BIC: KFWIDEFF, account IBAN: DE53 5002 0400 3800 0000 00, for account of KMRL (project executing agency).
  13. NOT WITHSTANDING anything contained hereinbefore, our liability under this Guarantee is restricted to Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ (in words)). Our Guarantee shall remain inforce till \_\_\_\_\_ (as required by the Employer). Unless demands or claims under this Bank Guarantee are made to us in writing on or before

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**KOCHI METRO RAIL LTD**  
**(WATER METRO PROJECT)**



\_\_\_\_\_ (date should be ---- days, as decided by the Employer over and above the validity period of BG which shall not be less than 365 days), all rights of Beneficiary under this Bank Guarantee shall be forfeited and we shall be released and discharged from all liabilities there under.

**Place:**

**Signature of the Bank's Authorized  
 Signatory with Official Seal**

**Date:**

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**Form-E Retention Money Security**

**Demand Guarantee**

\_\_\_\_\_ [Guarantor letterhead or SWIFT identifier code]

**Beneficiary:** \_\_\_\_\_ [Insert name and Address of Employer]

**Date:** \_\_\_\_\_ [Insert date of issue]

**RETENTION MONEY GUARANTEE No.:** [Insert guarantee reference number]

**Guarantor:** [Insert name and address of place of issue, unless indicated in the letterhead]

We have been informed that \_\_\_\_\_ [insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture] (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ [insert reference number of the contract] dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ [insert name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of [insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security] is to be made against a Retention Money guarantee.

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of Rs\_\_\_\_\_ [insert amount in figures] (Rs\_\_\_\_\_)[amount in words] 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 is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Applicant on its account number \_\_\_\_\_ at \_\_\_\_\_ [insert name and address of Applicant's bank].

This guarantee shall expire no later than the .... Day of ....., 2019<sup>(2)</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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In the event that any amount to be paid under this guarantee, payments shall be remitted to a special account of the Beneficiary in the country of the Beneficiary, which may be drawn on only with the consent of KfW.

*(2) Insert the same date expiry date as set forth in the performance security, representing the date twenty eight days after the completion date as described in GCC Clause 11.9. 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."*

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**Form-F Contractor’s Warranty**

**(As Applicable)**

**THIS WARRANTY** is made the \_\_\_\_\_ day of \_\_\_\_\_ BY \_\_\_\_\_ ("the Contractor")

To Kochi Metro Rail Limited together with its successors and assigns, ("the Employer") of:

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

**WHEREAS**

- A. By a Contract for \_\_\_\_\_ of Kochi Metro Rail Limited Contract No: ("the Contract") made between (1) Kochi Metro Rail Limited (the “Employer”) and (2) \_\_\_\_\_ (the “Contractor”), the Contractor has agreed to execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defects in the works ("the Works") upon the terms and conditions contained in the Contract.
- B. At the request of the Employer and pursuant to the terms of the Contract, the Contractor has agreed to provide this Warranty.

**NOW IT IS AGREED AS FOLLOWS:**

- 1. The Contractor hereby warrants and undertakes that:
  - a. the Contractor will execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defect in the Works in accordance with the terms of the Contract; and
  - b. the Contractor owes a duty of care to the Employer in relation to the performance of its duties under the Contract; and
  - c. the Contractor will rectify or replace at free of cost to the Employer any defect or failure of equipment provided in the Works for a period of 24 months from the date of taking over of section of the Works; and
  - d. the Contractor agrees that should any modification be required to any part of the work as a consequence of failure analysis, the aforesaid period of 24 months shall re-commence from the date when the modified part is commissioned into service if the date of modification is later than the date of taking over of last trainset, and such modification shall be carried out free of cost to the Employer in all sections; and
  - e. the Contractor shall maintain the manufacture & supply of spares (including those of its Sub-Contractors / vendors) for the equipment supplied in the Contract-work for at least 10 years till the date of Completion of the Contract; and

