

Invitation for Bids

Tamil Nadu, India

Supply, Operation and Maintenance of 100 (nos.) of 12 metre – Low Floor – AC, Electric Buses and Charging Solution along with Depot Improvement works for Metropolitan Transport Corporation, Chennai, Tamil Nadu.

Date: 11/01/2024

IRT Tender No.: 16/E-Bus/CP/IRT/2024

KfW Ref. No.: BMZ209919234/KFW510081

The Government of Tamil Nadu has signed a financing agreement with Kreditanstalt für Wiederaufbau (KfW) toward the cost of the Climate Friendly Modernization Program of Bus Services in Major Cities of Tamil Nadu and intends to apply part of the proceeds toward payments under the contract(s) for Supply of 100 (nos.) of 12 metre – Low Floor – AC, Electric Buses, Charging Solution along with Depot Improvement works and Operation and Maintenance (O&M) Service for Metropolitan Transport Corporation, (MTC) Chennai, Tamil Nadu.

The Institute of Road Transport (IRT), Chennai now invites sealed Bids on behalf of Metropolitan Transport Corporation (MTC), Chennai from eligible Bidders for the captioned assignment within a period as specified in the Bidding Schedule of the RFP with an estimated project cost of INR Rs. 170 Crore for Supply of Electric Buses and Depot Improvement Works.

Bidding will be conducted by means of the International Competitive Bidding procedure with qualification as specified in KfW Guidelines for Guidelines for Procurement of Electric Buses, Works, and associated Services in Financial Cooperation with Partner Countries ("KfW Guidelines – Version 2021").

Interested eligible Bidders may obtain further information from The Institute of Road Transport (IRT), Chennai by sending the queries through mail ID: irttaramani@gmail.com and/or irtcpo@gmail.com.

A complete set of bidding documents is available to interested Bidders as a downloadable file at <https://tntenders.gov.in>. The bidding documents received from the Authority are not transferable.

Qualification, Technical and Price Bids must be submitted online at the URL specified in the clause ITB 22.1 of the bidding documents on or before **11/03/2024, 3:00 PM (IST)**. The Physical Submission shall be made strictly after online submission on or before **13/03/2024, 3:00 PM (IST)** on the address specified in ITB 22.1 before the time specified in ITB 22.1. Late submission of Qualification Bid, Technical Bid and Price Bid will be rejected.

In the first online/public session, only the **"Qualification Bid"** will be opened in the presence of the Bidders' designated representatives. In the second public session, only the **"Technical Bids"** of those Bidders who have fulfilled the qualification criteria will be opened. Following that, in the third public session, the **"Price Bid"** of those Bidders who have fulfilled both the Qualification and the Technical requirements will be opened.

All Bids must be accompanied by a Bid Security.

**German Financial Cooperation with Government of
Tamil Nadu**

**Climate Friendly Modernization Program of Bus Services
in Major Cities of Tamil Nadu**

Bidding Documents

for

**Supply, Operation and Maintenance of 100 (nos.) of
12 metre – Low Floor – AC, Electric Buses and
Charging Solution along with Depot Improvement
works for Metropolitan Transport Corporation,
Chennai, Tamil Nadu**

International Competitive Bidding Process

**Authority: Metropolitan Transport Corporation (MTC),
Chennai**

January 2024

IRT Tender No: 16/E-Bus/CP/IRT/2024

KfW Ref. No.: BMZ209919234/KFW510081

Disclaimer

This RFP is being issued by Institute of Road Transport, Govt. of Tamil Nadu for inviting bids for Supply, Operation and Maintenance of 100 (nos.) of 12 metre – Low Floor – AC, Electric Buses and Charging Solution along with Depot Improvement works for Metropolitan Transport Corporation (MTC), Chennai on such terms and conditions as set out in this RFP document, including but limited to the Technical Specifications set out in Section VII, Schedule of Requirements of this RFP document.

It is hereby clarified that this RFP is not an agreement and is not an offer or invitation by Authority to any party hereunder. The purpose of this RFP is to provide the Bidder(s) with information to assist in the formulation of their proposal submission. This RFP document does not purport to contain all the information Bidders may require. This RFP document may not be appropriate for all persons, and it is not possible for Authority to consider particular needs of each Bidder. Each Bidder should conduct their own investigation and analysis, and should check the accuracy, reliability, and completeness of information in this RFP document and obtain independent advice from appropriate sources. Authority and their advisors make no representation or warranty and shall incur no liability financially or otherwise under any law, statute, rules, or regulations or otherwise as to the accuracy, reliability, or completeness of the RFP document. Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information in this RFP document.

The Authority reserves the right not to proceed with the Purchase or to change the process or procedure to be applied. It also reserves the right to decline to discuss the process further with any party submitting a proposal. No reimbursement of cost of any type shall be paid to persons, entities, or consortiums submitting a proposal.

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PART 1 – Bidding Procedures

Section I. Instructions to Bidders

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A. General

1. **Scope of Bid and Project**
 - 1.1 In connection with the Invitation for Bids and Tendered Quantity and type of electric buses ("Buses"), **specified in the Bid Data Sheet (BDS)**, the Authority, **as specified in the BDS**, issues these Bidding Documents for the Procurement of Electric Buses and Related Services incidental thereto as specified in Section VII, Schedule of Requirements. The name, identification, and number of lots (contracts) of this International Competitive Bidding (ICB) are **specified in the BDS**.
 - 1.2 The scope of the Project will broadly include the following:
 - (a) **Supply of Buses and Bus Charging Solution:** Design, manufacture and supply the Tendered Quantity as specified in ITB 1.1 (hereinafter the "Buses") and suitable Bus Charging Solution to the MTC, Chennai, at the locations in Chennai City as specified Annexure 1 of Attachment 2 to Particular Conditions of Bus Supply and O&M Service Contract of the RFP strictly adhering to the Delivery Schedule as provided in the Schedule 1 - List of Electric Buses and Delivery Schedule of Section VII of the RFP. All Bidders shall note that the Authority reserves the right to reduce the number of Buses in accordance with ITB 39.1.

The Contractor shall provide services to the Authority for the different Warranties related to Buses, Charging Solution, ICT components and other Bus Aggregates as specified in the RFP following Best Market Practices. The Warranty services shall be exclusive, over and above the O&M services. The Contractor shall exclude the cost of replacement of spares parts and components falling under the warranty(ies) from the cost of O&M services.
 - (b) **Development of Civil and Electrical Infrastructure for Depot Improvement:** The Contractor shall design, supply and install, at its own cost and at the Charging Locations/ land provided by the Authority, a suitable Bus Charging Solution including necessary equipment for Town Bus or Urban Bus Operation of Contracted Buses in the city of Chennai as per routes, duty cycle and operational conditions provided by the Authority as well as the Opportunity for Bus charging as specified in the Attachment 2 to Particular Conditions of Bus Supply and O&M Service Contract. The Contractor shall construct the support infrastructure as specified for electric supply, charging infrastructure and bus maintenance facility as at 1) Central and 2) Adyar Depot of the Authority. The Contractor shall obtain

approval of the final designs of the scope of work from the Authority prior to commencement of the work ("Depot Improvement Works"). The general scope of work of the Contractor with regard to Depot Improvement works shall be as follows.

Part A: Civil Work

- a) Ensure assessment of site conditions, existing structures, utility lines and other existing conditions
- b) Construction of conduits for necessary connection from transformer and earthwork required for laying down the conduit, cables, etc.
- c) All sub terrain conduits must have an additional capacity of 50% to enable additional cable insertion in case of future installation or facility upgrading by MTC
- d) All work associated with construction including site survey, approvals, equipment material, and installation of depot charging system. The Contractor shall coordinate any site findings or issues with MTC during the construction stage that may affect the approved design or cost
- e) Installation of bollards around each of the charging stations
- f) Construction and installation of 33kV Outdoor RMU/RMG panel (Extensible Type)
- g) Construction and installation of HT Multi- Panel (33 kV, LBS): IP54 (Weatherproof & suitable for Outdoor)
- h) Construction and installation of 11kV VCB Panel:(Indoor)
- i) Construction and installation of 1500 kVA 11kV/433V Compact Substation (CSS)- (Outdoor)
- j) Construction and installation of DG Set and Accessories
- k) Construction and installation of DG LT Panel (SYC. PANEL)
- l) Construction and installation of LT Panel Boards and Accessories
- m) Construction and installation of Auxiliary Switch Board (ASB)
- n) Construction and installation of Battery Charger & UPS
- o) Construction and installation of HT Cabling-33 kV
- p) Construction and installation of HT Cabling-11 kV
- q) Construction and installation of LT Cabling-1.1 kV
- r) Construction and installation of Cable Ducts/ Cable Trays

- s) Earthing and Construction and installation of Safety Equipments
- t) Construction and installation of Lightning Protection
- u) Construction of electrical Room for HT/LT Panels
- v) Construction of foundation of Compact Sub Station (CSS) with RMU
- w) Construction and installation of Feeder pillar
- x) Construction and installation of EV chargers
- y) Installation of Canopy for EV chargers
- z) Construction of footpath
- aa) Construction of e-bus Equipment area/ Contractor store
- bb) Construction of e-bus Workshop/ Maintenance area
- cc) Construction of conduits/ trenches
- dd) Construction of Green Area with plantation and grass
- ee) Installation of Bollards at each Charging point;
- ff) Installation of isolators for each charger in case of accident (check specification if charger protection already included. If yes, then this is not required).
- gg) Demolition of structures as proposed in the indicative plan;
- hh) Repairing and refurbishing of existing maintenance pits to be utilized for maintenance of electric buses;
- ii) Repairing and refurbishing of existing washroom/ toilets;
- jj) Providing all material, construction and safety equipment's, supplies, labour, expertise, services, supervision, tools, transportation and incidental expenses for accomplishing the work, except the material and services specified by MTC;
- kk) Comply with the site requirements necessary for operation and maintenance of existing buses on the depot such as vehicle access, operating and parking area, washing area. All such areas should be maintained during the construction stage;
- ll) Restore all area temporary utilised on site during the construction stage to its original condition prior to the completion of the project. Any damage caused to the existing conditions due to the constriction activities has to be rectified/ restored by the Contractor at its own cost;
- mm) Maintain the area free of debris or any material that could interfere or jeopardize operation or safety of existing buses;

- nn) Works including but not limited to demolition and removals shall be conducted by the Contractor as required in the design;
- oo) Provide protection of public right of way, existing buildings, utilities, etc. from all materials, equipment or any method of construction;
- pp) The construction should prevent runoff of hazardous or waste material to any storm water sewer or drainage inlet. All work executed shall be in compliance with the ESHS plan provided by MTC;
- qq) The Contractor shall construct/ install/ shift the following components on the depots

Adyar Depot

- Propose any other suitable locations for existing Washing Ramp
- Re- installation of existing Washing Ramp on the suitable location proposed by the Contractor (If any)
- Propose location of additional Washing Ramp for electric buses
- Installation of additional Washing Ramp for electric buses

Central Depot

- Shifting of fuelling station (near the main gate) to any other suitable location as prescribed by the Authority
- Propose location of additional Washing Ramp for electric buses
- Supply and Installation of additional Washing Ramp for electric buses
- Propose location of a new Effluent Treatment Plant
- Supply and Installation of a new Effluent Treatment Plant

Part B: Electrical Work

- a) Ensure interconnection with the transformer provided by MTC;
- b) Electrical equipment and components to bring the secondary electrical service to the charging equipment from the transformer including conduit, secondary cable, meter bases, etc. However, the meter shall be provided by MTC;
- c) Supply, Installation, Testing and commissioning of 33kV Outdoor RMU/RMG panel (Extensible Type)
- d) Supply, Installation, Testing and commissioning of HT Multi- Panel (33 kV, LBS): IP54 (Weatherproof & suitable for Outdoor)
- e) Supply, Installation, Testing and commissioning of 11kV VCB Panel:(Indoor)

- f) Supply, Installation, Testing and commissioning of 1500 kVA 11kV/433V Compact Substation (CSS)-OUTDOOR
- g) Supply, Installation, Testing and commissioning of DG Set and Accessories
- h) Supply, Installation, Testing and commissioning of DG LT Panel (SYC. PANEL)
- i) Supply, Installation, Testing and commissioning of LT Panel Boards and Accessories
- j) Supply, Installation, Testing and commissioning of Auxiliary Switch Board (ASB)
- k) Supply, Installation, Testing and commissioning of Battery Charger & UPS
- l) Supply, Installation, Testing and commissioning of HT Cabling-33 kV
- m) Supply, Installation, Testing and commissioning of HT Cabling-11 kV
- n) Supply, Installation, Testing and commissioning of LT Cabling-1.1 kV
- o) Supply, Installation, Testing and commissioning of Cable Ducts/ Cable Trays
- p) Earthing and Supply, Installation, Testing and commissioning of Safety Equipments
- q) Supply, Installation, Testing and commissioning of Lightning Protection
- r) Liaisoning Works with TANGEDCO & Electrical Inspector (CEA/CEIG)
- s) Liaisoning Works;
 - (i) Appointing an "A" CLASS Electrical Contractor for liaisoning work;
 - (ii) Initial scheme approval from the Inspector- Central Electricity Authority (CEA)/ Chief Electrical Inspectorate General (CEIG)
 - (iii) Sanction order/safety clearance from the Inspector- Central Electricity Authority (CEA)/ Chief Electrical Inspectorate General (CEIG)
 - (iv) Power Connection application to TANGEDCO
 - (v) Service Connection application to TANGEDCO

- (c) **Bus Operation and Comprehensive Maintenance Service:** The Bus Operation and Comprehensive Maintenance Service ("The O&M Service") for 9 years ("O&M Service Period") from the Final Acceptance Date for all contracted buses. It shall include the following;

- (i) **Operation of Buses:** The Contractor shall provide adequate, qualified and skilled Driving Resources for operation of buses as per schedule and contract conditions during the

Service Hours of MTC - Town buses and Operate the Buses. The Driving Resources should be carrying a valid driving license along with the badge for heavy vehicle operations. The Driving Resources shall be adequately trained to Operate electric buses. Further, the Driving Resources shall be well-behaved, wearing a uniform approved by the Authority. The Contractor shall be responsible for compliance of all statutory requirements pertaining to labour and human resource applicable in India and Tamil Nadu. The Contractor shall indemnify the Authority from claim, representation and dispute pertaining to any manpower/ labour deployed by it for execution of the Contract.

- (ii) **Comprehensive Maintenance of Buses:** The Contractor shall provide Comprehensive maintenance of Buses, Entire Battery Packs and Battery Management System for the O&M Service Period defined above. The Contractor shall deploy adequate manpower and equipment as well as maintain inventory of the critical and fast-moving spare parts, aggregates and EV drivetrain components. The Contractor shall also undertake activities such as 1) cleaning of buses and 2) repair and replacement of the Bus tyres.
- (iii) **Comprehensive Maintenance of Bus Charging Infrastructure:** Further, the Contractor shall operate and maintain the Bus Charging Infrastructure throughout the Comprehensive Operation and Maintenance Period of 9 (Nine) years.
- (d) **Training Support to the MTC Staff:** Further, the Contractor shall also impart handholding support/ training to the MTC, Chennai staff in accordance with the Schedule 3 Technical Specifications of Section VII of the RFP, during the O&M Service Period.
- (e) **Warranty:** The Contractor shall ensure a warranty period as specified in GC 28.3, to ensure trouble free services and supply of components of Buses. The Contractor shall comply with the Terms of the Warranty pursuant to GC 28 of Section VIII of the RFP. All components/ items covered in the Bus Warranty and ICT components Warranty will also be part of Section VIII General Conditions of Comprehensive Bus Supply, Operation and Maintenance period Contract of 9 (Nine) years under the RFP.
- (f) **Spares and after sales service:** The Contractor shall confirm adequate availability of spare parts

and after sales services in India for the Buses offered till 9 years from the date of Final Acceptance of Buses. The Contractor shall not be permitted to use the spares and aggregates of non-OEM make or inferior quality.

- (g) **Insurance:** The Contractor shall maintain and provide insurance cover as per GC 24.1 of Section VIII of the RFP.

1.3 Throughout these Bidding Documents:

- (a) The term “in writing” means communicated in written form (e.g., by mail, e-mail, fax, telex) with proof of receipt;
- (b) If the context so requires, “singular” means “plural” and vice versa; and
- (c) “Day” means calendar day.

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| 2. Source of Funds | 2.1 The Authority specified in the BDS has applied for or received financing (hereinafter called “funds”) from the KfW Entwicklungsbank (hereinafter called “the KfW”), toward the project named in the BDS . The Authority intends to apply a portion of the funds to eligible payments for Supply of Buses and Depot Improvement Works under the Contract for which these Bidding Documents are issued. |
| 3. Corrupt and Fraudulent Practices | <p>3.1 KfW requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI of the RFP.</p> <p>3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents to provide information and permit KfW or an agent appointed by KfW to inspect on site all accounts, records and other documents relating to bid submission and contract performance (in the case of award), and to have them audited by auditors or agents appointed by KfW.</p> |
| 4. Eligible Bidders | 4.1 A Bidder may be a firm that is a private entity, a state-owned entity subject to ITB 4.8 or any combination of such entities in the form of a Consortium (“Consortium”) under an existing Consortium Agreement or with the intent to enter into such an agreement supported by a letter of intent to execute a Consortium Agreement, in accordance with ITB 11.2. In the case of a Consortium, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The Bidder shall nominate an authorized representative or a Lead Member of the Consortium who shall have the authority to conduct all business for and on behalf of Bidder and any and all its members if the Bidder is a Consortium during bidding and contract execution (in the event the Bidder is awarded the Contract). The limit on the number |

of members in a Consortium shall be as per Section II Bid Data Sheet (BDS) and ITB 11.2 of the RFP.

- 4.2 The Bidder(s) including the Single Bidder or the Lead Member of the Consortium should be legally competent to enter into a contract as per prevailing laws of India or abroad.
- 4.3 The Single Bidder or the Lead Member of the Consortium shall have a Bus manufacturing facility in India or abroad. In case of a Foreign Bidder, it shall be required to demonstrate contractual relationship with an authorized representative/ agency/ dealership who has been in the business of after sales services of the similar vehicles for the last 5 years in India preceding the bid due date.
- 4.4 Deleted.
- 4.5 The Single Bidder or the Lead Member of the Consortium shall have obtained a type approval certificate for at least one Pure Electric Bus variant from the authorized agencies under CMVR 1989 in India or equivalent statutory provisions abroad.
- 4.6 The Single Bidder or the all the Consortium members shall have valid certificates complying in ISO 9001 or IATF 16949 and ISO 14001 and OHSAS 18001/ ISO 45001 requirements as part of the Qualification bid.
- 4.7 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:
 - (a) Directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - (b) Receives or has received any direct or indirect subsidy from another Bidder; or
 - (c) Has the same legal representative as another Bidder; or
 - (d) Has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Authority regarding this bidding process; or
 - (e) Participates in more than one bid in this bidding process, both as an individual firm and as a Consortium member. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or

- (f) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the Electric Buses that are the subject of the bid; or
- (g) Any of its affiliates has been hired (or is proposed to be hired) by the Authority for the Contract implementation; or
- (h) Has a close business or family relationship with a professional staff of the Authority (or of the project implementing agency, or of a recipient of a part of the funds) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the KfW throughout the procurement process and execution of the contract.

- 4.8 The KfW's eligibility criteria to bid are described in Section V, Eligibility criteria.
- 4.9 A Bidder shall not be under suspension from bidding by the Authority as the result of the execution of a Bid-Securing Declaration.
- 4.10 This bidding is open only to eligible Bidders, who will be subject to qualification.
- 4.11 A Bidder shall provide such evidence of eligibility satisfactory to the Authority, as specified in ITB 17.1 or as the Authority shall reasonably request.

5. Eligible Electric Buses and Related Services

- 5.1 All the Electric Buses and Related Services to be supplied under the Contract and financed by the KfW shall have their origin in any country in accordance with Section V, Eligibility Criteria.
- 5.2 For purposes of this Clause, the term "Electric Buses" includes commodities, raw material, machinery, equipment, and industrial plants; and "related services" includes services such as insurance, installation, training, and initial maintenance.
- 5.3 The term "origin" means the country where the Electric Buses have been produced, manufactured, processed, or assembled, another commercially recognized article results that differs substantially in its basic characteristics from its components.

B. Contents of Bidding Documents

6. Sections of Bidding Documents

- 6.1 The Bidding Documents consist of Parts 1, 2, 3, and 4 which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

PART 1 - Bidding Procedures

- Section I. Instructions to Bidders (ITB)
- Section II. Bid Data Sheet (BDS)
- Section III. Qualification and Evaluation Criteria
- Section IV. Bidding Forms
- Section V. Eligibility Criteria
- Section VI. KfW Policy - Corrupt and Fraudulent Practices and Social and Environmental Responsibility

PART 2 - Supply Requirements

- Section VII. Schedule of Requirements

PART 3 - Contract

- Section VIII. General Conditions of Bus Supply and O&M Service Contract (BSO&M-GC)
- Section IX. Particular Conditions of Bus Supply and O&M Service Contract (BSO&M-PC)
- Section X, General Conditions of Depot Improvement Works Contract (DIW-GC)
- Section XI: Particular Conditions of Depot Improvement Works Contract (DIW-PC)
- Section XII. Contract Forms.

PART 4 – Project Details and Key RFP provisions

- 6.2 The Invitation for Bids issued by the Authority is not part of the Bidding Documents.
- 6.3 Unless obtained directly from the electronic procurement portal or webpage designated by the Authority, the Authority is not responsible for the completeness of the Bidding Documents, responses to requests for clarification or Addenda to the Bidding Documents in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Authority shall prevail.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and

to furnish with its Bid all information or documentation as is required by the Bidding Documents.

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| <p>7. Pre-bid Meeting /Clarification of Bidding Documents</p> | <p>7.1 A Bidder requiring any clarification of the Bidding Documents shall contact the Authority in writing at the Authority's email address specified in the BDS. A pre-bid meeting shall be arranged on the date, time and place provided in the BDS. The Authority will respond in writing to any request for clarification, provided that such request is received no later than 21 (Twenty-One) days prior to the deadline for submission of bids. The Authority shall forward copies of its response to all Bidders who have submitted the pre-bid queries/clarification for the bidding documents, including a description of the inquiry but without identifying its source. If so specified in the BDS, the Authority shall, also promptly publish its response at the web page identified in the BDS. Should the clarification result in changes to the essential elements of the Bidding Documents, the Authority shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2.</p> |
| <p>8. Amendment of Bidding Document</p> | <p>8.1 At any time prior to the deadline for submission of bids, the Authority may amend the Bidding Documents by issuing addenda.</p> <p>8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Authority in accordance with ITB 6.3. The Authority shall also promptly publish the addendum on the Authority's web page in accordance with ITB 7.1.</p> <p>8.3 To give Bidders reasonable time in which to take an addendum into account in preparing their bids, the Authority may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2.</p> |

C. Preparation of Bids

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| <p>9. Cost of Bidding</p> | <p>9.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Authority shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.</p> |
| <p>10. Language of Bid</p> | <p>10.1 The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Authority, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language specified in the</p> |

BDS, in which case, for purposes of interpretation of the Bid, such translation shall govern.

**11. Documents
Comprising the
Bid**

11.1 The Bid shall comprise the following:

(a) Qualification (Online submission Part 1)

- (i) Qualification Submission Form, in accordance with Section III (1.1) (Table 1)
- (ii) Declaration of Undertaking duly signed, in accordance with Section III (1.2) (Table 1)
- (iii) Undertaking for ESHS duly signed in accordance with Section III (1.3) (Table 1)
- (iv) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2 and Section III (1.2) (Table 1)
- (v) Any other forms and supporting documents required in Section III (1.1) (1.2) (Tables 1 to 5)
- (vi) Bid Submission Form and the Bidding Forms in accordance with ITB 12. The original copy of Power of Attorney (POA) shall be submitted physically as well, in accordance with ITB 21.1
- (vii) Scanned copies of Online Payment Receipt of RFP fees and Bid Security, in accordance with ITB 19.1. The printed/ original copy of the same shall be submitted physically as well in accordance with ITB 21.1
- (viii) Alternative bids, if permissible, in accordance with ITB 13
- (ix) Documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the contract if its Bid is accepted
- (x) Documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility to bid
- (xi) Documentary evidence in accordance with ITB 16, that the Electric Buses and Related Services to be supplied by the Bidder are of eligible origin
- (xii) Documentary evidence in accordance with ITB 16 and 30, that the Electric Buses and Related Services conform to the Bidding Documents
- (xiii) Any other document **required in the BDS**.

(b) Technical Bid (Online Submission Part 2)

- (i) Copies of the entire RFP document, Bus Specifications, Response to Pre-Bid Queries

and all corrigendum signed and stamped by the Authorized signatory for the RFP.

- (ii) Compliance to technical specifications as per the requirements of the RFP.
- (iii) An undertaking on the bidder's letterhead and signed and stamped by the Authorized signatory for the RFP clearly stating that the bidder shall meet and comply with all the commercial and technical terms and conditions of the RFP.

(c) Financial Bid (Online Submission Part 3)

- (i) Completed schedules, in accordance with ITB 12 and 14

11.2 In addition to the requirements under ITB 11.1, bids submitted by a Consortium shall include a copy of the Consortium Agreement entered into by all members. Alternatively, a letter of intent to execute a Consortium Agreement in the event of a successful bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement. The bidding conditions for a consortium **shall be as provided in the BDS.**

11.3 The Bidder shall furnish in the Bid Submission Form information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

12. Qualification Submission Form, Declaration of Undertaking, Qualification Forms, and Bid Submission Form, Bidding Forms, Price Schedules

12.1 The Qualification Submission Form, the Declaration of Undertaking and the Qualification Forms as listed in ITB 11.1(a) shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.

12.2 The Technical Bid Submission Form, and the Bidding Forms as listed in ITB 11.1(b) shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.

12.3 The Financial Bid Submission Form, the Price Schedules, and the Bidding Forms as listed in ITB 11.1(c) shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.

- 13. Alternative Bids** 13.1. Unless otherwise **specified in the BDS**, alternative bids shall not be considered.
- 14. Bid Prices**
- 14.1 The prices quoted by the Bidder in the Bid Submission Form and in the Price Schedules shall conform to the requirements specified below.
- 14.2 Deleted.
- 14.3 The price to be quoted in the Bid Submission Form shall be the total price of the bid, including any discounts offered.
- 14.4 Deleted.
- 14.5 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, **as specified in the BDS**. A bid submitted with an adjustable price quotation, for the Supply of Buses and Charging Solution and the Depot Improvement Works, however except for the O&M Services, shall be treated as nonresponsive and shall be rejected, pursuant to ITB 30. However, if in accordance with the BDS, prices quoted for the O&M Services by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.
- 14.6 As specified in ITB 1.1, bids are being invited for individual lot (contract). Prices quoted shall correspond to 100 % of the items specified for the lot. Bidders wishing to offer discounts for the award of the Contract shall include in their bid.
- 14.7 The term CIP (Carriage and Insurance Paid to), and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, as **specified in the BDS**.
- 14.8 Prices shall be quoted as specified in each Price Schedule included in Section IV, Bidding Forms. The Bidders are required to quote Three (3) separate prices for 1) Design, Manufacture and Supply of 100 (nos.) of Electric Buses and charging solution inclusive of transit insurance, packaging and transport cost for final delivery at designated location of MTC Chennai, (Landed Cost) 2) Item wise and aggregated price for the Depot Improvement Works and prices for 3) Operation and Maintenance Service for 9 years as per the format provided in Price Schedule of the RFP. All the bidders are required to quote the prices exclusive of Local GST in India and in Indian Rupees only. The Foreign Bidders are required to exclude all the duties, if applicable along with Local GST. The estimated amount of Local GST shall be

provided in the Price schedule however it shall not be considered for evaluation of Financial Bid. The Local GST on Supply of Buses and Charging Solutions and Depot Improvement works shall be payable by the Authority as applicable. However, the Authority does not expect Local GST to be applicable on O&M Service. If applicable it will be payable at applicable rate over above the Base per km Rate upon being satisfied by the Authority as to its applicability. The Prices shall be entered in the following manner:

a) For supply of Buses and Charging Solution

1. The Bidders are required to quote the prices for the Bus and Charging Solution inclusive of all taxes, except GST, insurance, and transit cost for final delivery at designated location of MTC Chennai. Bidders shall quote prices on CIP (Carriage and Insurance Paid) at designated locations. The terms CIP shall mean as defined in prevailing INCOTERMS. The foreign bidder shall bear risk of any change in taxes in the country of its origin along with foreign exchange risk at the time of bidding and during the Contract Period. The Bidders are required to indicate the break-up of duties and taxes payable by them in their Price Schedule in respect of Price of Bus.
2. **Electric Buses and Charging Solution:** The price of the Electric Buses quoted CIP named place of destination (final destinations), excluding all customs duties and GST and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Electric Buses.
3. All related services required in these Bidding Documents.

b) For Depot Improvement Works

1. The bidder shall quote unit rate and Total Depot Improvement works price against the Estimated Bill of Quantity provided as per table B of Part 1 of the Price Schedule. The prices quoted by the Bidder shall be inclusive of all applicable taxes, royalties, levies, cess, duties, charges, fees, Design and consultancy charges, Cost of ESHS Management Plan measures relevant to the Contractor to be implemented during the Depot Improvement Works, contingencies etc. required to be paid under the Contract or as required by the applicable laws or as required by the laws of India **except GST**. The Bid Prices shall not be adjusted for any of these costs other than GST.

c) For O&M Services

- (i) The Bidder shall quote, **excluding GST**, the cost of the O&M Service for Nine (9) years in

INR per km terms against annual minimum km for each year as per the format provided in Table C of Part 1 of the Price Schedule.

(ii) The Aggregated per km Cost of O&M Service shall include the following:

- a. Cost of Driving Manpower with adequate relievers
- b. Cost of Maintenance Manpower with adequate relievers
- c. Depot Equipment Cost and maintenance of such equipments
- d. Cost of spare parts, inventory, charging infrastructure and other costs of buses applicable for Comprehensive Maintenance
- e. Cost of Supervision and Monitoring of O&M Services and general administration
- f. Cost of ICT components
- g. Cost of ESHS management plan measures relevant to Contractor to be implemented during operation period.
- h. Any other Cost that is applicable.

(iii) However, the O&M service cost shall exclude 1) the cost pertaining to Depot Improvement Works and Charging Infrastructure work 2) cost of spare-parts, aggregates and labour covered under different warranties specified in the RFP and 3) entire Cost of Electricity Consumed for Charging of buses (including of Base Tariff, Demand Charges, Fuel and Power Purchase Price Adjustments, Govt Duty and any other cost as applicable) and Auxiliary use for Depot lighting, depot equipment, water supply and utilities

(iv) The Bidder shall also include the cost of extended Warranties as specified in the RFP. The Authority shall not provide any upward revision in the year wise quoted prices throughout the O&M Service Period.

2. For Related Services specified in Section VII - Schedule of Requirements:

(i) All related services are to be included in the respective Price Schedule [(a), (b), or (c) above] submitted by each Bidder.

- 15. Currencies of Bid and Payment**
- 15.1 The currency(ies) of the bid and the currency(ies) of payments shall be **as specified in the BDS**. The Bidder shall quote in the currency of the Authority's Country the portion of the bid price that corresponds to expenditures incurred in the currency of the Authority's country, unless otherwise **specified in the BDS**. For avoidance of any doubt the Bidder shall quote all the prices in INR terms only.
- 16. Documents Establishing the Eligibility and Conformity of the Electric Buses and Related Services**
- 16.1 To establish the eligibility of the Electric Buses and Related Services in accordance with ITB 5, Bidders shall complete the country-of-origin declarations in the Price Schedule Forms, included in Section IV, Bidding Forms.
- 16.2 To establish the conformity of the Electric Buses and Related Services to the Bidding Documents, the Bidder shall furnish as part of its Bid the documentary evidence that the Electric Buses conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 16.3 The documentary evidence may be in the form of literature, drawings, or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Electric Buses and Related Services, demonstrating substantial responsiveness of the Electric Buses and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
- 16.4 The Bidder shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Electric Buses during the period **specified in the BDS** following commencement of the use of the Electric Buses by the Authority.
- 16.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Authority in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Authority's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

17. Documents Establishing the Eligibility and Qualifications of the Bidder

- 17.1 To establish their eligibility in accordance with ITB 4, Bidders shall complete the Qualification and Bid Submission Forms, included in Section IV, Bidding Forms.
- 17.2 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Authority's satisfaction:
- (a) That, as **required in the BDS**, the Bidder is the manufacturer or producer of the Electric Buses;
 - (b) That, if **required in the BDS**, in case of a Bidder not doing business within the Authority's Country, the Bidder is represented by a subsidiary, registered under Authority's country equipped and able to carry out the e-bus supply, operation, maintenance, repair, spare parts-stocking and Depot Improvement works related obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
 - (c) That the Bidder meets each of the qualification criterion specified in Section III, Qualification and Evaluation Criteria.

18. Period of Validity of Bids

- 18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Authority in accordance with ITB 22.1. A bid valid for a shorter period shall be rejected by the Authority as nonresponsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Authority may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 19, it shall also be extended for forty-two (42) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.
- 18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:
- (a) In the case of E-buses and Charging Solution supply and Depot Improvement works Contract price shall be the bid price adjusted by the factor **specified in the BDS**;
 - (b) In the case of O&M Service Contract, no adjustment shall be made. The prices applicable for a particular time period as per the Price Schedule shall be considered as the Contract Price

- (c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.

19. RFP Fees and Bid Security

19.1 The Bidder shall furnish as part of its bid, the RFP fee and a Bid Security, as **specified in the BDS**, in original form or paid Online in the amount and currency **specified in the BDS**.

19.2 The RFP fee and Bid Security shall be paid online only through e-payment. The bank details of the Authority are specified in the BDS. The RFP fee shall be non-refundable. The Bid Security must be issued in the currency of the Bid.

19.3 If a Bid Security is specified pursuant to ITB 19.1, the Bid Security shall be a demand guarantee in any of the following forms at the Bidder's option:

- (a) An unconditional guarantee issued by an Indian Nationalized or Scheduled Bank in favour of The Director, IRT valid till 192 days from the date of Bid Submission, encashable at Chennai only;
- (b) A Demand Draft issued by an Indian Nationalized or Scheduled Bank in favour of The Director, IRT encashable at Chennai only; or
- (c) Another security **specified in the BDS**;

from a reputable source from an eligible country as specified in Section V, Eligibility Criteria. Bidders are free to use any reputable bank for the purpose of issuing the required Bid Security, subject to all conditions of ITB 19 are being met without exception; the issuing bank shall have a correspondent Nationalized or Scheduled bank in the Authority's country. In the case of a bank guarantee, the Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Authority prior to bid submission. The Bid Security shall be valid for forty-two (42) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

19.4 If a Bid Security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive Bid Security shall be rejected by the Authority as non-responsive.

19.5 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder signing the contract and furnishing the Performance Security pursuant to ITB 42.

19.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has

signed the contract and furnished the required performance security.

19.7 The Bid Security may be forfeited:

- (a) If a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, or any extension thereto provided by the Bidder; or
- (b) If the successful Bidder fails to:
 - (i) Sign the Contract in accordance with ITB 41; (or)
 - (ii) Furnish a performance security in accordance with ITB 42.

19.8 The Bid Security of a Consortium must be in the name of the Consortium that submits the bid. If the Consortium has not been legally constituted into a legally enforceable Consortium at the time of bidding, the Bid Security shall be in the name of the Lead Member of the Consortium named in the letter of intent referred to in ITB 4.1 and ITB 11.2.

19.9 If a Bid Security is **not required in the BDS**, pursuant to ITB 19.1, and:

- (a) If a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, or any extension thereto provided by the Bidder; or
- (b) If the successful Bidder fails to: sign the Contract in accordance with ITB 41; or furnish a performance security in accordance with ITB 42;

the Authority may, **if provided for in the BDS**, declare the Bidder ineligible to be awarded a contract by the Authority for a period of time **as stated in the BDS**.

20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11, separated into Qualification, Technical Bid and Financial Bid, and Colour Scanned the documents in PDF version. The Bidder shall submit the bids online only, separated into Qualification bid, Technical Bid and Financial Bid, in the number **specified in the BDS**.

20.2 The bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments

have been made shall be signed or initialled by the person signing the bid.

- 20.3 In case the Bidder is a Consortium, the Bid shall be signed by an authorized representative/ lead member of the Consortium on behalf of the Consortium and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

- 21.1 The 1) Qualification, 2) Technical Bid and 3) the Financial Bid and 4) online payment for RFP fee and Bid Security ("collectively known as Bid") shall be submitted online at <https://tntenders.gov.in>, and physically in the manner specified in the BDS.

21.2 Deleted.

21.3 Deleted.

- 21.4 Physical Submission of the Qualification Bid and/ or Technical Bid and/or the Financial Bid, shall lead to outright rejection of the Bid.

22. Deadline for Submission of Bids

- 22.1 Bids, as defined in ITB 21.1, must be received by the Authority at the address and no later than the date and time **specified in the BDS**.

- 22.2 The Authority may, at its discretion, extend the deadline for the submission of Bids, by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Authority and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

- 23.1. The bidder shall not be allowed to submit online bid after expiry of the Bid submission timeline. The Authority shall not consider any Physical submission as per ITB 21.4 that arrives after the deadline for submission of bids, in accordance with ITB 22. Any Bid received by the Authority after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and Modification of Bids

- 24.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted online till the expiry of the Submission timeline as per ITB 22.1.
- 24.2 No Bid can be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the

Bidder on the Bid Submission Form or any extension thereof.

25. Bid Opening

25.1 Bid opening will be conducted in Three (3) online sessions accessible to all the Bidders:

- (a) During the first online session, the Qualification Bid, shall be opened online as per ITB 25.2, and online submitted RFP fees and Bid Security shall be opened and kept in a safe place.
- (b) During the second online session, the Technical Bid shall be opened online only for those Bids having passed the 1) responsiveness check pursuant to ITB 30, 2) Eligibility criteria as per ITB 4 and 3) evaluation of the Qualification Bid as per ITB 17 and Section III.
- (c) During the Third online session, the Financial Bid shall be opened online only for those Bids having passed the 1) responsiveness check pursuant to ITB 30, 2) Eligibility criteria as per ITB 4, 3) evaluation of the Qualification Bid and 4) Technical Bid as per ITB 17 and Section III

25.2 First Online Session:

- (a) Except in cases specified in ITB 23 and ITB 24, the Authority shall publicly open and read out in accordance with ITB 25.2 all Bids received by the deadline (regardless of the number of Bids received), at the date, time and place **specified in the BDS**, in public and in the presence of Bidders' designated representatives.
- (b) Deleted.
- (c) First of all, the Online Submission of RFP fees and Bid Security shall be checked first, one at a time reading out: the name of the Bidder, the Qualification shall be opened online subsequently all at a time, reading out: the name of the Bidder and any other details as the Authority may consider appropriate. The Authority shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 23.1).
- (d) The Authority shall prepare a record of the opening session that shall include, as a minimum: the name of the Bidder. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

25.3 Second Online Session:

After completion of the evaluation of the Basic Responsiveness Check (ITB 30) and Qualification Bid,

and after obtaining approval by KfW, the Authority shall advise all bidders of the result, and invite the Bidders considered as qualified for the opening of the Technical Bids. Sufficient time for attendance preparation shall be afforded to the Bidders. The Bidders meeting basic responsiveness, eligibility/ pre-qualification and qualification criteria shall be considered qualified for Technical Bid Opening. The Authority shall check the specific responsiveness of the Bidder at this stage pursuant to ITB 30.

25.4 Third Online Session:

After completion of the evaluation of the Qualification and Technical Bid, and approval by KfW, the Authority shall advise all bidders of the result, and invite the Bidders considered as qualified for the opening of the Financial Bids. Sufficient time for attendance preparation shall be afforded to the Bidders.

- (a) The Authority shall publicly open online and read out in accordance with ITB 25, Financial Bids of all qualified Bidders pursuant to ITB 25.2, including the total Bid Prices, alternative bids (if permitted pursuant to ITB 13); The Authority shall neither discuss the merits of any bid nor reject any bid.
- (b) The Authority shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and the Bid Price including any discounts. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders

E. Evaluation and Comparison of Bids

26. Confidentiality

- 26.1 Information relating to the examination, evaluation, and comparison of the bids, and qualification of the Bidders and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract Award is communicated to all Bidders in accordance with ITB 40.
- 26.2 Any attempt by a Bidder to influence the Authority in the examination, evaluation, and comparison of the bids, and qualification of the bidders, or contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact

the Authority on any matter related to the bidding process, it shall do so in writing.

27. Evaluation of Responsiveness, Eligibility, Qualification and Technical Bid of the Bidder

27.1 The Authority shall determine to its satisfaction whether the Bidder meets 1) Basic and Specific Responsiveness Check as per ITB 30, 2) Eligibility of the Bidders as per ITB 4 and 3) the qualifying criteria specified in Section III, Qualification and Evaluation Criteria.