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- f. the Contractor has exercised and will continue to exercise in execution of the Works all the skill and care to be expected of a professionally qualified and competent experienced in work of similar nature and scope as the Works; and
  - g. the Works will, when completed, comply in all respects with the Employer's Requirements, the Contractor's Proposals, for the intended use of the Works; and
  - h. the Works have been executed to the highest standards available using nationally/internationally proven up-to-date good practice; and
  - i. the Works will, when completed, comply with enactments and regulations relevant to the Works; and
  - j. no Materials generally known to be deleterious or not in accordance with good engineering practice have been or will be specified or selected or incorporated in the Works by the Contractor.
2. The liability of the Contractor under this Warranty shall not be released, diminished or in any way affected by any independent inquiry or investigation into the Works or any matter related to the Contract whether carried out by or on behalf of the Employer or any liability or right of action which may arise out of such inquiry or investigation.
  3. Insofar as the copyright or other intellectual property rights in any plans, calculations, drawings, documents, materials, plant, know-how and other information relating to the Works shall be vested in the Contractor, the Contractor grants to the Employer its successors and assigns a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works, inventions or other information incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works of the Kochi Metro Rail Limited including without limitation the Approved Design, Procurement of Materials, , installation, completion, testing and commissioning (including Integrated Testing and Commissioning) reinstatement, extension and the remedy of any defect in the Works. To the extent that beneficial ownership of any such copyright or other intellectual property rights is vested in anyone other than the Contractor, the Contractor, shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Contractor, shall for any reason cease to be employed in connection with the Works.
  4. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Contractor, whether in tort or otherwise.
  5. Nothing contained in this Warranty shall vary or affect the Contractor's rights and obligations under the Contract.
  6. The address for service of all documents arising out of or in connection with this Warranty shall be:
    - a. Upon the Employer at:

.....

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.....  
.....

- b. Upon the Contractor at [Location]\_\_\_\_\_ India.
- 7. The Employer and the Contractor may change their respective nominated addresses to another address in India but only by prior written notice to each other.
- 8. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
- 9.
  - a. Any dispute or difference of any kind whatsoever between the Employer and the Contractor arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the provisions relating to 'Conciliation and Arbitration' as set out in the General Conditions of Contract. "Dispute" as defined in the Contract shall be deemed to include any such dispute or difference between the Employer and Contractor.
  - b. In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under out of or in connection with the Contract ("the Contract Dispute") then provided that an arbitrator has not already been appointed pursuant to Clause 9(a), the Employer may by notice in writing to the Contractor require and the Contractor shall be deemed to have consented to the referral of such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.
  - c. Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objections relating to the dispute.
  - d. Subject to the foregoing provisions of this clause 9, the Employer and the Contractor agree to submit to the exclusive jurisdiction of the Courts of India at Ernakulam, Kerala, India.

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

.....

Name:

Designation:

Date of Board resolution authorizing executant to execute this undertaking

Place:

**Note: -**

1. ***This is a sample format and may be subject to changes as deemed necessary.***
2. ***The Contractor shall provide a additional separate Form against item no. 1.1 in the BOQ***

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**Form-G Sub-Contractor's / Vendor's Warranty**

**(As applicable)**

**THIS WARRANTY** is made the \_\_\_\_\_ day of \_\_\_\_\_ BY \_\_\_\_\_ [whose registered office is at] / [of] \_\_\_\_\_ ("the Sub-contractor") and TO Kochi Metro Rail Limited together with its successors and assigns, "the

Employer") of:

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

**WHEREAS**

- A. By a Contract for \_\_\_\_\_ of Kochi Metro Rail Limited Project Contract No: ("the Contract") made between
  - 1. Kochi Metro Rail Limited (the "Employer")
  - and
  - 2. \_\_\_\_\_ (the "Contractor"), the Contractor has agreed to \_\_\_\_\_ and remedy any defects in the works ("the Works") upon the terms and conditions contained in the Contract.
- B. The Sub-contractor / vendor has had an opportunity of reading and noting the provisions of the Contract (other than details of the Contractor's prices and rates).
- C. Pursuant to the Contract, the Contractor wishes to enter into an agreement ("the Subcontract") with the Sub-contractor / Vendor to carry out and complete a part of the Works as more particularly described in the Sub-contract ("the Sub-contract Works").
- D. The Contract stipulates that the Contractor shall obtain the consent of the Engineer before entering into the Sub-contract, and that the Contractor shall procure that the Subcontractor executes a warranty in favour of the Employer.