27.2 The Authority shall stepwise examine and evaluate the technical bid in the following sequence;

Step 1: Basic Responsiveness Check (ITB 30.1)

Step 2: Eligibility Check (ITB 4)

Step 3: Qualification Check (ITB 17 and Section III)

Step 4: Specific Responsiveness Check (ITB 30.2)

The Qualification and Technical bid of the Bidders shall be required to pass (meet the provisions set forth in the respective clauses) each of the evaluation step to be eligible for assessment of the next step as mentioned above.

For avoidance of any doubt, only the Qualification Bid which are found to be meeting Basic Responsiveness shall be considered for evaluation of Bidder's Eligibility.

Similarly, the Bids meeting the Eligibility Criteria shall be evaluated for Qualification criteria.

The Technical Bid of only those bidders shall be Opened who are meeting Basic Responsiveness, Eligibility and Qualification criteria as part of the Qualification Bid evaluation.

The Authority shall evaluate the Technical Bid or determination of the Specific Responsiveness as per ITB 30.2. The Authority reserves the right to reject any Bid which is non-responsive and not meeting Eligibility and Qualification criteria. No request for alteration, modification, substitution, or withdrawal shall be entertained by the Authority in respect of such rejected Bid.

27.3 The Qualification and Technical Bid Evaluation shall be based upon determination of timely and appropriate submission, assessment of validity and adequacy of the payments made towards RFP fee and Bid Security and an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.2 (c), Qualification.

27. An affirmative determination of Responsiveness, Eligibility and Qualification shall be a prerequisite for successfully qualified Bidder, for continued evaluation of the Bidder's

Financial Bid. A negative determination shall result in disqualification of the bid.

27.5 An evaluation report of the qualification shall be prepared and presented to KfW for no-objection.

27.6 On receipt of KfW's no-objection, all Bidders shall be informed of the evaluation result of the Bidders' qualification, and only those Bidder's passing this evaluation step shall be invited for the opening of the remainder of the Bids, pursuant to ITB 25.3.

28. Clarification of Bids

28.1 To assist in the examination, evaluation, comparison of the qualification and Financial Bids of the Bidders, the Authority may, at its discretion, ask any Bidder for a clarification of its Bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Authority shall not be considered. The Authority's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Authority in the Evaluation of the bids, in accordance with ITB 32.

28.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Authority's request for clarification, the Authority shall proceed to evaluate the Bid as per the available information.

29. Deviations, Reservations, and Omissions

29.1 During the evaluation of bids, the following definitions apply:

- (a) "Deviation" is a departure from the requirements specified in the Bidding Documents;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents.

30. Determination of Responsiveness

30.1 Basic Responsiveness of the Bid: The Authority's determination of a bid's Basic responsiveness is to be based on the contents of the bid itself, as defined in ITB 11 and valid submission of RFP and EMD/ Bid Security. A Bid with Basic responsiveness is one that 1) has been accompanied by valid receipt of online payment for RFP fees and Bid Security, 2) has all the Documents comprising Bid as per ITB 11. The Basic Responsiveness

of the Bid shall be determined prior to evaluation of Qualification Bid.

30.2 Specific Responsiveness of the Bid: The Specific Responsiveness of the Bid shall be the one which meets the Commercial and Technical Conditions and requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- (a) If accepted, would:
 - (i) Affect in any substantial way the scope, quality, or performance of the Electric Buses and Related Services specified in the Contract; or
 - (ii) Limit in any substantial way, inconsistent with the Bidding Documents, the Authority's rights or the Bidder's obligations under the proposed Contract; or
- (b) If rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

30.3 As part of the Basic and Specific Responsiveness checks, the Authority shall examine the technical aspects of the bid submitted in accordance with ITB 16, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.

30.4 If a bid is not substantially meeting the Basic and Specific responsive to the requirements of the Bidding Documents, it shall be rejected by the Authority and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

31. Non-conformities, Errors and Omissions

31.1 Provided that a Bid is substantially responsive, the Authority may waive any non-material nonconformities in the Bid.

31.2 Provided that a bid is substantially responsive, the Authority may request that the Bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

31.3 Provided that a bid is substantially responsive and meeting the pre-qualification and qualification criteria, the Authority shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be **adjusted as specified in the BDS**, for comparison

purposes only, to reflect the price of a missing or non-conforming item or component.

32. Correction of Arithmetical Errors in the Financial Bid

32.1 Provided that the Bid is substantially responsive, the Authority shall correct arithmetical errors on the following basis:

- (a) If there is a discrepancy between the unit price and the line-item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line-item total shall be corrected, unless in the opinion of the Authority there is an obvious misplacement of the decimal point in the unit price, in which case the line-item total as quoted shall govern and the unit price shall be corrected;
- (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail, and the total shall be corrected; and
- (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

32.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 32.1 shall result in the rejection of the Bid.

33. Conversion to Single Currency

33.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted in a single currency as **specified in the BDS**.

34. Margin of Preference

34.1 **Unless otherwise specified in the BDS**, a margin of preference shall not apply.

35. Evaluation of Financial Bids

35.1 The Authority shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

35.2 To evaluate a Financial Bid, the Authority shall consider the following:

Step 1: Basic assessment of Correction of Bid Price as follows;

- (a) The Bid Price as quoted in accordance with clause 14;
- (b) Price adjustment for correction of arithmetic errors in accordance with ITB 32.1;
- (c) Price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 31.3;
- (d) Converting the amount resulting from applying (a) to (d) above, if relevant, to a single currency in accordance with ITB 33;

- (e) The additional evaluation factors as specified in Section III, Qualification and Evaluation Criteria, 2. Evaluation.

Step 2: Determination of Aggregated Bid Price.

- (a) The Bidders shall quote the bid price as per ITB 14.8.
- (b) The Authority shall consider the following Bid Prices for Evaluation of Financial Bid
 - (i) Aggregated Bid Price for Design, Manufacturing and Supply of 100, Low Floor, AC 12 metre Electric Buses and Charging Solution excluding local GST..... **(A)**
 - (ii) Aggregated Lump Sum Bid Price for Depot Improvement Works excluding GST.....**(B)**
 - (iii) For O&M Service, the Aggregated Annual Operations and Comprehensive Maintenance Service cost [rate per km multiplied by annual assured km for 100 (nos.) electric buses] for O&M Service Period of Nine (9) years shall be considered for further evaluation of the Financial Bid as specified in the format of price bid.....**(C)**

Note: The payment to the Contractor shall be made by the Authority using the per km rate applicable for each year of the Comprehensive Maintenance Period as per the rate revision formula provided in GC 16.8 of the RFP.

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

35.4 Deleted.

35.5 The Authority's evaluation of a bid will exclude and not take into account:

- (a) In the case of Electric Buses manufactured in the Authority's Country, sales and other similar taxes, which will be payable on the Electric Buses if a contract is awarded to the Bidder;
- (b) In the case of Electric Buses manufactured outside the Authority's Country, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Electric Buses if the contract is awarded to the Bidder;

- (c) In the case of Related Services, customs duties and sales and other similar taxes that will be payable on the Related Services if the contract is awarded to the Bidder;
 - (d) Any allowance for price adjustment during the period of execution of the contract, if provided in the bid.
- 35.6 The Authority's evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Electric Buses and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise **specified in Section III, Qualification and Evaluation Criteria**. The criteria and methodologies to be used shall be as specified in Section III, Qualification and Evaluation Criteria.
- 35.7 The total cost of supply of Buses and Charging Solutions and Depot Improvement should not be greater than 1.3 times of Aggregated O&M Service Cost of 9 years in the Prices quoted by the Bidder. Any Financial Bid not meeting the above requirement shall be summarily rejected.
- 35.8 The sum of the costs (A), (B) and (C) specified in the ITB 35.2, however after application of the formula provided for the additional factor as per ITB 35.6 shall be considered as the Aggregated Bid Price for final Financial Bid Evaluation and comparison purpose.
- 35.9 If the bid, which results in the lowest Evaluated individual or Aggregated Bid Price, is significantly lower than the Authority's estimate, the Authority shall require the Bidder to produce detailed price analysis for any or all items of the Price Schedules, to demonstrate the internal consistency of those prices with the supply requirements and the method and schedule proposed. If one or several inconsistencies are evidenced, or if a bidder does not provide the required detailed price analyses, the bid shall be declared non-compliant and rejected.
- 36. Comparison of Financial Bids**
 - 36.1 The Authority shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 35.2 and 35.7 to determine the lowest evaluated bid.
- 37. Authority's Right to Accept Any Bid, and to Reject Any or All Bids**
 - 37.1 The Authority reserves the right to accept or reject any Bid, and to annul the bidding process and reject all Bids at any time prior to Contract Award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

F. Award of Contract

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| <p>38. Award Criteria</p> | <p>38.1 Subject to ITB 37.1, the Authority shall award the Contract to the eligible Bidder, whose bid is substantially responsive and qualified, pursuant to ITB 4, ITB 30 and ITB 27, and Bidder whose Aggregated Bid Price has been determined to be the lowest evaluated bid.</p> |
| <p>39. Authority's Right to Vary Quantities at Time of Award</p> | <p>39.1 At the time the Contract is awarded, the Authority reserves the right to increase or decrease the quantity of Electric Buses and Related Services originally specified in Section VII, Schedule of Requirements, provided this does not exceed the percentages specified in the BDS, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.</p> |
| <p>40. Notification of Award</p> | <p>40.1 Prior to the expiration of the period of bid validity, the Authority shall notify the successful Bidder, in writing, that its Bid has been accepted; for this purpose, the Letter of Acceptance Form attached to these Bidding Documents shall be used. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Authority will pay the Contractor in consideration of the supply of Electric Buses (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). At the same time, the Authority shall also notify all other Bidders of the results of the bidding.</p> <p>40.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.</p> <p>40.3 The Authority shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in writing the grounds on which its bid was not selected.</p> |
| <p>41. Signing of Contract</p> | <p>41.1 Promptly after notification, the Authority shall send the successful Bidder the Contract Agreement.</p> <p>41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Authority.</p> <p>41.3 Notwithstanding ITB 41.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Authority, to the country of the Authority, or to the use of the products/ Electric Buses, systems or services to be supplied, where such export restrictions arise from trade regulations from a country supplying those products/Electric Buses, systems or services, the Bidder shall not be bound by its bid, always provided however, that the Bidder can demonstrate to the satisfaction of the Authority and of the KfW that signing of the Contract Agreement has not been prevented by any lack of diligence</p> |

on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the products/ Electric Buses, systems or services under the terms of the Contract.

41.4 Within seven (7) days of signing of Contract and submission of requisite Performance Security, as specified below, by the Contractor, the Authority i.e., Managing Director of MTC Chennai shall issue Purchase Order ("Purchase Order") to the Contractor. The Contractor shall acknowledge the signed copy of the Purchase Order within seven (7) days of its receipt.

42. Performance Security

42.1 Within twenty-eight (28) days of the receipt of notification of award from the Authority, the successful Bidder shall furnish the Performance Security in accordance with the GC, using for that purpose the Performance Security Form included in Section X, Contract Forms. Bidders are free to use any Indian Nationalized and Scheduled bank acceptable to the Authority for the purpose of issuing the required performance security, subject to all conditions of ITB 42 and GC are being met without exception. The issuing bank shall have a correspondent bank in the Authority's country.

42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Authority may award the Contract to the next lowest evaluated Bidder, whose bid is Eligible, whose bid is substantially responsive and qualified pursuant to ITB 4, ITB 30 and ITB 27, and substantially responsive.

Section II. Bid Data Sheet (BDS)

The following specific data for the Electric Buses to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

ITB Clause Reference	A. General																				
ITB 1.1	<p>The number of the Invitation for Bids is: IRT Tender No.: 16/E-Bus/CP/IRT/2024 KfW Ref. No.: BMZ209919234/KFW510081</p> <p>100 (nos.) of 12 metre long, 400 mm Floor Height, Air Conditioned, Pure Electric Fully Built buses and Charging Solution for Urban application (“Tendered Quantity”)</p> <p>The Tendered Quantity of buses shall be supplied, commissioned and operated as part of Metropolitan Transport Corporation (Chennai) Ltd, (“MTC, Chennai”) within Chennai Metropolitan Area.</p>																				
ITB 1.1	<p>The Authority for different activities, purpose and objectives shall mean as follows;</p> <table><tr><th>S. No.</th><th>Responsibilities and Obligations as per the RFP</th><th>Authority</th></tr><tr><td>1</td><td>Finalization and submission of Final draft RFP, Obtaining No-Objection approval from KfW, Issuance of the RFP, Conducting Prebid meeting, carryout the bid evaluation, selection of Successful Bidder, Conducting Pre-award Discussion (if any) Issuance of LOA and Coordination and contract management.</td><td>Institute of Road Transport (IRT)</td></tr><tr><td>2</td><td>Signing of Contract, issuance of Purchase Order and management and enforcement of contract.</td><td>Managing Director, MTC, Chennai.</td></tr><tr><td>3</td><td>Payment to the Contractor against supply of Buses and Depot Improvement Works</td><td>Joint Managing Director, Tamil Nadu Transport Development Finance Corporation Ltd. (TDFC Ltd.)</td></tr><tr><td>4</td><td>Payment to the Contractor against O&M Services</td><td>Managing Director MTC, Chennai.</td></tr><tr><td>5</td><td>Dispute Resolution</td><td>Managing Director MTC, Chennai and Institute of Road Transport (IRT)</td></tr></table>			S. No.	Responsibilities and Obligations as per the RFP	Authority	1	Finalization and submission of Final draft RFP, Obtaining No-Objection approval from KfW, Issuance of the RFP, Conducting Prebid meeting, carryout the bid evaluation, selection of Successful Bidder, Conducting Pre-award Discussion (if any) Issuance of LOA and Coordination and contract management.	Institute of Road Transport (IRT)	2	Signing of Contract, issuance of Purchase Order and management and enforcement of contract.	Managing Director, MTC, Chennai.	3	Payment to the Contractor against supply of Buses and Depot Improvement Works	Joint Managing Director, Tamil Nadu Transport Development Finance Corporation Ltd. (TDFC Ltd.)	4	Payment to the Contractor against O&M Services	Managing Director MTC, Chennai.	5	Dispute Resolution	Managing Director MTC, Chennai and Institute of Road Transport (IRT)
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5	Dispute Resolution	Managing Director MTC, Chennai and Institute of Road Transport (IRT)																			

ITB 1.1	<p>The name of the ICB is: Supply, Operation and Maintenance of 100 (nos.) of 12 metre – Low Floor – AC, Electric Buses and Charging Solution along with Depot Improvement works for Metropolitan Transport Corporation, Chennai, Tamil Nadu through International Competitive Bidding</p> <p>– Individual lot/ contract/ package</p> <p>The identification number of the ICB is:</p> <p>IRT Tender No.: 16/E-Bus/CP/IRT/2024</p> <p>KfW Ref. No.: BMZ209919234/KFW510081</p>																									
ITB 2.1	<p>The name of the Project is: Climate Friendly Modernization Program of Bus Services in Major Cities of Tamil Nadu</p>																									
	<p>B. Contents of Bidding Documents</p>																									
ITB 7.1	<p>1) For <u>clarification of bid purposes</u> only, the Authority's address is:</p> <p style="padding-left: 40px;">Attention: The Director, IRT</p> <p style="padding-left: 40px;">Address: Institute of Road Transport, 100 Feet Road, Taramani, Chennai – 600113</p> <p>2) Requests for clarifications, if any, should reach the employer in writing, not later than 09/02/2024.</p> <p>3) Pre-Bid meeting will be held offline and online simultaneously on 08/02/2024. The Pre-Bid meeting will be held offline / physically at: Institute of Road Transport, 100 Feet Road, Taramani, Chennai – 600113.</p> <p style="padding-left: 40px;">The prospective bidders those who want to participate in the online pre bid meeting can submit their authorized e-mail ID at irttaramani@gmail.com/ irtcpo@gmail.com through mail requesting participation in the pre bid meeting. The authority will share the URL to the online platform with the interested parties 2 days prior to the pre bid meeting.</p> <p>4) The Bidders are advised to use the following format for submitting their queries or request for clarification:</p> <table border="1" data-bbox="456 1659 1342 1944" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="5" style="padding: 5px;">Name of the Bidder:</td> </tr> <tr> <th style="padding: 5px;">Query No.</th> <th style="padding: 5px;">Reference Clause No.</th> <th style="padding: 5px;">Reference Page no.</th> <th style="padding: 5px;">Existing Provision in the Bid</th> <th style="padding: 5px;">Query or Clarification Sought</th> </tr> <tr> <td style="padding: 5px;">(1)</td> <td style="padding: 5px;">(2)</td> <td style="padding: 5px;">(3)</td> <td style="padding: 5px;">(4)</td> <td style="padding: 5px;">(5)</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>	Name of the Bidder:					Query No.	Reference Clause No.	Reference Page no.	Existing Provision in the Bid	Query or Clarification Sought	(1)	(2)	(3)	(4)	(5)										
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(1)	(2)	(3)	(4)	(5)																						

	<p>5) In case if the Bidder wishes to visit the Depot site prior to Pre-Bid Meeting, the Bidders shall have to obtain permission in this regard from MTC through a written request. The Depot inspection shall be permitted for a window of maximum 5 days from the date of the pre-bid meeting. Further, the Bidder shall not be allowed to deploy more than 5 persons for the depot visit. Any request for depot visit, after the permitted timeline mentioned above shall not be entertained by MTC.</p>
ITB 7.1	Web page : www.tenders.tn.gov.in
	C. Preparation of Bids
ITB 10.1	<p>The language of the bid is: English.</p> <p>All correspondence exchange shall be in the English language. Language for translation of supporting documents and printed literature is English.</p>
ITB 11.2	<p>Bidding Conditions for a Single Bidder and a Consortium</p> <ol style="list-style-type: none"> 1. If the Bid is by a Single Bidder, the Bid needs to be submitted by a Vehicle Manufacturer only, who is meeting the prescribed Qualification Criteria for Vehicle Manufacturer and who shall supply the Contracted Buses under this RFP ("Single Bidder"). 2. If the Bid is through a Consortium, maximum three (3) members are permitted to participate. The combinations of consortium members permitted are as follows. <ol style="list-style-type: none"> a. Vehicle Manufacturer and a Bus Operator; (Or) b. Vehicle Manufacturer and an Energy Solution Provider (ESP); (Or) c. Vehicle Manufacturer, Bus Operator and Energy Solution Provider (ESP) 3. The Vehicle Manufacturer shall mandatorily be the Lead Member of the Consortium ("Lead Member"). 4. The Vehicle Manufacturer and ESP can be Foreign Bidders, however, the Bus Operator shall mandatorily be a Domestic (Indian) firm. 5. The Bus Operator can be an independent entity or a Special Purpose Vehicle controlled by a Vehicle Manufacturer. 6. As used here, the expression "Control" means, with respect to the SPV of the Vehicle Manufacturer (i) the ownership of the Vehicle Manufacturer or its common shareholders, directly or indirectly (i.e. together with one or more of its subsidiary/ Holding companies), of at least 50% of the voting shares/ shareholding of the SPV in question OR (ii) the Vehicle Manufacturer has right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

	<p>7. The Energy Solution Provider shall be a firm involved in the provision of Electric Vehicle Battery/ Battery Management System/ Charging solutions/ services for operation and maintenance of charging station or all comprehensive Energy Solution.</p> <p>8. The ESP not meeting the conditions specified in sub-clause (7) above shall not be considered eligible as consortium members.</p> <p>9. Bids of the non-eligible consortium members shall be summarily rejected.</p> <p>10. Replacement in any of the Consortium members shall not be permitted throughout the Contract Period without prior consent of the Authority and as per the provisions of GC 6 under Section VIII.</p> <p>11. The roles and responsibilities of any member must be commensurate with the technical/ financial capabilities that such member is contributing towards meeting the qualification criteria. Each consortium member is liable to contribute resources in terms of knowledge, skills and trained manpower commensurate with its roles and responsibilities during the Contract Period.</p> <p>12. The Consortium member shall enter into a Joint Bidding Agreement before submission of the Bid as per the format provided in Form 10 of Section IV the RFP. Consortium Members shall be jointly and severally liable for execution of the contractual obligations. Further the non-lead member of the Consortium shall issue a Power of Attorney in favour of the Lead Member.</p> <p>13. The Bids of the Single Bidders and the Consortiums not meeting the above requirements shall be summarily rejected by the Authority.</p>
ITB 13.1	Alternative Bids shall not be considered.
ITB 14.5	<p>The prices quoted by the Bidder for Supply of Buses and Charging Solutions as per table A of Part 1 of Price Schedule shall not be adjustable.</p> <p>The prices quoted by the Bidder for Depot improvement Works as per table B of Part 1 of Price Schedule shall not be adjustable.</p> <p>The prices quoted by the Bidder for Operation and Maintenance Services as per Table C of Part 1 of Price Schedule shall not be adjustable.</p>
ITB 14.7	The Incoterms edition is Incoterms 2010.
ITB 14.8 (b) (i)	Named Place of Destination: Chennai, Tamil Nadu, India
ITB 15.1	The prices shall be quoted by the bidder in Indian Rupee (INR) only.
ITB 16.4	Period of time the Electric Buses are expected to be functioning (for the purpose of spare parts): 9 years
ITB 17.2 (a)	Evidence showing bidder as Manufacturer of e-buses.

ITB 17.2 (b)	After sales service is required
ITB 18.1	The bid validity period shall be 150 days.
ITB 18.3 (a)	<p>The bid price shall be adjusted by the following factor:</p> <p>1) <i>For supply of Electric Buses and Charging Infrastructure: 3% per annum on the base supply rate (excluding of taxes, insurance cost, transit cost, and other expenses)</i></p> <p>2) <i>For Depot Improvement Works: 3% per annum on the base estimated cost excluding contingencies, general and design charges, all the taxes, insurance and other misc. expenses.</i></p>
ITB 19.1	<p>The amount and currency of the RFP Fee shall be INR 18,880/- (INR Seventeen thousand seven hundred Only)</p> <p>The amount and currency of the Bid Security shall be INR 2,50,00,000/ (INR Two Crore Fifty Lakh Only)</p> <p>For online payment/ RTGS of RFP fees and Bid Security following details can be used.</p> <p>Name of the Account Holder: Institute of Road Transport</p> <p>Bank Name: Canara Bank</p> <p>Branch Name: Thiruvanniyur Branch</p> <p>Account Number: 2649101000360</p> <p>IFSC Code: CNRB0002649</p>
ITB 19.3 (c)	None
ITB 19.9	Not Applicable.
ITB 20.1	In addition to the original Online bid, the number of copies is: <i>None</i> .
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: a Power-of-Attorney or permitted authorisation document accompanying the Bid. In case of the Bidder being Company incorporated under Indian Companies Act 1956/ 2013 or applicable similar statutory requirements of the country of origin in case of Foreign Bidder, the Power of Attorney shall be supported by a Board Resolution in favour of the person vesting power to the person signing the Bid.
	D. Submission and Opening of Bids
ITB 21.1	<p>1.1 Online Submission</p> <p>1.1.1 The bidder shall submit online the requirements under qualification criteria and technical document required and commercial bid as prescribed in the tender document. All the documents are required to be signed digitally by the bidder. After electronic online bid submission, the system generates a unique</p>

	<p>bid reference number which is time stamped. This shall be treated as acknowledgement of bid submission.</p> <p>1.1.2 Bidder should log into the site well in advance for bid submission so that they can upload the bid in time i.e., on or before the bid submission time. Bidder will be responsible for any delay due to other issues</p> <p>1.1.3 The bidder has to digitally sign and upload the required bid document one by one as indicated in the tender document.</p> <p>1.1.4 Bidder has to select the payment option as “online” to pay the Tender document cost and EMD amount through RTGS/ Net-Banking.</p> <p>1.1.5 The Scanned copy of payment made through RTGS/ Net-Banking for RFP Fees, and EMD amount has to be uploaded. IRT shall not be responsible for any delay in uploading the proof for the payment of RFP Fee and EMD amount. Failing which their tender will be summarily rejected.</p> <p>1.1.6 Format for the Price bid is provided with the RFP document. Bidders are requested to note that they should necessarily submit their Price bids in the file (.xls), open it and completed the coloured (Unprotected) cells with their respective price quotes and other details (such as name of the bidder). No other cells should be changed. Once the details have been completed, the bidder should save it and submit it online, without changing the file name. If the file is found to be modified by the bidder, the bid will be rejected.</p> <p>1.1.7 The Server time (which is displayed on the bidders dashboard) will be considered as the standard time for referencing the deadlines for submission of the bids by the bidders, opening of bids etc. The bidders should follow this time during bid submission</p> <p>1.1.8 All the documents being submitted by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of bid opening. The confidentiality of the bids is maintained using the secured Socket Layer 128-bit encryption technology. Data Storage encryption of sensitive fields is done. Any bid document that is uploaded to the server is subjected to symmetric encryption using buyers/ bid openers public keys.</p> <p>1.1.9 The uploaded tender documents become readable only after the tender opening by the authorized bid openers.</p> <p>1.1.10 Upon the Successful and timely submission of bids (i.e., after clicking “ Freeze Bid submission “ in the portal) the portal will give a successful bid submission message & a bid summary will</p>
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	<p>be displayed with the bid no. and the date & time of submission of the bid with other relevant details.</p> <p>1.1.11 IRT or Tamil Nadu Government E-procurement System shall not be responsible for any failure such as a bad internet connection or power failure outside of their control. The bidder is responsible to ensure they have sufficient time to submit an electronic bid prior to closing date and time including the payment of any fees and getting e- receipt. In case of failure in the system within the control of the service provider that may affect a bidding process, the contracting authority on his sole discretion will postpone the closing time at least 24 hours from the time of system recovery to allow bidders sufficient time to submit their bids.</p> <p>1.1.12 IRT may, as its discretion, extend the deadline for the submission of bids by amending the bidding document, in which case all rights and obligations of IRT and bidders subject to the previous deadline shall thereafter be subject to the deadline extended.</p> <p>1.1.13 The Qualification and Technical bid documents should be self-attested by the bidder in all pages. Otherwise, tender will summarily be rejected.</p> <p>1.2 Instructions to Bidders for E-Tendering</p> <p>1.2.1 Tender document is uploaded in the e-Tender portal https://tntenders.gov.in. The prospective Bidder shall register themselves in the e-Tender Portal (https://tntenders.gov.in) and submit the Bids electronically through the e-Tender portal.</p> <p>1.2.2 It is mandatory for the Bidder to possess a valid Class -3 Signing and Encryption Digital Signature Certificate in the name of the Tender submitting authority to complete the e-Tender Bid process as per the provisions of Government of India IT Act 2000 with latest amendments.</p> <p>1.2.3 Digital Signature Certificates can be obtained from the authorized certifying agencies, details of which are available in the web site https://tntenders.gov.in under the link "Information about DSC".</p> <p>1.2.4 The website has user manuals with detailed guidelines on enrolment and participation in the online Bidding process. The user manuals can be downloaded for ready reference.</p> <p>1.2.5 The Bidders are requested to download the e-Tender help manual and user manuals from the Portal for reference.</p> <p>1.2.6 The registered Bidder can log into the e-Tender portal and download the Bid Forms and Tender document/ corrigendum as applicable and go through them carefully.</p> <p>1.2.7 Bidder shall go through the Tender documents and get ready with all relevant documents in pdf/ xls/ rar formats as indicated therein and then have them uploaded against each category. In</p>
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	<p>the Qualification and Technical Bid, Bidder may attach an index page wherever necessary, in the beginning, which indicates the details of the files/ documents that follow the index page against Qualification and Technical Bid content indicated. This shall also help for easy reference later.</p> <p>1.2.8 While scanning the Bid documents to convert to pdf, Bidder shall scan the page in 65 to 100 dpi mode, to get a readable page after scanning and also the size of the document shall also be lesser. For pages in text, it is advised to use 65 dpi mode and for pages with images, 100 dpi mode.</p> <p>1.2.9 Bidder shall be ready with the Qualification and Technical Bid and Price Bid in filled form well in advance to avoid last minute submission and once the bids are ready in all aspects, they may choose the freeze option to submit the Bid finally and thereafter they shall get a Bid acknowledgement receipt which is the final end, indicating the Successful submission of the Bid.</p> <p>1.2.10 The Qualification, Technical and Price Bids shall be submitted separately using the Digital Signature Certificates.</p> <p>1.2.11 Bidder can do the resubmission of the Bid any number of times, either Qualification or Technical Bid or Price Bid or all 3 (three) till the closure of bid.</p> <p>1.2.12 The Bids shall be submitted online not later than the date and time specified in the Tender Schedule or Corrigendum if published. E-Tender portal shall automatically lock the date and time exactly as specified in the tender.</p> <p>1.2.13 Even if the Bid submission is in halfway through during the closing date and time, submission would not be possible. Hence the Bidder should be cautious to submit the Bids well in advance to avoid failures in the submission of their bids.</p> <p>1.2.14 IRT shall not be responsible for the failure of the Bidder to submit the Bids due to any reason.</p> <p>1.2.15 For all Tender processing activities, the server time indicated at the top of the e- Portal, while doing Bid submission/ Tender opening activities shall be final. The Local system time shall not be taken into account in such case.</p> <p>1.2.16 The e-Tender system shall issue a Bid acknowledgement receipt which is the final proof for the Successful Bid submission.</p> <p>1.2.17 Bidder may contact the Helpdesk at National Informatics Centre for support on the Tender portal.</p> <p>1.2.18 For specific queries/ clarifications, please contact NIC (National Informatics Centre)</p>
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	<p>Contact Person:</p> <table><tr><td>Mr. B. Seenivasan, Senior Technical Director Email: b.seenivasan@nic.in</td></tr><tr><td>For NIC Technical Support: Email: support.etender@nic.in Contact Number : 044-24461505 / 044-24908115</td></tr></table> <p>1.2.19 Bids will be opened electronically on specified date and time as given in the RFP.</p> <p>1.2.20 All formats/ information requires as per the RFP should be entered in online Qualification, Technical and Price Formats without any ambiguity.</p> <p>1.2.21 E-tender cannot be accessed after the due date and time mentioned in NIT.</p> <p>1.2.22 Any order resulting from this RFP shall be governed by the terms and conditions mentioned therein.</p> <p>1.2.23 No deviation to the technical and commercial terms & conditions are allowed.</p> <p>1.2.24 The RFP inviting authority has the right to cancel this e-tender or extend the due date of receipt of bid(s) without assigning any reason thereof.</p> <p>1.2.25 The bidders should upload all the documents required (if any) as per the terms of the RFP. Any other document which is not required as per the terms of the RFP shall not be considered.</p> <p>1.2.26 The bid will be evaluated based on the filled-in Price bid formats.</p> <p>1.2.27 Canvassing in any form in connection with the Tender is strictly prohibited and the bids submitted by the bidders who resort to canvassing are liable to be rejected.</p> <p>1.3 Physical Submission</p> <p>1.3.1 The original copy of payment made through RTGS/ Net-Banking for RFP Fees, and EMD amount and the Power of Attorney (POA) shall be submitted physically through RPAD or Speed Post only at the address specified in ITB 22.1, failing which their tender will be summarily rejected.</p>	Mr. B. Seenivasan, Senior Technical Director Email: b.seenivasan@nic.in	For NIC Technical Support: Email: support.etender@nic.in Contact Number : 044-24461505 / 044-24908115
Mr. B. Seenivasan, Senior Technical Director Email: b.seenivasan@nic.in			
For NIC Technical Support: Email: support.etender@nic.in Contact Number : 044-24461505 / 044-24908115			
ITB 22.1	<p>For bid submission purposes, the Authority's address is:</p> <p>Attention: The Director, IRT</p> <p>Address: The Institute of Road Transport, 100 feet road, Taramani</p> <p>City: Chennai</p>		

	<p>ZIP Code: 600113</p> <p>Country: India</p> <p>The deadline for the submission of bids is:</p> <p>Online Submission: The Qualification, Technical Bid and Financial Bid along with the scanned copy of the RFP Fees and EMD and Price Bid shall be submitted online on or before 11/03/2024 at 3:00 PM (IST) at https://tntenders.gov.in.</p> <p>Physical Submission: RFP Fee and EMD/Bid Security and the Power of Attorney (POA) shall be submitted physically on or before 13/03/2024 at 3:00 PM (IST) at the above-mentioned address. Submission of the Qualification Bid, Technical Bid and Price Bid in Physical Format shall be treated as non-responsive and shall be summarily rejected.</p>
ITB 25.2	<p>The bid opening shall take place at: The Institute of Road Transport</p> <p>Street Address: 100 feet road, Taramani</p> <p>Floor/ Room number: 1st Floor, Conference Room</p> <p>City: Chennai</p> <p>Country: India</p> <p>No minimum number of bids is required in order to proceed to bid opening.</p>
ITB 25.2	<p>The first public bid opening session (qualification documents, and withdrawals, substitutions and modifications) shall take place on/at:</p> <p>Date: 13/03/2024</p> <p>Time: 3:30 PM (IST)</p>
	E. Evaluation and Comparison of Bids
ITB 33.1	Not applicable since the bids have to be submitted in only one currency, which is INR.
ITB 34.1	A margin of domestic preference shall not apply.
	F. Award of Contract
ITB 39.1	Authority may increase or decrease the order size by maximum 25% after issue of the Letter of Acceptance/ Work Order but prior to 60 days of completion of delivery as per agreed delivery schedule. Such increase or decrease in the order size shall be on pro-rata basis in the ordered quantity of the Buses.

Section III. Qualification and Evaluation Criteria

1. Qualification (ITB 27)

All Qualification documents and requirements listed here (including attached forms, and required support documents) shall be submitted online in accordance with ITB 25 and ITB 27, and will be evaluated before opening the remainder of the bid

1.1 The Qualification Document submission shall consist of:

- (1) Qualification Submission Form, Declaration of Undertaking, and Eligibility (Table 1)
 Bidder shall meet the requirements as per Table 1 and submit the required forms and supporting documents; forms provided in this bidding document may not be amended but only completed following the instructions in this bidding document.
 Mandatory or Optional (when required) + power of attorney
- (2) Historical Contract Non-Performance (Table 2)
 Both forms must be submitted duly filled and signed; any non-performance during the required period stated in Form 6 of Section IV of the RFP will lead to disqualification of the Bidder's bid.
- (3) Financial Capacity (Table 3)
 Bidders shall meet the requirements as per Table 3 and submit the required forms and supporting documents; forms provided in this bidding document may not be amended but only completed following the instructions in this bidding document.
- (4) Technical Capacity (Table 4)
 Submission of the required number of references (similar experience / contracts).
- (5) Technical Capacity, Spare Parts and Local Agent (if applicable) (Table 5)
 Submission of the required information, in response the requirements stated in Section VII, Schedule of Requirements. *[These requirements shall only be included if applicable, and those not required may be deleted from Section VII].*

1.2. Requirements and Criteria

The following tables describe qualification requirements and criteria, in accordance with ITB 27 and Section III (Qualification), which must be satisfied by each Bidder. Only specified requirements and criteria shall be used, and requirements and criteria not included in the tables below shall not be used in the evaluation of the Bidder's Qualification. For avoidance of any doubt, the following tables are the checklists for the bidders to comply with the qualification requirements as per the RFP.

Table 1						
Qualification Criteria			Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Consortium		Submission Requirements
				All Parties Combined	Each Member/ One Member	
1. Qualification Submission Form, Declaration of Undertaking, and Eligibility						
1.1	Qualification Submission Form	Submission, in accordance with Section III, Qualification	Must meet requirement	Must meet requirement	Must meet requirement	Form 1
1.2	Declaration of Undertaking	Submission, in accordance with ITB 12	Must meet requirement	Must meet requirement	Must meet requirement	Form 2
1.3	Undertaking for ESHS	Submission, in accordance with ESHSMP	Must meet requirement	Must meet requirement	Must meet requirement	Form 3
1.4	Power of Attorney	Submission, in accordance with ITB 20.2	Must meet requirement	Must meet requirement	Must meet requirement	Power of Attorney (free format)
1.5	Consortium Agreement	Consortium Agreement or Letter of Intent, (in case of a Consortium), in accordance with ITB 4.1	N/A	Must meet requirement	Must meet requirement	a Consortium Agreement as per format provided in Form 10 or Letter of Intent (free format).
1.6	Nationality	Nationality in accordance with ITB 4.8	Must meet requirement	Must meet requirement	Must meet requirement	Forms 4 and 5 (in case of Consortium), with attachments

1.7	Conflict of Interest	No conflicts of interest in accordance with ITB 4.7	Must meet requirement	Must meet requirement	Must meet requirement	Form 1
1.8	KfW Eligibility	Not being ineligible for KfW financing, as described in ITB 4.8	Must meet requirement	Must meet requirement	Must meet requirement	Form 1
1.9	State-owned Entity	Meets conditions of ITB 4.8	Must meet requirement	Must meet requirement	Must meet requirement	Forms 4 and 5 (in case of Consortium), with attachments

Table 1						
Qualification Criteria			Compliance Requirements			Documentation
No.	Subject	Requirement	Single Entity	Consortium		Submission Requirements
				All Parties Combined	Each Member/ One Member	
2. Historical Contract Non-Performance						
2.1	History of Non-Performing Contracts	Termination of a contract ¹ did not occur as a result of Contractor default in the past 5 years.	Must meet requirement ²	Must meet requirements	Must meet requirement ²	Form 6
2.2	Suspension Based on Execution of Bid Securing Declaration by the Authority or withdrawal of the Bid within Bid validity	Not under suspension based on execution of a Bid Securing Declaration pursuant to ITB 4.9 or withdrawal of a Bid pursuant ITB 19.9.	Must meet requirement	Must meet requirement	Must meet requirement	Form 1

¹ Non-performance shall include all terminations of contracts where (a) non-performance was not challenged by the supplier, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the supplier. Non-performance shall not include contracts where Authority's decision was overruled by the dispute resolution mechanism.

² This requirement also applies to contracts executed by the Bidder as a Consortium member.

2.3	Pending Litigation	All pending litigation shall in total not represent more than one hundred percent (100%) of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement	N/A	Must meet requirement	Form 6
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Table 3							
Qualification Criteria			Compliance Requirements ³				Documentation
No.	Subject	Requirement	Single Entity/ Bidder Vehicle Manufacturer only	Consortium			Submission Requirements
				Lead Member (Vehicle Manufacturer only)	Bus Operator	Energy Solution Provider (ESP)	
3. Financial Capacity							
3.1	Average Annual Contractor Turnover	Minimum average annual Contractor turnover, calculated as total certified payments received for contracts in progress and/or completed within the last 3 Years i.e., 2021-22, 2020-21, 2019-20	INR 120 Crore from vehicle manufacturing. Must meet requirement	INR 120 Crore from vehicle manufacturing. Must meet requirement	NR 60 Crore only from Operation and Maintenance of E- buses. Must meet requirement	NR 60 Crore only from Energy solution business.	Form 7
3.3	Net-worth	The Single Bidder or	INR 50 Crore. Must meet	INR 50 Crore.	INR 20 Crore.	INR 20 Crore.	Form 7

³ Drawing Credentials from the Associates of the bidder or any consortium members as well as combining the technical and financial capacity of the consortium members to meet the qualification criteria is not permitted.

Table 3							
Qualification Criteria			Compliance Requirements ³				Documentation
No.	Subject	Requirement	Single Entity/ Bidder Vehicle Manufacturer only	Consortium			Submission Requirements
				Lead Member (Vehicle Manufacturer only)	Bus Operator	Energy Solution Provider (ESP)	
3. Financial Capacity							
		Members of the Consortium shall have a minimum net worth as on the last day of the financial year preceding the due date of submission of Bid. For the purposes of this RFP, net worth (the “Net Worth”) shall mean Equity Capital + Reserve and Surplus - Revaluation Reserve - Accumulated losses - Intangible assets.	requirement	Must meet requirement	Must meet requirement	Must meet requirement	

Table 4							
Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity/Bidder Vehicle Manufacturer only	Consortium			Submission Requirements
				Lead Member (Vehicle Manufacturer only)	Bus Operator	Energy Solution Provider (ESP)	
4. Technical Capacity							
4.1	Similar Experience	A minimum number of similar ⁴ contracts specified below that have been satisfactorily and substantially ⁵ completed as Contractor in Capacity of Vehicle Manufacturer or Bus Operator or ESP as single entity/bidder/ contractor during the past in any three (3) years of last ten (10) Financial Years preceding the bid date in India or abroad.	The Vehicle Manufacturer, as Single Bidder shall be engaged in manufacturing and supply of minimum 100 (nos.), Pure Electric, fully built Buses and Design, Supply, installation and operation of Energy Solution/Chargin g Infrastructure of minimum 100 (nos.) Pure electric Buses cumulatively to	The Vehicle Manufacturer, as the Lead Member of a Consortium, shall be engaged in manufacturing and supply of minimum 100 (nos.), Pure Electric, fully built Buses cumulatively to the Government or Parastatal entities. Must meet requirement	The Bus Operator, bidding as part of a Consortium, shall be engaged in Operation and Maintenance of minimum 100 (nos.), Pure Electric, fully built Buses cumulatively for the Government or Parastatal entities Must requirement meet	The ESP, bidding as part of a Consortium, shall be engaged in Design, Supply, installation and operation of Energy Solution / Charging Infrastructure for minimum 100 (nos.), Pure Electric, fully built Buses cumulatively for the Government or Parastatal entities as direct vendor or as sub-	Form 8 (one per contract)

⁴ The similarity shall be based on the quantity, complexity, methods/technology and/or other characteristics described in Section VII, Schedule of Requirements. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.