**NOW IT IS HEREBY AGREED as follows:**

- 1. In consideration of the Engineer consenting to the Contractor and the Sub-contractor / Vendor entering into the Sub-contract, the Sub-contractor warrants and undertakes to the Employer that:
  - a. he will execute and complete the sub-contracted Works / supply, and will carry out each and all of the obligations, duties and undertakings of the Sub-contractor / Vendor under the Sub-contract when and if such obligations, duties and undertakings shall become due and performable, in accordance with the terms of the Sub-contract (as the same may from time to time be varied or amended with the consent of the Employer); and

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- b. he will supply to the Contractor and in specific cases wherever required to the Engineer with all information as may be required from time to time in relation to progress of the Sub-contract Works.
2. The Sub-contractor / Vendor undertakes to indemnify the Employer against each and every liability which the Employer may have to any person whatsoever and against any claims, demands, proceedings, loss, damages, costs and expenses sustained, incurred or payable by the Employer provided that the Sub-contractor / Vendor shall have no greater liability to the Employer by virtue of this Warranty than the liability of the Contractor to the Employer under the Contract insofar as and to the extent that the same has arisen by reason of the execution of the Sub-Contract or any breach by the Sub-contractor / Vendor of his obligations under the Sub-contract.
  3. No allowance/extension of time by the Employer hereunder or by the Contractor under the Sub-contract nor any forbearance or forgiveness in or in respect of any matter or thing concerning this Warranty or the Sub-contract on the part of the Employer or the Contractor, nor anything that the Employer or the Contractor may do or omit or neglect to do, shall in any way release the Sub-contractor / Vendor from any liability under this Warranty.
  4. The Sub-contractor / Vendor agrees that he will not without first giving the Employer not less than 21 day's prior notice in writing exercise any right he may have to terminate the Sub-contract or treat the same as having been repudiated by the Contractor or withhold performance of its obligations under the Sub-contract.
  5.
    1. In the event that the Contract or the employment of the Contractor under the Contract is terminated for any reason whatsoever and if so requested by the Employer in writing within 21 days of such termination, the Sub-contractor / Vendor shall carry out and complete his obligations under this Warranty and shall enter into a novation agreement with the Employer and the Contractor in which the Sub-contractor will undertake inter alia to perform the Sub-contract and be bound by its terms and conditions as if the Employer had originally been named as a contracting party in place of the Contractor. The said novation agreement will be in such form as the Employer may reasonably require.
    2. In the event that the Employer does not require the Sub-contractor / Vendor to enter into a novation agreement as required by Sub-clause 5 (1), the Sub-contractor shall have no claim whatsoever against the Employer for any damage, loss or expense howsoever arising out of or in connection with this Warranty.
  6. Insofar as the copyright or other intellectual property rights, in any plans, calculations, drawings, documents, materials, know-how and information relating to the Sub-contract Works shall be vested in the Sub-contractor / Vendor, the Sub-contractor / Vendor grants to the Employer, his successors and assignees a royalty free, non-exclusive and irrevocable licence (carrying the

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right to grant sub-licences) to use and reproduce any of the works, inventions or other information incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works of the Kochi Metro Rail Project, without limitation to the construction, installation, reconstruction, completion, reinstatement, extension, remedy of any defect of the Works. To the extent beneficial ownership of any such copyright or other intellectual property right is vested in anyone other than the Subcontractor / Vendor, the Sub-contractor shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Sub-contractor / Vendor shall for any reason cease to be employed in connection with the Sub-contract Works.

7. In the event of any ambiguity or conflict between the terms of the Sub-contract and this Warranty, the terms of this Warranty shall prevail.
8. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Sub-contractor / Vendor whether in tort or otherwise.
9. Nothing contained in this Warranty shall vary or affect the Sub-contractor's / Vendor's rights and obligations under the Sub-contract.
10. The Employer shall be entitled to assign the benefit of this Warranty at any time without the consent of the Sub-contractor / Vendor being required.
11. All documents arising out of or in connection with this Warranty shall be served:
  - a. Upon the Employer at:  
.....  
.....
  - b. Upon the Sub-Contractor / Vendor at \_\_\_\_\_ India.
12. The Employer and the Sub-contractor / Vendor may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.
13. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
14.
  1. Any dispute or difference of any kind whatsoever between the Employer and the Subcontractor / Vendor arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the arbitration provisions as described in the Contract.
  2. In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under out of or in connection with the Contract ("the Contract Dispute") then provided that an arbitrator has not already been appointed pursuant to Clause 14 (1), the Employer may by notice in writing to the Sub-contractor

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/ Vendor require and the Sub-contractor/Vendor shall be deemed to have consented to the referral of such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.

3. Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objection, assessment or valuation by the Engineer or the Contractor relating to the dispute or difference.
4. Subject to the foregoing provisions of this clause 14, the Sub-Contractor agrees to submit to the exclusive jurisdiction of the Courts at Ernakulam, Kerala, India.

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

.....

Name:

Designation:

Date of Board resolution authorizing executant to execute this undertaking

Place:

Note: The notarized copy of the board resolution of the Sub-Contractor/vendor must also accompany this Warranty.

**Note: -**

- 1. This is a sample format and may be subject to changes as deemed necessary.**
- 2. The Contractor shall provide a additional separate Form against item no. 1.1 in the BOQ**

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**Form-H Indemnity Bond**

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

WHEREAS by the agreement (LOA No ..... dated.....) (hereinafter called the said agreement) the contractor has agreed to “-----” and whereas the contractor has applied to the KMRL that they may be allowed advance on the security of materials absolutely belonging to them and brought by them to the site of the works covered under the project of the said agreement for use in of such of the work as they have under taken to execute at rates fixed for the finished work (inclusive of the cost of materials and labour and other charges).

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

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

1. That the said sum of Rs. ----- (Rupees ----- only) so Stage Payment by the KMRL to the contractors as aforesaid and all or any further sum or sum’s advanced as aforesaid shall be employed by the contractor in or towards the execution of the said works and for no other purpose whatsoever.
2. That the Stage Payment detailed in the said running account bill which have been offered to and accepted by the KMRL as security are absolutely the contractor’s own property and free from encumbrances of any kind and the contractor’s shall not make any application for or receive any further payments on the security of work executed which are not absolutely his own property and free from encumbrances of any kind the Contractor indemnifies the KMRL against all claims on any materials in respect of which any Stage Payment has been made to him as aforesaid.
3. That the Stage Payment detailed in the said running account bill and all other stage payments on the security of which further payments or Stage Payment any hereafter be made as aforesaid (hereinafter called the said materials) shall be used by the contractor solely in the execution of the

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said works in accordance with the directions of the Engineer / KMRL and in the terms of the said agreement.

4. That the contractor shall be fully liable for the materials/components and shall make at his own cost all necessary and adequate arrangement for the proper watch, safe custody and protection against all risks including, acts of the God of the said materials/components and provide on approved insurance in favour of KMRL that until used in construction as aforesaid the said materials shall remain at the site of said works in the contractor's custody and on his own responsibility and shall at the time be open to inspection by the Engineer /KMRL. This insurance will be valid for a period until this material is approved and fixed in the building or advance has been fully recovered from contractor.
5. That the said materials/components shall not on any account be removed/shifted from the site of the works except with the written permission of the Engineer KMRL.
6. That issue of any Stage Payment excess of what is finally required to be used at site would be the contractor's property without any liability on KMRL, who would recover the cost of this from the contractor.
7. That the contractor hereby charges all the said materials components with the repayment to the KMRL of the said sum of Rs. ----- (Rupees -----only) and any further sum or sums advanced as aforesaid and all cost charges. Damages and expenses payable under these presents provided always and it is hereby agreed and declared that not with power contained therein, if any, whenever the convenient for payment, and repayment herein before contained shall become enforceable and the money owned shall not be paid in accordance therewith, the KMRL., may at any time thereafter adopt all or any of the following courses as he may deem best.
  - a) That if the contractor shall at any time not be able to complete any part of the Component / equipment as per provision in Agreement it shall be considered as the work being left incomplete by the contractor and action as per the conditions of the contract shall be taken.
  - b) Deduct all or any of the money owing out of the performance security or any sum due to the contractor under the said agreement.

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

This widening shall be co-extensive to the agreement dated ..... between Kochi Metro Rail Limited, \_\_\_\_\_ (Client) and ..... (Contractor).

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

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Signed, Sealed & Delivered by the said Contractor:

IN THE PRESENCE OF: WITNESS:

1. NAME: \_\_\_\_\_ Signature: \_\_\_\_\_

SIGNED BY (ADDRESS)

BY THE ORDER AND DIRECTION OF THE KMRL IN THE PRESENCE OF:

SIGNATURE: \_\_\_\_\_ WITNESS \_\_\_\_\_

(NAME AND ADDRESS)

**Note: - This is a sample format and may be subject to changes as deemed necessary.**

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