⁵ Substantial completion shall be based on 80% or more completed under the contract.

Table 4							
Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity/Bidder Vehicle Manufacturer only	Consortium			Submission Requirements
				Lead Member (Vehicle Manufacturer only)	Bus Operator	Energy Solution Provider (ESP)	
4. Technical Capacity							
			the Government or Parastatal entities. The Vehicle Manufacturer, as Single Bidder, shall be engaged in Operation and Maintenance of minimum 100 (nos.), Pure Electric, fully built Buses cumulatively for the Government or Parastatal entities Must meet requirement			contractor to a Vehicle Manufacturer Must meet requirement	
4.2	Similar Experience in Depot Improve	A minimum number of similar contracts specified below that have been satisfactorily and	The Vehicle Manufacturer, as Single Bidder, shall have	Any of the Consortium Member shall have executed, operated and maintained the Depot works including Bus charging infrastructure and allied civil infrastructure through in-house			

Table 4							
Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity/Bidder Vehicle Manufacturer only	Consortium			Submission Requirements
				Lead Member (Vehicle Manufacturer only)	Bus Operator	Energy Solution Provider (ESP)	
4. Technical Capacity							
	nt Works	substantially ⁶ completed as Contractor in Capacity of Vehicle Manufacturer or Bus Operator or ESP as single entity/bidder/ contractor during the past Five (5) Financial Years preceding the bid date in India or abroad.	executed,operate d and maintained the Depot works including Bus charging infrastructure and allied civil infrastructure through in-house capacity or through sub-contracting to a Category/ Class AA or A contractor for a min. of 100 E-Buses in the last 5 years under a single contract or combining 2 contracts.	capacity or through sub-contracting to a Category/ Class AA or A contractor for a min. of 100 E-Buses in the last 5 years under a single contract or combining 2 contracts.			

⁶ Substantial completion shall be based on 80% or more completed under the contract.

Table 5							
Qualification Criteria			Compliance Requirements				Documentation
No.	Subject	Requirement	Single Entity/Bidder Vehicle Manufacturer only	Consortium (existing or intended)		Submission Requirements	
				Lead Member (Vehicle Manufacturer only)	Bus Operator		Energy Solution Provider (ESP)
5. Technical Capacity, Spare Parts and Local Agent (if applicable)							
5.1	Spare Parts	If so, required in Section VII, Schedule of Requirements, the Bidder's must confirm availability of spare parts.	Must meet requirement	Must meet requirement	N/A	N/A	Form 9, and any support documents as required in Section VII, Schedule of Requirements

2. Evaluation (ITB 35)

2.1 Evaluation Criteria (ITB 35.6)

The Authority's evaluation of Financial Bids for Supply of Buses and Charging Solutions may take into account, in addition to the Bid Price quoted in accordance with ITB 14.8, following factor as specified in ITB Sub-Clause 35.6, using the following criteria and methodology. The factor specified below shall not be applicable for evaluation of Bid Price for 1) Depot Improvement Works and 2) O&M Services.

(a) Delivery Schedule

The Electric Buses specified in the List of Electric Buses are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section VII, Delivery Schedule. No credit will be given to deliveries before the earliest date, and bids offering delivery after the final date shall be treated as non-responsive.

3. Domestic Preference (ITB 34)

Not Applicable.

Section IV. Bidding Forms

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Form 1. Qualification Submission Form

[The Bidder shall prepare his Qualification Submission Form on a Letterhead specifying the Bidder's complete name, address and communication details].

[Note: All italicized text is for use in preparing these forms by bidders and shall be deleted from the final document.]

Date: *[Insert date]*

ICB No.: *[Insert ICB No.]*

To:

The Director,

Institute of Road Transport, Chennai.

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda *[Insert Addenda No./Nos., if any]* issued in accordance with Instructions to Bidders (ITB 8);
- (b) We are bidding as Single Bidder/ Consortium of the following members;

S. no.	Name of Organization	Destination in the Consortium.	Role and Responsibility in the Consortium.

- (c) We meet all the eligibility and qualification requirements and have no conflict of interest in accordance with ITB 4;
- (d) We have not been suspended nor declared ineligible by the Authority based on execution of a Bid Securing Declaration in the Authority's country in accordance with ITB 4.9;
- (e) We have submitted our Bid in Three (3) online packages, of which Package 1 contains Qualification Bid, Package 2 is Technical Bid, and package 3 contains Financial Bid.
- (f) We are not participating, as a Bidder, in more than one bid in this bidding process in accordance with ITB 4.7(e).
- (g) We, along with any of our subcontractors, Contractors, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by an entity or individual that is subject to, a temporary suspension or a debarment imposed by a member of the World Bank Group or a debarment imposed by the KfW, the World Bank in accordance with the Agreement of Mutual Enforcement of Debarment Decisions between the World Bank and other development banks, or any other any other similar funding agency;

- (h) We have paid and submitted, the RFP fee and Bid Security with respect to the bidding process

Payment made towards/	Name of Recipient	Address	Details of payment and Banking Instrument	Amount
RFP Fee	The Director, Institute of Road Transport,	100, Taramani, Chennai	Date____ Transaction ID:	
EMD	The Director, Institute of Road Transport,	100, Taramani, Chennai	Date____ Transaction ID/ BG Number:	

- (i) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (j) We understand and accept that (i) the Authority is not bound to accept the lowest evaluated bid or any other bid that the Authority may receive, and (ii) the Authority reserves the right to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders; and
- (k) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.

Name of the Bidder *[Insert the complete name of the bidder; in the case of a Bid submitted by a Consortium insert the name of the Lead member of the Consortium]*

Name of the person duly authorized to sign the Bid on behalf of the Bidder *[Insert complete name of the person duly authorized to sign the Bid; the person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid Schedules]*

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

Form 2. Declaration of Undertaking

(On bidder's letterhead)

Reference name of the Application/Offer/Contract: ("Contract")¹

To: ("Institute of Road Transport, Chennai")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")² subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Consortium or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Consortium including Subcontractors under the Contract are in any of the following situations:
 - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
 - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
 - 2.4) having been subject, within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged, and dispute resolution is still pending or has not confirmed a full settlement against us;
 - 2.5) not having fulfilled the applicable fiscal obligations with regard to the payment of taxes at the respective tax residence and in the country of origin of the PEA (*contractors based in Annex 1 countries (<https://www.consilium.europa.eu/de/policies/eu-list-of-non-cooperative-jurisdictions/>) must submit a fully completed and legally countersigned declaration of tax conformity (Appendix 1 to the Declaration of Undertaking) in addition to the Declaration of Undertaking at the time of award of the contract/ contract review.*

¹Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Electric Buses, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries".

²The PEA means the Authority, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Electric Buses or Non-Consulting Services.

This shall become an integral part of the contract. Failure to submit may result in exclusion from the awarding procedure. For contractors based in countries not listed as Annex I countries, only the Declaration of Undertaking must be submitted, and not the declaration of tax conformity;

2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or

2.7) being guilty of misrepresentation in supplying the information required as condition to participation in this Tender Procedure.

3. We hereby certify that neither we, nor any of the members of our Consortium or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:

3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;

3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;

3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;

3.5) in the case of procurement of Works, Plant or Electric Buses:

- i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
- ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;

4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.

5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.

6. In the context of the Tender Process and performance of the corresponding Contract:

6.1) neither we nor any of the members of our Consortium nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded

a Contract will engage in any Sanctionable Practice during the performance of the Contract;

6.2) neither we nor any of the members of our Consortium or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and

6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major Contractors under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation³ (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender-based violence.

7. In the case of being awarded a Contract, we, as well as all members of our Consortium partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an auditor appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Consortium partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case, for at least six years from the date of fulfilment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf of⁴: _____

Signature: _____ Dated: _____

³In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

⁴ In the case of a Consortium insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

Appendix 1**Declaration of tax conformity – binding confirmation for legal persons****Name of company**

I hereby confirm with my signature that:

1. I am authorised to make this declaration on behalf of the above company;
2. the company properly pays all taxes in accordance with the tax laws of the country in which the company is domiciled;
3. the company is not currently nor has been in the past involved in any legal proceedings concerning the taxation of the company;
4. the company will duly pay taxes that may arise from the provision of contracted services;
5. all information and statements provided in advance are complete, accurate in terms of content and currently correct.

.....

(Place)

.....

(Date)

.....

(Name of the consultant)

.....

(Signature(s))

Appendix 2**Declaration of tax conformity – binding confirmation for natural persons**

I hereby confirm with my signature that:

1. I make this declaration in my name/on my own account;
2. I duly pay taxes that I am obliged to pay under the tax law of my country of residence;
3. I am not currently involved in tax law court proceedings, nor have I been in the past;
4. I will duly pay taxes that may arise from the provision of contracted services;
5. I have filled in all the information and statements of this confirmation in full, accurately in terms of content and that they are up to date at this time.

.....

(Place)

.....

(Date)

.....

(Name of the person)

.....

Form 3. Undertaking for ESHS Specifications

(On bidder's letterhead)

Reference name of the Application/Offer/Contract: ("Contract")⁵

To: ("Project Executing Agency")

1	Specifications for Project Area Environmental, Social, Health and Safety Management (ESHS)	1.1.1	<p>General requirements for ESHS Management:</p> <p>A table with the general ESHS requirements is attached to this tender document. The Bidder is requested to sign in each paragraph if he is compliant and committed to implement the requirements.</p>
		1.1.2	<p>Specific requirements for ESHS Management:</p> <p>Specific Requirements of the works with regard to</p> <ul style="list-style-type: none"> • Protection of the Environment and People • Health & Safety (incl. Occupational Health & Safety) • Local labour and relations with local communities <p>are attached to this tender document. The Bidder is required to enter "Yes" in the space provided if he is compliant and committed to implement the requirements. In case the Bidder enters "No" he should explain his reason for doing so.</p>

⁵Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Electric Buses, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries".

A. General Requirements for ESHS Management

A. General Requirements for ESHS Management		
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Bidder's signature
1.Responsibilities and liabilities	1.1. In conjunction with his obligations defined under the Contract, the Contractor will plan, execute, and document construction works pursuant to the present Environment, Social, Health and Safety specifications (ESHS).	
	1.2. The Contractor is liable for all damages to the environment and people caused by the execution of the works, or the methods used for execution, unless it is established that the execution or methods were necessary, according to the provisions of the Contract or an Engineer's instruction.	
	<p>1.3. Under the Contract and as introduced by the present Undertaking for ESHS Specifications, the term "Project Area" means:</p> <ul style="list-style-type: none"> a) The land where work will be carried out; or b) The land necessary for the implantation of construction facilities (work camp, workshops, offices, storage areas, concrete production plants) and including special access roads; or c) Quarries for aggregates, rock material and riprap; or d) Borrow areas for sand and other selected material; or e) Stockpiling areas for backfill material or other demolition rubble; or f) Any other location specifically designated in the Contract as a Project Area. <p>The term "Project Area" encompasses any individual Project Area or all Project Areas.</p> <p>Project Area defines an area within which the Contractor is to comply with environmental, social, health and safety</p>	

A. General Requirements for ESHS Management		
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Bidder's signature
	<p>obligations defined in the present Undertaking for ESHS Specifications.</p> <p>Site is the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and where right of access to, and possession of, is to be given by the Employer to the Contractor. The Employer is under no similar obligation for any area located outside the Site, even if within the Project Area, where access is at Contractor's risk.</p> <p>In term of physical footprint, the Site is included in the Project Area. The Project Area is then of greater geographical extent than the Site.</p>	
	<p>1.4. The Undertaking for ESHS Specifications refer to:</p> <p>a) Protection of the natural environment (water, air, soil, vegetation, biological diversity) in areas within any Project Area and its surroundings, i.e., including but not limited to access roads, quarries, borrow areas, stockpiling of backfill material, camps or storage areas;</p> <p>b) Health and safety conditions to be maintained for the Contractor's personnel and any other person present on the Project Areas, or along access routes;</p> <p>c) Working practices and the protection of people and populations living near the Project Area but exposed to the general disturbance caused by works.</p>	
	<p>1.5. Subcontractors</p> <p>The Contractor shall ensure that all Subcontractors and Suppliers (in particular those for major supply items) are familiar with the ESHS requirements and guidelines valid on Site and Project Area.</p>	
	<p>1.6. Applicable regulations</p> <p>The Contractor must comply with all applicable national laws, permits and regulations and the World Bank Group's Environmental and Social Health and</p>	

A. General Requirements for ESHS Management		
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Bidder's signature
	Safety Standards in relation to the protection of the environment and people during construction (e.g., management of impacts and disturbances related to water, air, soils, noise, vibration, vegetation, fauna, flora, waste, groundwater, national labour standards, if relevant indigenous populations, standards on occupational exposure, other). For identifying the applicable regulations, the Contractor may seek external support from a specialist.	
	1.7 Notwithstanding the Contractor's obligation under the above clauses, the Contractor shall implement all measures necessary to avoid undesirable adverse environmental and social impacts wherever possible, restore work sites to acceptable standards, and abide by any environmental performance requirements.	

<p>2. Management of Non-conformities</p>	<p>2.1 Non-conformities detected during inspections carried out by the Supervisor, shall be addressed through measures adapted to the severity of the situation and which may include deductions from Interim Payments in accordance with GCC 14.6.</p> <p>2.2 Non-conformities detected during inspections carried out by the Supervisor are subject to a process adapted to the severity of the situation. The non-conformities will be defined as deviations from the requirements of the applicable regulations, the present Undertaking for ESHS Specifications, the ESMP, and the Worksite - ESMP. Non-conformities are divided into 4 categories as follows:</p> <p>a) Notification of observation of minor non-conformities. The non-conformity results in a notification to the Contractor's Representative, followed-up by a signed notification of observation prepared by the Supervisor. The multiplication of notifications of observation at the Project Area, or absence of corrective actions by the Contractor, can result in the severity of the non-conformity being raised to that of level 1.</p> <p>b) Level 1 non-conformity: Non-conformities that do not represent a serious immediate risk for health, environment, social or safety. The non-conformity is the subject of a report addressed to the Contractor and which shall be resolved within five (5) days. The Contractor addresses to the a report explaining how the non-conformity has been corrected. Further to an inspection and a favourable evaluation of effectiveness of the corrective action, the supervisor signs a close-out report for the non-conformity. In all cases where a non-conformity of level 1 is not resolved within one (1) month, the severity of the non-conformity is raised to level 2.</p> <p>c) Level 2 non-conformities: applies to all non-conformities that represent a risk with major consequences to health and/or the environment, social or safety. The same procedure as for level 1 non-conformities is applied. Corrective action shall be taken by the Contractor within three (3) days. The Contractor addresses a report explaining the corrective actions implemented. All</p>	
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A. General Requirements for ESHS Management		
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Bidder's signature
	<p>level 2 non conformities, which are not resolved within one (1) month, are raised to level 3.</p> <p>d) Level 3 non-conformities: applies to all non-conformities that have resulted in damage to health or the environment, or which represent a high safety hazard or high social risk. The highest levels of the Contractor's and Supervisor's hierarchies present in the Employer's country are informed immediately and the Contractor has twenty-four (24) hours to bring the situation under control. Pursuant to Clause 14.6 of the Particular Conditions of Contract (PC), a level 3 non conformity results in the staged reduction of interim payments until the non-conformity has been resolved. Following the resolution of the Level 3 non-conformity the reduction(s) will be included in the next Interim Payment Certificate for payment. No interest will be paid on any reductions or suspended payment amounts. If the situation requires, and in pursuance to Clause 8.8 of the PC, the Supervisor can order the suspension of work until the resolution of the non-conformity.</p>	
3. Resources allocated to ESHS management	<p>3.1 Environment, Social, Health and Safety Officer</p> <p>3.1.1 The Contractor appoints at least one or several Environment, Social, Health and Safety persons in charge, who is/are fully or in part, time in charge of implementing the ESHS requirements. The ESHS person in charge speaks fluently the language of communication of the Contract. The Contractor informs all staff and workers of the name and authority of the ESHS person in charge.</p> <p>3.1.2 The ESHS person in charge holds the power within the Contractor's organization to escalate non-conformities, and in the event of severe ESHS non-conformities and in agreement with the Employer, suspend the works if considered necessary,</p>	

A. General Requirements for ESHS Management		
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Bidder's signature
	and allocate all resources, personnel and equipment required to take any corrective action considered necessary.	
	<p>3.2 Personnel in charge of relations with stakeholders</p> <p>3.2.1 If applicable, the Contractor nominates a Stakeholders Relations Officer (or Community Liaison Officer if appropriate) who is responsible for relations and engagement with local communities, administrative authorities, and other stakeholders and representatives of economic activities. For contracts with a low level of ESHS risks and impacts, this could also be the Contractors site staff. The Community Liaison Officer must speak the language of the local population in the Project Area. The Stakeholder Relation Officer speaks fluently the language of the local population.</p> <p>3.2.2 The Stakeholders Relations Officer will be located onsite or within reasonable travelling time from the Project Area.</p> <p>3.2.3 Local authorities will be informed of the existence of this person as of the start of works and will be provided with telephone contact details so as to be able to contact this person if a problem arises during the execution of works, or concerning the behaviour of the Contractor's Personnel, inside or outside the Project Area or any other public disturbances caused by the works.</p>	
	3.3 Both the ESHS and Stakeholder Relations Officer [Community Liaison Officer] will be equipped with the necessary resources to operate independently and get to all location of the Project Area without delay.	

A. General Requirements for ESHS Management		
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Bidder's signature
4. Inspections	4.1 The Employer will regularly inspect the Project Area and Project sites for adherence to the contract conditions including the ESHS requirements. State environmental authorities may carry out similar inspection duties. The Contractor shall comply with directives from such inspectors to implement the required measures.	
5. Reporting	5.1 The Contractor prepares regular ESHS progress reports as part of the contractually agreed reporting requirements to the Employer.	
6. Code of Conduct	<p>6.1. The Contractor establishes a Code of Conduct and displays it clearly within the Project Area. The Contractor will regularly make personnel and workers aware of the Code of Conduct and the associated provisions.</p> <p>The Code of Conduct addresses the following issues:</p> <ol style="list-style-type: none"> 1. Compliance with applicable laws, rules, and regulations 2. Compliance with applicable health and safety requirements to protect the local community (including vulnerable and disadvantaged groups), the Employer's personnel and the Contractor's personnel, including sub-contractors and day workers (including wearing prescribed personal protective equipment, preventing avoidable accidents and a duty to report conditions or practices that pose a safety hazard or threaten the environment) 3. The use of illegal substances 4. Non-Discrimination in dealing with the local community (including vulnerable and disadvantaged groups), the Employer's personnel and the Contractor's personnel, including sub-contractors and day workers (for example on the basis of family status, ethnicity, race, gender, religion, language, marital status, age, disability (physical and mental), sexual orientation, gender identity, 	

A. General Requirements for ESHS Management		
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Bidder's signature
	<p>political conviction or social, civic, or health status)</p> <p>5. Interactions with the local community(ies), members of the local community (ies), and any affected person(s) (for example to convey an attitude of respect, including to their culture and traditions)</p> <p>6. Sexual harassment</p> <p>7. Violence including sexual and/or gender-based violence</p> <p>8. Exploitation including sexual exploitation and abuse</p> <p>9. Protection of children (including prohibitions against sexual activity or abuse, or otherwise unacceptable behaviour towards children, limiting interactions with children, and ensuring their safety in the Project Area).</p> <p>10. Sanitation requirements (for example, to ensure workers use specified sanitary facilities provided by their employer and not open areas)</p> <p>11. Avoidance of conflicts of interest</p> <p>12. Respecting reasonable work instructions (including regarding environmental and social norms)</p> <p>13. Protection and proper use of property (for example, to prohibit theft, carelessness, or waste)</p> <p>14. Duty to report violations of this Code</p> <p>15. Non-retaliation against workers who report violations of the Code, if that report is made in good faith.</p>	
7. ESHS training	<p>7.1 The Contractor provides ESHS inductions and trainings to the workforce, in particular regarding Health and Safety risks and mitigation measures tailored to the project scope. The Contractor makes personnel aware about the importance to protect species, habitats, fauna and flora and the safety and rights of neighbouring communities.</p>	

A. General Requirements for ESHS Management		
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Bidder's signature
8. Standards	8.1 The Contractor complies with all applicable national norms, standards and discharge, emission etc. limit values defined in the national regulations.	

B. Specific Requirements for ESHS Management

B 1 Protection of the Environment and People			
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Compliance Yes/No	Please explain in case of No
9. Protection of adjacent areas	9.1 Keep distances in compliance with national regulations and as appropriate: a) from sensitive urban services and buildings (health centre, school, water supply for populations); b) from any housing; cultural sites, archaeological areas, sensitive wetlands, forest reserves or any other valued ecosystem component, or on high or steep ground or in areas of high scenic value. c) Where it is not possible to keep distances, permission shall be obtained from the appropriate authorities.		
	9.2 Discourage construction workers from engaging in the exploitation of natural resources such as hunting, fishing, and collection of forest products or any other activity that might have a negative impact on the social and economic welfare of the local communities.		
	9.3 Minimize long-term visual impacts.		
10. Pollution prevention	10.1 For all works minimize pollution risk (e.g., liquid effluents; air emissions; noise and vibration management; vehicle and equipment maintenance and selection; fuel, oil and chemical storage and handling).		
	10.2 Identify potentially toxic overburden and screen with suitable material to prevent mobilization of toxins.		
	10.3 Use in as much as possible, local materials to avoid importation of foreign material and long-distance transportation.		
11. Emissions and dust	11.1 Comply with national requirements for emissions.		
	11.2 Minimise the effect of dust on the surrounding environment to ensure		

B 1 Protection of the Environment and People			
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Compliance Yes/No	Please explain in case of No
	safety, health and the protection of workers and communities living in the vicinity of dust producing activities. Use best practice to ensure minimisation of dust emissions		
	11.3 Use vehicles in appropriate technical conditions and provide emissions control equipment where applicable (e.g., filters).		
	11.4 Switch off vehicles when not in use.		
	11.5 Keep speed limits on site.		
	11.6 Sensitise drivers with regards to all measures with regards to avoiding dust and emissions and safe driving.		
12. Noise and vibration	12.1 Keep noise levels emanating from machinery, vehicles and noisy construction activities (e.g., excavation, blasting) at a minimum for the safety, health and protection of workers within the vicinity of high noise levels and nearby communities.		
13. Waste	13.1 If not otherwise instructed by the Employer, identify waste management facilities and waste management contractors. Ensure disposal through waste contractors, licensed for treatment/removal/recycling of each of the waste types, if existent.		
	13.2 Properly collect all wastes produced including containers, litter and any other waste generated during the construction and dispose and segregate at designated disposal sites in line with applicable government waste management regulations.		
	13.3 Minimise the waste production to the extent possible.		
	13.4 Remove construction waste left in stockpiles along the road, and reuse or dispose of on a daily basis.		

B 2 Health and Safety			
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Compliance Yes/No	Please explain in case of No
14. Health and safety plan	<p>14.1 Develop an Occupational Health and Safety (OHS) Plan, appropriate to the ESHS impacts and risks level of the works to be carried out. Set a minimum of OHS Standards for each task. Implement prevention, protection and monitoring measures as described in the OHS Plan.</p> <p>The OHS Plan shall include at least:</p> <ul style="list-style-type: none"> • Provisions to guarantee a safe and healthy work environment, taking into account inherent risks in its particular sector and specific classes of hazards in the work areas, including physical, chemical, biological, and radiological hazards; • Provisions of preventive and protective measures, including management and safety of hazardous materials; • Training of workers; • Documentation and reporting of occupational accidents, diseases, and incidents; • Emergency preparedness and response arrangements; • Provisions for appropriate securing of the sites and work-places (e.g. fencing, signage); • If appropriate: Appointment of site security personnel; • Road safety measures; • First aid and medical assistance; • ESHS measure at community level to avoid community exposure to health issues (see also Paragraph 47). 		
15. Occupational Health and Safety (OHS) 16. Reporting	15.1 Document in a structured and transparent system, (e.g. a Site Accident record sheet) all accidents, dangerous occurrences and investigations.		
	16.1 Produce an OHS report documenting OHS performance and progress (e.g. statistics: month, number of workers, number of health and safety staff on site, number/type of OHS trainings); number of near misses, first aid cases, incidents with more than three days of absence, fatalities; summary of all accidents resulting in more than three days of absence (accident details to be enclosed in the Annex); third party incidents (e.g. community members, road traffic etc.).		

B 2 Health and Safety			
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Compliance Yes/No	Please explain in case of No
17. Accident reporting procedure	17.1 Record all health and safety related incidents (e.g. observations, accidents, witness statements) on site and follow up immediately and properly. A reportable incident includes any accident to any person on site requiring medical attention or resulting in the loss of working hours or that resulted, or could have resulted in injury, damage or a danger to the works, persons, property or the environment. If applicable, the Contractor will also notify and report of incidents of subcontractors and suppliers (in particular those for major supply items).		
	17.2 Inform the Employer immediately of any accident involving serious bodily injury to a member of personnel, a visitor or any other third party, caused by the execution of the works or the behaviour of the personnel of the Contractor.		
	17.3 Inform the Employer as soon as possible of any near-accident (or near misses) relating to the execution of the works, which, in slightly different conditions, could have led to bodily injury to people, or damage to private property or the environment.		
18. Personal protective equipment	18.1 Make sure that all workers wear Personal Protective Equipment (PPE) (hardhats, masks, safety glasses, safety boots, SLA's etc. depending on project type).		
19. Emergency scenarios prevention	19.1 Provide necessary prevention equipment on site in line with applicable regulations to respond to emergency scenarios, e.g. fire, explosion, floods, natural hazards, etc.		
	19.2 Immediately clean any spills and remediate contaminated areas.		
	19.3 Maintain high standard in housekeeping on site to avoid emergencies. Properly store construction materials and light equipment.		
	19.4 Train the workers to handle emergency situations.		
	19.5 Materials shall be stacked properly at site		

B 2 Health and Safety			
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Compliance Yes/No	Please explain in case of No
20. First-aid	20.1 Keep minimum first aid equipment and provisions on site (e.g. suitably stocked first-aid kits; a person, respectively an adequate number of trained first-aid helpers, inform staff and workers about first-aid arrangements).		
21. Access to health care and training	21.1 Organize for the workforce access to medical treatment within or in the vicinity of the Project Area.		
	21.2 Make contingency arrangements for transporting injured persons to a hospital as quickly as possible.		
22. Hygiene, accommodation, and food	22.1 Organize for the workforce adequate accommodation if applicable, supply of water, adequate sewage and garbage disposal system, appropriate protection against heat, cold, damp, fire and disease-carrying animals, adequate sanitary and washing facilities, adequate lighting, and basic medical services, in accordance with all applicable health and safety regulations and norms.		

B 3 Local labour and relations with local communities			
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Compliance Yes/No	Please explain in case of No
23. Labour conditions	23.1 The Contractor complies with labour standards as both per national laws and ILO Fundamental Conventions (e.g. prohibit child labour under minimum age; forced labour; sexual assault; discrimination; ensure non-discrimination and equal opportunities of workers; provide information to workers that is clear and understandable regarding their terms and conditions of employment; respect their rights related to hours of work, wages, overtime, benefits at the beginning of the work; ensure payment on a regular basis etc.). Grant the same rights to contracted workers, community workers and primary supply workers.		
	23.2 Develop and implement labour management procedures which set out the way workers will be managed in accordance with the standards mentioned above in Paragraph 42.		
	23.3 Establish a simple but functional complaints mechanism that all workers have access to (e.g. letter boxes which are emptied regularly) and are aware of so that they can raise workplace relevant complaints anonymously (e.g. about unfair treatment, unsafe driving).		
24. Local recruitment	24.1 Prioritise local employment and staff from local communities for the supply of goods and services to the works and local workforce, where appropriate.		
	24.2 Provide additional specialised training to local workforce in skills required by contractor (i.e. administrator, driving etc.).		
25. Meals	25.1 Proper place shall be provided for having meals		
26. Community interaction and safety	26.1 Engage, communicate with and inform communities and local authorities about the works. Obtain local knowledge regarding chance finds and land acquisition matters.		
	26.2 Initiate an efficient grievance mechanism and timely grievance redress to allow potentially affected individuals to raise their concerns regarding damages and disturbances caused by the Contractor or sub-contractors.		

B 3 Local labour and relations with local communities			
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Compliance Yes/No	Please explain in case of No
	26.3 Undertake all measures necessary to avoid conflicts with local communities regarding water demands.		
	26.4 Abstract both surface and underground water only after consultation with the local communities and after obtaining a permit from the relevant water authority.		
	26.5 In order to avoid accidents in particular related to the creation of water reservoirs/ ponds or construction site dumps, excavation areas: <ul style="list-style-type: none"> • Take necessary precaution measures to protect children/residents/workers from falling into ponds, excavation areas, etc. • Restrict access to these areas; install climbing ladders in ponds; install signs and rescue ropes and lifebuoys. • Prepare for emergencies and response arrangements. • Sensitise the population including local primary schools 		
27. Damage to people and property	27.1 Train workers and drivers to respect the safety and rights of neighbouring people, communities, and their properties to avoid disturbances. Supervise that they respect communities' houses, cultures, animals, properties, customs, and practices.		
	27.2 Appropriately fence, protect, light and sign-post site areas. Use hazard notices/signs/barriers to protect children and other vulnerable people from harm and prevent access to the sites to non-workers.		
	27.3 The Contractor shall submit a detailed structural report on the existing conditions of the nearby buildings falling within a radius of 30 mts from any point of piling before the piling works are initiated 27.4 In case of any damages on the structures nearby construction/piling location because of direct/indirect cause of the construction activities, contractor shall be liable for rectifying the damages caused		
28. Traffic management	28.1 Establish signage and create public awareness of increased traffic and of potential hazards caused by construction equipment/machinery movement near the Project Area and laydown areas.		

B 3 Local labour and relations with local communities			
Topic/ Potential Impact	Requirements for Mitigation, Management and Enhancement	Compliance Yes/No	Please explain in case of No
	28.2 Reduce accidents, by minimizing vehicle movements; train drivers for driving and security and check that they have the appropriate permits for driving vehicles.		
	28.3 Access roads and surrounding roads shall be kept clean from construction debris and dirt		

Form 4. Bidder Information Form

[The Bidder shall in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted. The form shall be submitted on letter of the bidder/Lead Member of the Consortium.]

Date: *[Insert]*

ICB No.: *[Insert]*

Page *[Insert]* of *Insert* pages

Bidder's name: <i>[Insert Bidder's legal name]</i>
In case of Consortium (JV), legal name of each member: <i>[Insert legal name of each member in JV]</i>
Bidder's actual or intended country of registration: <i>[Insert actual or intended country of registration]</i>
Bidder's year of registration: <i>[Insert Bidder's year of registration]</i>
Bidder's address in country of registration: <i>[Insert Bidder's legal address in country of registration]</i>
Bidder's Authorized Representative Information Name: <i>[Insert Authorized Representative's name]</i> Address: <i>[Insert Authorized Representative's address]</i> Telephone/Fax numbers: <i>[Insert Authorized Representative's telephone/fax numbers]</i> E-mail address: <i>[Insert Authorized Representative's email address]</i>
<p>1. Attached are copies of original documents of <i>[Check the box(es) of the attached original documents]</i></p> <p><input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association) and/or documents of registration of the legal entity named above, in accordance with ITB 4.5;</p> <p><input type="checkbox"/> In case of Consortium, letter of intent to form Consortium or Consortium agreement, in accordance with ITB 4.1;</p> <p><input type="checkbox"/> In case of a state-owned enterprise or institution, in accordance with ITB 4.8 documents establishing:</p> <p style="padding-left: 40px;">a) Legal and financial autonomy;</p> <p style="padding-left: 40px;">b) Operation under commercial law;</p> <p style="padding-left: 40px;">c) Establishing that the Bidder is not dependent agency of the Authority.</p> <p>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.</p>
Information pertaining to Vehicle Design and Manufacturing Capacity.

1	Bus Design & Evaluation Facilities:			
(a)	In house facilities (Yes or No)			
(b)	If no, then Name & Address of the Firm to carry out the work Outsourced			
(c)	Confirmation of being an authorized agency under CMVR		Certificate of authorization	
2	Vehicle Manufacturing Capacity	1) Address of the Plant 2) Photographs of the plant 3) Installed Bus Manufacturing Capacity for the last 10 financial years. 4) Utilized Capacity for the last 10 financial years.	A certificate from the statutory auditor of the bidder shall be submitted showcasing detailed year wise certificate for 1. Installed Capacity 2. Utilized Capacity For Bus Manufacturing for the last 10 financial years.	
3	Design Collaboration – Address & other details - Proof of Collaboration			
4	Manufacturing Collaboration – Address & other details - Proof of Collaboration			
5	Quality Certificate (from reputed/ recognized Firm) - Certificate No. - Date of Validity		Copies of Certificates.	
6	Details of Safety Critical Items with their Type Approval Certificate No. and Date (wherever applicable)		Copies of Certificates.	
7	Details of			
(a)	Quality Management System Certification (e.g., ISO: 9001-2000)		Copies of Certificates.	
(b)	Quality System Certification (e.g., ISO: 16949-1999)		Copies of Certificates.	

(c)	Environment Management Certification (ISO:14001-1996)		Copies of Certificates.	
(d)	Occupational Health and Safety Certification (OHSAS 18001/ISO 45001)		Copies of Certificates.	

Appendix 1: Format for showcasing Vehicle Manufacturing Capacity

S. No.	Financial Year	Installed Capacity of Fully Built Electric Buses	Utilised Capacity of Fully Built Electric Buses
1	FY 2022-23		
2	FY 2020-21		
3	FY 2019-20		
4	FY 2018-19		
5	FY 2017-18		

Appendix 2: List of Documents/ Items required along with Form 2

(Documents shall be submitted duly signed attested by the authorized person of the Bidder)

1. Registration Certificates of the Factory.
2. License for Manufacturing Buses.
3. Proprietorship Certificate/ Partnership Deed/ Company incorporation Certificate along with Memorandum of Association and Article of Association
4. Complete list of Instruments/ Equipment required for Inspection at Receipt Stage, In-process Stage and Final Stage.
5. Copies of Type Approval of Complete Bus, Aggregates/ Safety Critical Items as applicable.
6. Copies of Documents in respect to Design Collaboration.
7. Copies of Documents in respect to the Manufacturing Collaboration.
8. Copies of Quality Management System Certificates
9. Copies of Quality System Certificates.
10. Copies of Environment Management System Certificates
11. Submission of item wise / parameter wise details of offered Bus Design Vs UBS II in same format
12. Copies of the production capacities of buses – installed and production levels achieved during last three years –year wise.
13. Submission of the General schematic Drawings, Bus Layout, Front, Rear and Both Side Views of the offered design of the Bus.

14. List of documents to be submitted for registration of buses

Note: Copies of Certificates cited above are to be enclosed

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* **day of** *[Insert month]* *[Insert year]*

Form 5. Bidder's Consortium Information Form

[The Bidder shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the Bidder and for each member of a Consortium. No alterations to its format shall be permitted and no substitutions shall be accepted. The form shall be submitted on letter of the bidder/Lead Member of the Consortium]

Date: *[Insert]*

ICB No.: *[Insert]*

Page *[Insert]* of *[Insert]* pages

Bidder's Consortium Member's name: <i>[Insert JV's Member legal name]</i>
Bidder's Consortium Member's country of registration: <i>[Insert JV's Member country of registration]</i>
Bidder's Consortium Member's year of registration: <i>[Insert Consortium Member's year of registration]</i>
Bidder's Consortium Member's legal address in country of registration: <i>[Insert JV's Member legal address in country of registration]</i>
Bidder's Consortium Member's Authorized Representative Information Name: <i>[Insert name of JV's Member Authorized Representative]</i> Address: <i>[Insert address of JV's Member Authorized Representative's]</i> Telephone/Fax numbers: <i>[Insert telephone/fax numbers of JV's Member Authorized Representative]</i> E-mail address: <i>[Insert email address of JV's Member Authorized Representative]</i>
1. Attached are copies of original documents of <i>[Check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association) of the legal and/or documents of registration of the legal entity named above, in accordance with ITB 4.1 and ITB 4.5; <input type="checkbox"/> In case of a state-owned enterprise or institution, in accordance with ITB 4.8 documents establishing: a) Legal and financial autonomy; b) Operation under commercial law; c) Establishing that the Bidder is not dependent agency of the Authority. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* **day of** *[Insert month]* *[Insert year]*

Form 6. Historical Contract Non-Performance, Pending Litigation and Litigation History

[To be completed by the Bidder and by each member of the Consortium on their respective letterhead.]

Bidder's Name: *[Insert]*

Date: *[Insert]*

JV Member's Name: *[Insert or state "None" if the Bidder is not a Consortium]*

ICB No.: *[Insert]*

Page *[Insert]* of *[Insert]* pages

Non-Performed Contracts in accordance with Section III, Qualification and Evaluation Criteria			
<input type="checkbox"/> Contract non-performance did not occur since 1st January <i>[insert current year number less 5]</i> specified in Section III, Qualification and Evaluation Criteria, Qualification, subclause 2.1. Or <i>[Tick as appropriate]</i> <input type="checkbox"/> Contract(s) not performed since 1st January <i>[insert current year number less 5]</i> specified in Section III, Qualification and Evaluation Criteria, Qualification, subclause 2.1 are as follows:			
Year	Non- performed Portion of Contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and €-equivalent)
<i>[Insert year]</i>	<i>[Insert amount and percentage]</i>	Contract Identification: <i>[Indicate complete contract name/ number, and any other identification]</i> Name of Authority: <i>[Insert full name]</i> Address of Authority: <i>[Insert street/city/country]</i> Reason(s) for non-performance: <i>[Indicate main reason(s)]</i>	<i>[Insert amount and values]</i>

Pending Litigation, in accordance with Section III, Qualification and Evaluation Criteria and Requirements			
<input type="checkbox"/> No pending litigation in accordance with Section III, Qualification and Evaluation Criteria and Requirements, Qualification, subclause 2.3. Or <i>[Tick as appropriate]</i> <input type="checkbox"/> Pending litigation in accordance with Section III, Qualification and Evaluation Criteria, Qualification, subclause 2.3 as indicated below:			
Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), €-equivalent (exchange rate)
<i>[Insert year]</i>	<i>[Insert amount]</i>	Contract Identification: Name of Authority: Address of Authority: Matter in dispute: Party who initiated the dispute: Status of dispute:	<i>[Insert amount and values]</i>

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* **day of** *[Insert month]* *[Insert year]*

Form 7. Financial Capacity

[To be completed by the Bidder and by each member of the Consortium. Each Member of the Consortium shall submit respective forms Certified by a registered Chartered Accountant in India or equivalents abroad who has been vested in Statutory Powers by the competent Authority]

Bidder's Name: *[Insert]*

Date: *[Insert]*

Consortium Member's Name: *[Insert or state "None" if the Bidder is not a Consortium]*

ICB No.: *[Insert]*

Page *[Insert]* of *[Insert]* pages

- i. The annual turnover of the Company/ firm for the last three years from _____ is as follows;

Year	Annual Turnover (Rs. Crore) ¹
2020-21	
2021-22	
2022-23	
Average of above <i>(Applicable for Annual Turnover only)</i>	

- ii. The above turnover includes income only from Vehicle Manufacturing/Operation and Maintenance of Buses/ Energy Solutions for E-buses. Other incomes such as interest, dividend and trade income are excluded from the above-mentioned turnover.

- iii. The Net worth* of the bidder (name of the Bidder) as on 31st March, 2023 is Rs.

(* for the purpose of Net worth Calculation, it is defined: Net worth*: = Equity Capital + Reserve and Surplus - Revaluation Reserve - Accumulated losses - Intangible assets)

(Signed and Sealed by the Chartered Accountant)

- iv. Note: In case foreign bidder, the exchange rate of its respective foreign currency to Indian Currency as on last date of the financial year as available on the online archives of Reserve Bank of India at <https://rbi.org.in/home.aspx> shall be considered to compute the Turnover and Net worth in INR terms.

¹ In case of foreign firms, millions may be used instead of crore (1 million = 1,000,000)

2. Financial Documents

The Bidder and its parties shall provide copies of financial statements for **the last available three (3) years** pursuant Section III, Qualification and Evaluation Criteria, Qualification, Sub-factor 3.1.

The financial statements shall:

- (a) Reflect the financial situation of the Bidder or in case of Consortium member, and not an affiliated entity (such as parent company or group member);
 - (b) Be independently audited or certified in accordance with local legislation;
 - (c) Be complete, including all notes to the financial statements;
 - (d) Correspond to accounting periods already completed and audited.
- ☐ Attached are copies of financial statements² for the **last available three (3) years** required above and complying with the requirements.

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* **day of** *[Insert month]* *[Insert year]*

² If the most recent set of financial statements is for a period earlier than 12 months from the date of bid, the reason for this should be justified.

Form 8. Technical Capacity

[To be completed by the Bidder and by each member of the Bidder's JV]

Bidder's Legal Name: *[Insert]*

Date: *[Insert]*

Consortium Member's Legal Name: *[Insert]*

ICB No.: *[Insert]*

Page *[Insert]* of *[Insert]* pages

A. Technical Capacity/ performance statement for Vehicle Manufacturer

S. No.	Contract placed by (full name & Address of Authority)	Contract No. & Date	Description of Electric Buses Supplied	Quantity of Electric Buses Supplied	Value of Contract (In INR terms)	Date of Completion of Delivery (as per Contract)	Documentary evidences (Purchase Order/ Letter of Award / Bus Purchase Agreement/ work Completion certificate)
	(A)	(B)	(C)	(D)	(E)	(F)	(G)

B. Technical Capacity/ performance statement for Bus Operator of the Vehicle Manufacturer

S. No.	Contract placed by (full name & Address of Authority)	Contract No. & Date	Quantity of Buses Operated and Maintained.	Documentary evidences (Purchase Order/ Letter of Award / Bus Purchase Agreement/ work Completion certificate)
	(A)	(B)	(C)	(D)

C. Technical Capacity/ performance statement for ESP

S. No.	Contract placed by (full name & Address of Authority)	Contract No. & Date	Description of the project	Quantity of Buses Operated and Maintained.	Documentary evidences (Purchase Order/ Letter of Award / Bus Purchase Agreement/ work Completion certificate)
	(A)	(B)	(C)	(D)	(E)

Note:

- i. In case foreign bidder, the exchange rate of its respective foreign currency to Indian Currency as on the date of work order/agreement/purchase order as available on the online archives of Reserve Bank of India at <https://rbi.org.in/home.aspx> shall be considered to compute the value of Contract in INR terms.
- ii. Copy of the documentary evidences, signed by the Authorized Signatory shall be attached.

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* **day of** *[Insert month]* *[Insert year]*

Form 9. Spare Parts

[To be completed by the Bidder and by at least one member of the Bidder's JV]

Bidder's Legal Name: *[Insert]*

Date: *[Insert]*

JV Member's Legal Name: *[Insert]*

ICB No.: *[Insert]*

Page *[Insert]* of *[Insert]* pages

We confirm that, if awarded the Contract, spare parts will be available on short notice, through us / our local agent / the manufacturer-appointed official representative *[Select as appropriate]*.

We further confirm that, if awarded the Contract, we (i) will carry sufficient inventories to assure ex-stock supply of consumables and consumable spares, and other spare parts and components will be supplied as promptly as possible but in any case within *[Insert number of days – same as used in the PC attached at the end of this Bidding Document]* days of placement of order; (ii) will be for a period of _____ *[Insert number of years – same as used in the PC attached at the end of this Bidding Document]* years from the date of delivery and commissioning under obligation to supply spare parts, and will, in the event of termination of production of the spare parts, send an advance notification to the Authority of the pending termination, in sufficient time to permit the Authority to procure needed requirements.

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

Form 10. Format of Consortium Agreement

(To be signed and executed on the stamp paper of relevant value by all the Members of the Consortium)

The Bidder bidding as Consortium shall provide a Consortium Agreement between the consortium members specifying the followings:

1. Convey the intent to Consortium Agreement as per provisions of the RFP, which would enter into the Contract Agreement and subsequently perform all the obligations of the Operator as per Agreement terms, in case the Project is awarded to the Consortium;
2. Clearly outline the proposed roles and responsibilities, if any, of each member
3. Tenure of Consortium Agreement
4. Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Operator in relation to the Project during Contract Period.
5. The role and responsibility of any member must be commensurate with the technical/financial capabilities that such member is contributing towards meeting the qualification criteria. Each consortium member is liable to contribute resources in terms of knowledge, skills and trained manpower commensurate with its role and responsibilities during the Contract Period.
6. *No change in composition of the Consortium shall be permitted during the Bidding Process and during the Contract Period without prior consent of the Authority , in case the Project is awarded to the Consortium.*

Form 11. Price Schedule Forms

The Bidder shall fill in these Price Schedule Forms online only in accordance with the instructions indicated. The Bidder shall fill all three Price schedule and table for Aggregated bid price as indicated. Non fulfilment of above requirements shall lead to rejection of the Financial Bid.

Price Schedule for Key Bus Aggregates and ICT components (Part 2 of this Form 11) is to be submitted online only along with Price Schedule for 1) Buses 2) Depot Improvement Works and 3) O&M Services (Part 1 of this Form 11) at <https://tntenders.gov.in>.

Physical submission of the same shall be summarily rejected. Kindly note that Price Schedule for Key Bus Aggregates and ICT components shall not be considered for Financial Bid Evaluation and is solicited only for the purpose of price discovery for any future references.

Part 1: Format of Price Bid

Table A: Price Schedule for Supply of Buses and Charging Solution

S. No.	Particular	INR Per Unit	Number of Units	Total (INR) (In Figures)	Total (INR) (In Words)
	(A)	(B)	(C)	(D) = (B) X (C)	(E)
1	Basic Price of the buses including charging solutions		100		
2	Packing Charges, if any		100		
3	Custom and any other ad valorem duties		100		
4	Central Excise Duty/Central GST/GST		100		
5	Other levies		100		
6	Forwarding Charges		100		
7	Transit Insurance Charges		100		
8	Freight to Destination		100		
9	Any other Charges		100		
10	Aggregated Bid Price for Supply of Buses and Charging Solutions (A) (Total Destination price/Landed Price <i>(Sum of S. No. 1 to S. No 9)</i>				
11	GST		100		

Table B: Price Schedule for Depot Improvement Works

S. No.	Particular	INR
1	Lumpsum Bid Price for Adyar Depot Improvement Works.....(a)	
2	Lumpsum Bid Price for Central Depot Improvement Works.....(b)	
3	Aggregated Lumpsum Bid Price for Depot Improvement Works....._(B)= (a)+(b) above	
4	GST	

Table C: Price Schedule for O&M Service

S. No	Rate Per Km Applicable for O&M Service (INR per Km Exclusive of GST)	Number of E buses (nos.)	Annual Assured km Per Bus (Kms)	O&M Service Period (Years)	Total Annual Assured Km for the O&M Service Period (km)	Total Annual Price for the O&M Service (Exclusive of GST) (INR)
	A	B	C	D	E = B x C x D	F = A x E
1		100	72,000	9	6,48,00,000	
2	Aggregated Bid Price for O&M Service as per Cell "F1" (.....) (C)					

Table D: Aggregated Bid Price

Reference No.	Particular	Amount in Figures (INR)	Amount in Words (INR)
A	Aggregated Bid Price for Supply of Buses and Charging Solutions_		
B	Aggregated Bid Price for Depot Improvement Works....._(B)		
C	Aggregated Bid Price for O&M Service.... (C)		
D	Aggregated Bid Price (A+B+C)		

Part 2: Schedule of Key Bus and ICT Aggregates

A) Statement Life of Some of The Electric Bus Aggregates

S. No.	Item	Aggregate life in km before re-conditioning	Life in km for each re- conditioning	Ex- Factory price in Rs per unit
1.	Electric Motor			
2.	Motor Control Unit			
3.	Transmission (if provided)			
4.	Traction Batteries			
5.	Battery Management System			
6.	Front axle			
7.	Rear axle			
8.	Steering			
9.	Air suspension			
10.	Low Voltage Battery			
11.	DC/DC converter			
12.	Pneumatic door cylinder			
13.	Destinations			
14.	Air Conditioning			
15.	Charging Ports / Chargers (Off Board)			
16.	Charging Management System (Off Board)			
17.	Others			

The guaranteed life of the Bus: _____ Years _____ Kms.

B) Capital Cost for ICT Aggregates

S. No.	Particular Item	Quantity	Unit of Measurement	Unit Price in INR	Unit Price Tax in INR	Total Price in INR
A	B	C	D	E	F	G = C X (E+F)
I. Hardware Component						
1.	Bus PIS Unit; includes PIS sign boards (front) with wiring harness for all types of buses.		Nos.			
2.	Bus PIS Unit; includes PIS sign boards (Rear) with wiring harness for all types of buses.		Nos.			
3.	Bus PIS Unit; includes PIS sign boards (Side) with wiring harness for all types of buses.		Nos.			
4.	Bus PIS Unit; includes PIS sign boards (Inner) with wiring harness for all types of buses.		Nos.			
5.	Bus PAS Unit (Includes set of 6 speakers in each bus)		Sets.			
6.	SCU Unit for Buses: (1 unit includes -SCU with SSD; built in Amplifier, 4G and above modem, Combine Antenna along with installation material and accessories including telematics functionalities)		Sets.			
7.	BDC Unit for Buses: (1 unit includes - Bus Driver Console (BDC) with emergency button feature, Microphone, SOS buttons along with installation material and accessories)		Sets.			
8.	Telematics Interface		Sets.			

9.	Wiring Provision for two surveillance cameras in each bus to monitor bus interiors (doors, driver zone, ticketing zone etc.) and one reversing surveillance camera.		Sets.			
II. Training						
10.	Training and capacity building for MTC as specified in the RFP	1	Lumpsum			
III. Integration						
11.	Integration with Backend Systems	1	Lumpsum			
12.	Integration Telematics Hardware (CAN2.0/ J1939) with backend systems per STU for all buses	3	Lumpsum			
Total CAPEX (I+II+III)						

C) Price Discovery of ICT Aggregates*

S. No.	Particular Item	Quantity	Unit of Measurement	Unit Price in INR	Unit Price Tax in INR	Total Price in INR
A	B	C	D	E	F	G = C X (E+F)
1.	Any requirement for development of customized interface required for integration	1	Man-days			
2.	De-installation of the OBITS System from Buses and handover to designated location of STU	1	Bus			
3.	Any requirement for development of customized interface required for integration	1	Man-days			
4.	Refresher Training and Capacity building for MTC	1	Lumpsum			

The above prices under Price Schedule of Key Bus and ICT Aggregates are obtained for the purpose of price discovery only. None of the Party i.e., the Bidder and the Authority, shall be liable to adhere or to supply material/Electric Buses and/or provide service or to call for supply of material/ Electric Buses and/or the service of maintenance of ITS Equipment at the above quoted rates. However, the Authority may, at its sole discretion, enter into a separate arrangement with the bidder either as part of this Contract or as a separate Maintenance Contract for ITS Equipment in mutual consultation with the Bidder.

Section V. Eligibility Criteria

Eligibility in KfW-Financed Procurement

1. Consulting Services, Works, Electric Buses, Plant and Non-Consulting Services are eligible for KfW financing regardless of the country of origin of the Contractors (including Subcontractors and Contractors for the execution of the Contract), except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.
2. Applicants/Bidders (including all members of a Consortium and proposed or engaged Subcontractors) shall not be awarded a KfW-financed Contract if, on the date of submission of their Application/Offer or on the intended date of Award of a Contract, they:
 - 2.1 are bankrupt or being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;
 - 2.2 have been
 - (a) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union and/or the German Government for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - (b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practice during any Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application/Offer which shows that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction;
 - 2.3 have been subject within the past five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless this termination was challenged, and the dispute resolution is still pending or has not confirmed a full settlement against them;
 - 2.4 have not fulfilled applicable fiscal obligations regarding payments of taxes either in the country where they are constituted or the PEA's country;
 - 2.5 are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individual available on the World Bank's website or any other multilateral development bank unless they provide supporting information together with their Declaration of Undertaking which shows that this exclusion is not relevant in the context of this Contract; or

- 2.6 have given misrepresentation in documentation requested by the PEA as part of the Tender Process of the relevant Contract.
3. State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to KfW's satisfaction, through all relevant documents, including its charter and other information KfW may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

1) Sanctionable Practice

The PEA and the Contractors (including all members of a Consortium and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract, and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare mis procurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

Coercive Practice	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
Collusive Practice	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
Corrupt Practice	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

- Fraudulent Practice** Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
- Obstructive Practice** Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
- Sanctionable Practice** Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

2) Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender-based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- a) comply with and ensure that all their Subcontractors and major Contractors, i.e., for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation¹ (ILO) and international environmental treaties and;
- b) implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the Environmental, Social, Health and Safety Management Plan (ESHSMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

The Contractor shall be mandated to comply to any additional guidelines or regulatory compliances and Standard Operating Procedures (SOPs) provided by the Authority.

¹In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

PART 2 – Supply Requirements

Section VII. Schedule of Requirements

Table of Schedules

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1. List of Electric Buses and Delivery Schedule

Line Item No. or Lot No.	Description of Electric Buses	Quantity ¹	Physical Unit ¹	Named Place of Destination as specified in BDS	Delivery (as per Incoterms) Date		
					Earliest Delivery Date ² at named place of destination	Latest Delivery Date at named place of destination	Bidder's offered Delivery date at named place of destination [to be provided by the bidder]
<i>[Insert item or lot no]</i>	<i>[Insert description of Electric Buses]</i>	<i>[Insert quantity of item to be supplied]</i>	<i>[Insert physical unit for the quantity]</i>	<i>[Insert named place of destination, typically the point-of-entry / place of customs clearance]</i>	<i>[Insert the number of days following the date of signature of the Contract]</i>	<i>[Insert the number of days following the date of signature of the Contract]</i>	<i>[Insert the number of days following the date of signature of the Contract]</i>
1	12 metre Long, Low Floor, AC Electric Buses	100	Bus/ Vehicle	MTC, Adyar Depot and MTC Central Depot Chennai	150	208	-
2	Charging Solution	To be inserted by the Bidder	To be inserted by the Bidder	MTC, Adyar Depot and MTC Central Depot Chennai	150	208	-

¹ Only required to be filled in case of line items being listed; not required for lots.

² Earliest delivery date is used in cases where the Authority cannot accept delivery before a specific date, e.g., if construction work is still under way; if there is no earliest delivery date required, leave this column blank.

Detailed Delivery Schedule for E-buses

- i. The Delivery shall commence after 30th day from the date of Approval of the Prototype Bus.
- ii. The Contractor(s) shall deliver the Tendered Quantity in the following manner at the Place of Destination of MTC Chennai as per clause 13.2 of Schedule 2: Part F of the RFP.

S. No	Timelines of Delivery <i>(30th day from the date of approval of Prototype Bus - "T")</i>	Nos. of Buses to be Delivered.
1	T + 1 Month	50 (Nos.)
2	T + 2 Months	100 (Nos.)

2. List of Related Services and Completion Schedule

The Depot Improvement Works and O&M services as specified in the Bid documents shall be considered as related services to Bus Supply. The above services shall be delivered and completed as specified in the relevant sections of the RFP.

3. Technical Specifications for E-buses

Bidder shall note that specifications, standards for workmanship, material and equipment, and open or hidden references to brand names or catalogue numbers, designated by the Authority in the Specifications, are intended to be descriptive only and not restrictive. The bidder may substitute other specifications, authoritative standards, brand names and/or catalogue numbers in its Bid, provided that it demonstrates to the Authority's satisfaction that the substitutions are equivalent or superior to those designated in the Specifications.

All Electric Buses and Charging Solutions offered by Bidders and supplied by the successful Bidders must be new and unused, be of the most recent or current models, and must incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

Bidders shall provide a clause-by-clause confirmation of compliance (see filed attached separately) on the Authority's specifications, demonstrating the Electric Buses 'and related Services' responsiveness to those specifications or a statement of deviation and exceptions to the provisions of the Authority's specifications. General replies to the Authority's specifications, such as 'acceptable', 'comply', 'yes', etc., or simply copying the Authority's specifications word-by-word, will be treated without exception as non-responsive during the technical evaluation; bidders are also requested to strictly refrain from self-classification of their replies to the Authority's specifications (such as 'better', 'compliant', 'acceptable', etc.); any statement made by the Bidder(s) must be verifiable in the provided catalogues/leaflets/literature ('custom-made' catalogues/leaflets/literature, i.e. literature specifically manufactured for this tender, and e.g. only consisting of a picture and some text, and generally appearing unprofessional, will not be accepted).

The detailed specifications for e-buses are provided as a separate associated document to the RFP.

Compliance with Technical Bus Specifications: The Buses required against this RFP Document shall confirm to the Technical Bus Specifications. The Contractor shall obtain himself, at his own expense, all the latest specifications required for design, manufacture and supply of Contracted Buses in accordance with Contract terms. The Contractor shall be required to comply with all the latest provisions of the Central Motor Vehicle Rules 1989 (CMVR), Motor Vehicle Act 1988 (MVA), Bus Body Code (AIS052, AIS153 as applicable for fully built bus), AIS code for Electric Vehicle including but not limited to AIS 039, AIS 040, AIS 041, AIS 138 and the Tamil Nadu Motor Vehicles Rules 1989. The Contractor should also comply with provisions of the Rights of Persons with Disabilities Act, 2016, Rights of Persons with Disabilities Rules, 2017 and Harmonised Guidelines & Standards for Universal Accessibility in India (2021) published by Ministry of Housing and Urban Affairs as applicable and any and all amendments there in and other statutory/ mandatory and legal requirements as applicable on the date of delivery/registration of Buses with Transport Commissionerate and State Transport Authority.

Technical Evaluation

The technical evaluation shall be conducted based on a thorough comparison of the Bidder's offered specifications against the Authority's required specifications, using the following four (4) evaluation terms: comply (an item complies with, or exceeds, the Authority's specifications; the classification 'exceeds specification' shall be used rational and an excessive overspecification, e.g. in terms of capacity, size, power, shall not be considered and accepted), acceptable (an item does not fully comply with the Authority's specifications, has minor deviations, but fulfils perfectly well the intended purpose), borderline (an item deviates considerably from the Authority's specifications, but may just

be considered for the purpose intended; this classification is not permitted for major items), and not comply (an item deviates to an extent not suitable for the intended purpose).

Bidder's Technical Capacity

Not required.

Standards and Certifications

Standards and certifications can be a helpful requirement and complement specifications.

Standards typically refer to Electric Buses and required Electric Buses' compliance with specific standards; if national standards are used, the Authority should add 'or equivalent'.

If specific items are to comply with certain standards, these standards shall be stated in the Authority's specifications for each applicable item. Authorities shall refrain from requesting Bidders to state to which standards their products comply but must instead specify specific standards if so required.

Certifications typically refer to manufacturers and/or bidders.

In some cases, it may be beneficial to require either the bidder or the manufacturer, or both, to be certified; the most common certification is the ISO 9000 series, and ISO 9001 in particular; however, under ISO 9001 a variety of processes can be certified (e.g., management processes, production processes, etc.), which are not always relevant for the Authority, and do generally not reflect on the quality of Electric Buses offered. For specific cases (example: medical equipment/supplies: ISO 13485) manufacturer/bidder-specific certifications shall be required by the Authority.

The requirement of conformity of the Buses and Charging Solutions with applicable standard and certifications required to establish such compliance is mentioned in the Bus Specifications.

Spare Parts Requirements

Successful Bidder/Contractor shall also furnish printed price list (valid for the warranty period) giving cost of all components/ assemblies of the Bus for applicable spares parts/ aggregates/ consumables etc. along with maximum discount allowed to Authority on purchase of such items as per prices in the price list during life of the Bus. The Contractor shall give an undertaking along with the Bid that the rates of parts/ discounts etc. quoted by them in the price lists are reasonable and do not exceed rates at which these parts are made available on DGS&D/ ASRTU Rate Contract (RC) / to any other Government Department/ Public Sector Undertaking/ Authorized Dealers, etc. The rates of spare parts shall be valid for the warranty period from date of submission of printed price list and the price variation will be limited to relevant price index of the Government of India.

After Sales Service Contractor shall additionally ensure the setting up of after sales network along with the required spare parts, aggregates and sub-systems within 30 days from the date of Prototype Acceptance of the Buses. The Contractor shall submit documentary evidences showcasing locations of the service networks and the spare parts inventories.

Common Specifications& Requirements

Not required.

Training

- a) The Contractor, at its own cost, shall “Train the Trainers” on 1) BS VI technology and 2) on board ITS equipment to at least 25 Driving Instructors and 15 Maintenance Instructors per TNSTC STU. This shall also include training the Depot Managers and Engineers. The Contractor shall provide adequate material and resources required for the training.
- b) The Contractor shall submit the training content, Manuals and list of resources to the Authority in English within 10 days and in Tamil within 20 days from the date of issue of Letter of Acceptance/ Work Order. The training content shall be reviewed by the Authority or representatives of the Authority in light of larger capacity building program proposed under the Bus Modernisation Plan. The Contractor shall immediately commence the training pursuant to (a) above after incorporating the suggestions/modifications provided by the Authority or its representatives. The Contractor shall make available the finalised training manuals in English and Tamil language for the purpose of imparting better understanding of the training content to the trainees.
- c) The training shall be provided at regional training centres of the Authority/IRT after the issuance of the Provisional Receipt Certificate for the first lot of Contracted Buses. The Contractor can also arrange such Physical Training at its own premises/facility at its own cost.
- d) The Training for all the required staff as provided in the (a) above shall be completed within 15 days from the issuance of the Provisional Receipt Certificate for the first lot of Contracted Buses. The Final Acceptance Certificate for the first lot of Contracted Buses shall be subject to completion of training for all required staff as per clause (a) above.
- e) The Contractor shall have to certify the trainees for the said training programs and a satisfactory note to be issued by trainees at the end of training program.

User Manuals

Detailed Maintenance & Service Manuals, Spare Parts Catalogues, Price List etc. shall be specially prepared for Buses and at least 5 sets of each for every 100 buses or part thereof of the same shall be supplied without any extra charge, along with the first supply. Detailed spare parts catalogue listing all components manufactured or purchased (five copies for every 100 buses or part thereof) shall be supplied without any extra charge. All manuals shall be sent to Authority in advance of dispatch of buses from manufacturer's works.

Service Engineering

Contractor shall furnish information on maintenance practices to be followed for these Buses manufactured to confirm to Technical Specification or similar to those offered against the tender, clearly spelling out the following:

- a. Maintenance standards including clearances and tolerances at various locations and permissible limits of wear for good riding comfort, performance and operation.
- b. Inspection procedure & periodicity of various preventive schedules in detail including gauging practices.
- c. Maintenance procedures in detail including preventive maintenance schedules
- d. Facilities required for maintenance, giving detailed information on the following:
 - i. Plant & Machinery required for maintenance.
 - ii. Gauges, Jigs and Fixtures and Tools required during maintenance

- iii. Space requirements for maintenance facilities.
- iv. Any other details necessary for development of said facilities.

Environmental, Social, Health and Safety (ESHS) Requirements

Refer to “Undertaking of ESHS” of the RFP and the Environmental, Social, Health and Safety Management Plan (ESHSMMP) for Depot Upgradation attached with the RFP.

Detailed Technical Specifications

The detailed technical specifications are attached separately. Bidders shall provide a clause-by-clause confirmation of compliance to these specifications.

4. Inspections and Tests for electric buses and charging solutions

Following shall be the schedule for Bus Inspection.

1. Inspection of Prototype Bus

- i. Prototype Bus Inspection shall be carried out in stages as specified below;
 - a) **First Stage:** The structure assembly inspection of the Prototype Bus shall be carried out within 30 days from the date of Purchase Order.
 - b) **Second Stage:** Inspection of Fully Built Prototype Bus shall be carried out within 60 days of the completion of Structure Inspection (**First Stage**).
 - c) **Third Stage:** Within 15 days of the approval of the Fully Built Prototype Bus (**Second Stage**), the Contractor shall deploy the Prototype Bus for a Test Trial at Chennai for 3 days following the town bus duty cycle as per operational schedule planned by the Authority for deployment of e-buses in Chennai.
 - d) The Prototype Bus shall be approved by the Authority only after satisfaction to Authority with regard to the following (**“Approval of the Prototype Bus”**);
 - a. Compliance of the Prototype Bus with Bus Specifications including Performance and Qualification Parameters provided in the Part G of the RFP; AND
 - b. Successful and satisfactory rectification of defects or deficiencies observed in the Prototype Bus by the Authority at any Stage of inspection; AND
 - c. Successful Completion of all the Three Stages of Inspection as mentioned in points (ii), (iii) and (iv) above.

2. Inspection of Other Buses

- a) Authority or representative authorized by the Authority may carry out inspection of other buses at any of the following stages before pre-dispatch stage at Contractor's manufacturing premises -
 - a. **Stage 1: Structural assembly stage** before panelling on buses as per the specifications
 - b. **Stage 2: Fully Built Bus Stage** after Final completion of interior and exterior panelling, and fully equipping of buses as per the specifications.
- b) The Authority shall inspect the buses other than Prototype bus at abovementioned stages through random sampling of available lot of Buses. The Authority at its sole discretion shall decide the percentage of sample size for each available lot of buses based on its assessment of quality of material used in the bus and the workmanship.
- c) For any Deficiency noted by the Authority during any stage of the inspection, the Contractor shall initiate immediate remedial actions for the same as advised by the

Authority. The Authority or Representative of the Authority shall not be entitled to suggest changes or modification which are not part of the mutually agreed Bus specifications.

- d) The inspection and factory acceptance testing of the buses shall be carried out at either at the Vehicle Manufacturer's premises or at a location with adequate testing facilities that is nominated by the Vehicle Manufacturer. The inspection of the final acceptance of the buses shall be carried out at the Authority's premises including transit damages, dimension checks, built quality and commissioning work.
- e) All the costs associated with the inspection of Prototype bus and other buses at Contractor's premises in India or abroad and at Designated Locations for Delivery including travelling and conveyance expenses of Officials and representatives of the Authority shall be borne by the Contractor.

3. Testing

- a) The Authority shall not conduct any laboratory test if the material procurement certificates are submitted by the Contractor at the time of inspection of Prototype and other Buses. Notwithstanding with above, if found necessary, the Authority may conduct material test at any stage for prototype or any other buses, at its own cost. If the material fails the test, entire cost of testing shall have to be borne by the Contractor. The Authority might conduct lab testing mostly for following material.

S. No.	Items to be tested	Specifications
1	CR Tubular sections	BIS:4923-1997 (or latest) of Grade Yst. -240
2	Phosphating / Galvanizing	BIS:3618-1966 (or latest) Class A-2 for Phosphating & BIS:277-2003 or latest - 120 gsm for Galvanizing (Zinc Coating) and two weeks (336 hours) Salt Spray Test for both in accordance with ASTM procedure B117 with no structural detrimental effect to normally visible surfaces & no weight loss of over 1%.
3	EPDM Rubber	As per AIS 085
4	Glasses Laminated	BIS: 2553 (Part-2)-1992 (or latest) Float Glass, Front 'AA' Grade Glass, PVB Film in Laminated Glass.
5	Aluminium Parts	IS:733-1974 (or latest) for Solid Part, IS:1285-1975 or latest for Extruded Round Tube &Hallow Part and IS:738-1977 or latest for Drawn Tubes, Alloy 63400, tempering WP.

6	Paint	PU Paint as per relevant IS: 13213:1991 (or latest) & any other relevant BIS Standards. For Matt Black Paint the Gloss Value is up to 30 units.
7	LT Wire	BIS: 2465-1984(or latest). DIN 72551- Dimensional Test JIS C 3406- Spark, Immersion & Conductor Resistance Test' SAE recommended J 1127 & J 1128
8	Aluminium Sheet	BIS:737-1986(or latest), Aluminium Alloy H-2/31000
9	CR sheets	BIS:513-2008(or latest)
10	GI Sheets	BIS:277-2003 (or latest), Class-VIII Medium Coating of Zinc Nominal Weight120 grams/M2.
11	Passenger Seat Assembly	As per AIS-023, Bus Code & BIS Standards
12	Marine Board / other floor material	BIS: 710-1976 (or latest) IS:5509-2000 (or latest) for Flammability.

5. Distribution of Electric Buses

The Electric Buses shall be distributed to the following recipients and destinations:

List of Recipients			
Recipient			
No.	Organization	Address & Communication	Contact Person
1	Metro Transport Corporation, Chennai.	MTC, Adyar Depot and MTC Central Depot Chennai	Branch Manager

6. Dimensions and area for the civil and electrical works

(a) Adyar Depot

S. No	Description	Number	Length (m)	Width (m)	Depth / Height (m)	Unit Area	Total Area	Unit	Construction Type
	Civil Work								
1	Foundation for Power Transformer (10MVA, 33 KV, ONAN, Dyn 11)	2	25	10	0.3	250	250	m ²	Closed Concrete with 300 mm above the highest floor level
2	Construction of Substation Room including battery charging room & staircase	1	25	13		313	313	m ²	Closed RCC structure (with First floor for MTC Staff room and Rest Room)
3	Foundation of Compact Sub Station (CSS) with RMU, 1500 KVA 11KV/433 V Transformer, 2500 ACB O/G	4	4	2.5	0.3	10	40	m ²	Closed Concrete with 1000 mm above the highest floor level.
4	Foundation for Feeder pillar (2500 A, 415 V - 1 ACB I /C + 6 MCCB O/G)	4	3.5	0.75	0.3	3	11	m ²	Closed Concrete with 1000 mm above the highest floor level.
5	Foundation for EV chargers (Fast DC Chargers - 240 KW)	51	1.0	1.0	0.15	1	51	m ²	Closed Concrete with 1000 mm above the highest floor level. 50 chargers' foundations to be installed in the Parking and 1 charger foundation in the E- Bus Workshop/Maintenance Area
6	Foundation for DG Set (750 KVA, 415 V, 50 Hz)	1	13.1	10.9		143	143	m ²	Closed Concrete with 300 mm above the highest floor level
7	Construction of Footpath	1	2274	1		2274	2274	m ²	Closed RCC structure
8	Construction of E-Bus Equipment area/Contractor store + E bus Workshop/ Maintenance area	1				402	402	m ²	Closed RCC structure with First Floor for Contractor Staff Rooms and Rest Room)
9	Construction of Conduits for Electric lines	1	438	1	1	438	438	m ²	Closed RCC structure with 1m depth
10	Construction of Green Area	1	714			714	714	m ²	Creation of green space by grass and plants

S. No	Description	Number	Length (m)	Width (m)	Depth / Height (m)	Unit Area	Total Area	Unit	Construction Type
11	Demolition of existing waste segregation area + existing transformer and electric room	1	0	0	0	180	180	m ²	Concrete Structure
12	Demolition of existing wall of Admin Building Boundary		46						46m length of Admin boundary wall to be demolished
13	Repair and Refurbishment of existing washroom/ toilets	1	11.77	4.79		56	56		Putting tiles and repair of the existing washroom/ toilets including painting
14	Shifting of existing washing ramp	1	15	3.5		53	53		
15	Installation of additional washing ramp	1	15	3.5		53	53		
16	Construction of Canopy for EV Chargers								Material to be specified by the Contractor
	Electrical Work								
1	HT Equipment	As per Requirement (to be assessed by Contractor)							
1.1	Supply, Installation, Testing and commissioning of 33kV Outdoor RMU/RMG panel (Extensible Type)	1							By TANGEDCO
1.2	Supply, Installation, Testing and commissioning of HT Multi- Panel (33 kV,LBS): IP54 (Weatherproof & suitable for Outdoor)	1							By TANGEDCO
1.3	Supply, Installation, Testing and commissioning of 33kV/11kV Onan Transformer	2							By Contractor
1.4	Supply, Installation, Testing and commissioning of 11kV VCB Panel:(Indoor)	1							By Contractor
1.5	Supply, Installation, Testing and commissioning of 11kV/0.433kV Onan Distribution Transformer	1							By Contractor

S. No	Description	Number	Length (m)	Width (m)	Depth / Height (m)	Unit Area	Total Area	Unit	Construction Type
1.6	Supply, Installation, Testing and commissioning of 1500 kVA 11kV/433V Compact Substation (CSS)-OUTDOOR	4							By Contractor
2	Supply, Installation, Testing and commissioning of DG Set and Accessories	2							By Contractor
2.1	Supply, Installation, Testing and commissioning of DG LT Panel (SYC. PANEL)	1							By Contractor
3	Supply, Installation, Testing and commissioning of LT Panel Boards and Accessories	As per Requirement (to be assessed by Contractor)							By Contractor
3.1	Supply, Installation, Testing and commissioning of Auxiliary Switch Board (ASB)	1							By Contractor
4	Supply, Installation, Testing and commissioning of Battery Charger & UPS	2 Set							By Contractor
5	Supply, Installation, Testing and commissioning of HT Cabling-33 kV	1 Lot							By Contractor
6	Supply, Installation, Testing and commissioning of HT Cabling-11 kV	1 Lot							By Contractor
7	Supply, Installation, Testing and commissioning of LT Cabling-1.1 kV	1 Lot							By Contractor
8	Supply, Installation, Testing and commissioning of Cable Ducts/ Cable Trays	1 Lot							By Contractor
9	Earthing and Supply, Installation, Testing and commissioning of Safety Equipment's	As per Requirement							By Contractor

S. No	Description	Number	Length (m)	Width (m)	Depth / Height (m)	Unit Area	Total Area	Unit	Construction Type
		(to be assessed by Contractor)							
10	Supply, Installation, Testing and commissioning of Lightning Protection	As per Requirement (to be assessed by Contractor)							By Contractor
11	Liaisoning Works with TANGEDCO & Electrical Inspector (CEA/CEIG)	As per Requirement (to be assessed by Contractor)							By Contractor
11.1	Appointing "A" CLASS Electrical Contractor for liaisoning work								By Contractor
11.2	Initial scheme approval from the Inspector								By Contractor
11.3	Sanction order/safety clearance from the Inspector								By Contractor
11.4	Power Connection application to TANGEDCO								By Contractor
11.5	Service Connection application to TANGEDCO								By Contractor

(b) Central Depot

S. No	Description	Number	Length (m)	Width (m)	Depth / Height (m)	Unit Area	Total Area	Unit	Construction Type
	Civil Work								
1	Foundation for Power Transformer (10MVA, 33 KV, ONAN, Dyn 11)	1	19	13.2	0.3	247	247	m ²	Closed Concrete with 300 mm above the highest floor level

S. No	Description	Number	Length (m)	Width (m)	Depth / Height (m)	Unit Area	Total Area	Unit	Construction Type
2	Construction of Substation Room including battery charging room & staircase	1	25	12.5		313	313	m ²	Closed RCC structure (First floor- Canteen and Contractor Rest Room)
3	Foundation of Compact Sub Station (CSS) with RMU, 1500 KVA 11KV/433 V Transformer, 2500 ACB O/G	4	4	2.5	0.3	10	40	m ²	Closed Concrete with 1000 mm above the highest floor level
4	Foundation for Feeder pillar (2500 A, 415 V - 1 ACB I /C + 6 MCCB O/G)	4	3.5	0.75	0.3	3	11	m ²	Closed Concrete with 1000 mm above the highest floor level
5	Foundation for EV chargers (Fast DC Chargers - 240 KW)	51	1.0	1.0	0.15	1	51	m ²	Closed Concrete with 1000 mm above the highest floor level. 50 chargers' foundations to be installed in the Parking and 1 charger foundation in the E- Bus Workshop/Maintenance Area
6	Construction of Bollards near the EV chargers								Cement or Stone
7	Foundation for DG Set (750 KVA, 415 V, 50 Hz)	2	9.4	17.8		166	166		Closed Concrete with 300 mm above the highest floor level
8	Construction of RMG & Metering Panel Room	1	9.4	17.8		166	166		
9	Construction of fire walls around proposed Transformer, CSS, DG set and Feeder Pillars		7.0	9.3		65	65		
10	Construction of MTC Staff Parking (For Four Wheelers)	1	27	14		380	380	m ²	Open Surface parking (Bituminous Road)
11	Construction of Footpath	1	1290	1		1290	1290	m ²	Concrete or Stone
12	Construction of E-Bus Equipment area/Contractor store	1	11	10		117	117	m ²	Closed RCC structure (only Ground Floor)
13	Construction of Contractor Staff Office	1	11	4		49	49	m ²	Closed RCC structure (only Ground Floor)
14	Construction of E bus Workshop/ Maintenance area	1	17	17		289	289	m ²	Closed RCC structure- (only Ground Floor)

S. No	Description	Number	Length (m)	Width (m)	Depth / Height (m)	Unit Area	Total Area	Unit	Construction Type
15	Construction of Conduits for Electric lines	1	358	1	1	358	358	m ²	Closed RCC structure with 1m depth
16	Construction of Green Area	1				1725	1725	m ²	Creation of green space by grass and plants
17	Removal of temporary pillars from diesel bus workshop/ maintenance area	17							Removal of front pillars in the Diesel Bus Maintenance Shed which are not carrying any load.
18	Demolition of existing structures	1				864	864	m ²	Shed located at the North- West corner of the depot
19	Demolition of existing fuelling station (near the main gate)	1							The existing fuelling station near the main gate is to be re-located to a suitable location as prescribed by the Authority.
20	Installation of fuelling station	1							
21	Repair and Refurbishment of existing washroom/ toilets	2				55	55	m ²	Putting tiles and repair of the existing washroom/ toilets including painting
22	Repairing and refurbishing of existing maintenance pits to be utilized for maintenance of electric buses	3	12	2.5	2.5	30	90	m ²	Putting tiles and repair of all electric works in the pit including painting and beautification of pits.
22.1	All the pits have to be connected to each other from the front side.								
22.2	Pit cleaning and repainting								
22.3	Fitting of new LED lights in the pit.								
22.4	Two female socket boards are required one for front facing and one for rear facing, for all pits								
22.5	Air pressure line required near every pits.								
23	Construction of Canopy for EV Chargers								Material to be specified by the Contractor

S. No	Description	Number	Length (m)	Width (m)	Depth / Height (m)	Unit Area	Total Area	Unit	Construction Type
	Electrical Work								
1	HT Equipment	As per Requirement (to be assessed by Contractor)							
1.1	Procurement and Installation of 33kV Outdoor RMU/RMG panel (Extensible Type)	1							By TANGEDCO
1.2	Procurement and Installation of HT Multi- Panel (33 kV,LBS): IP54 (Weatherproof & suitable for Outdoor)	1							By TANGEDCO
1.3	Procurement and Installation of 33kV/11kV Onan Transformer	2							By Contractor
1.4	Procurement and Installation of 11kV VCB Panel:(Indoor)	1							By Contractor
1.5	Procurement and Installation of 11kV/0.433kV Onan Distribution Transformer	1							By Contractor
1.6	Procurement and Installation of 1500 kVA 11kV/433V Compact Substation (CSS)-OUTDOOR	4							By Contractor
2	Procurement and Installation of DG Set and Accessories	2							By Contractor
2.1	Procurement and Installation of DG LT Panel (SYC. PANEL)	1							By Contractor
3	Procurement and Installation of LT Panel Boards and Accessories	As per Requirement (to be assessed by Contractor)							By Contractor
3.1	Procurement and Installation of Auxiliary Switch Board (ASB)	1							By Contractor
4	Procurement and Installation of Battery Charger & UPS	2 Set							By Contractor

S. No	Description	Number	Length (m)	Width (m)	Depth / Height (m)	Unit Area	Total Area	Unit	Construction Type
5	Procurement and Installation of HT Cabling-33 kV	1 Lot							By Contractor
6	Procurement and Installation of HT Cabling-11 kV	1 Lot							By Contractor
7	Procurement and Installation of LT Cabling-1.1 kV	1 Lot							By Contractor
8	Procurement and Installation of Cable Ducts/ Cable Trays	1 Lot							By Contractor
9	Earthing and Procurement and Installation of Safety Equipment's	As per Requirement (to be assessed by Contractor)							By Contractor
10	Procurement and Installation of Lightning Protection	As per Requirement (to be assessed by Contractor)							By Contractor
11	Liaisoning Works with TANGEDCO & Electrical Inspector (CEA/CEIG)	As per Requirement (to be assessed by Contractor)							By Contractor
11.1	Appointing "A" CLASS Electrical Contractor for liaisoning work								By Contractor
11.2	Initial scheme approval from the Inspector								By Contractor
11.3	Sanction order/safety clearance from the Inspector								By Contractor
11.4	Power Connection application to TANGEDCO								By Contractor
11.5	Service Connection application to TANGEDCO								By Contractor

7. Layout for Depot Improvement Work

List of Drawings		
Drawing Nr.	Drawing Name	Purpose
1	Adyar Depot Layout	First Floor Plan
2	Adyar Depot Layout	Ground Floor Plan
3	Central Depot Layout	First Floor Plan
4	Central Depot Layout	Ground Floor Plan

The detailed layouts are attached as an associated file to the RFP.

PART 3 - Contract

Section VIII. General Conditions of Bus Supply and O&M Service Contract

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Section VIII. General Conditions of Bus Supply, Operation and Maintenance Service Contract

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “KfW” means the KfW Entwicklungsbank;
- (b) “Contract” means the Contract Agreement entered into between the Authority and the Contractor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein;
- (c) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto;
- (d) “Contract Price” means the price payable to the Contractor as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract;
- (e) “Day” means calendar day;
- (f) “Completion” means the fulfilment of the Related Services by the Contractor in accordance with the terms and conditions set forth in the Contract;
- (g) “GC” means the General Conditions of Contract;
- (h) “Electric Buses” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Contractor is required to supply to the Authority under the Contract;
- (i) “Authority’s Country” is the country **specified in the Particular Conditions of Contract (PC)**;
- (j) “Authority” means the entity purchasing the Electric Buses and Related Services, as **specified in the PC**;
- (k) “Related Services” means the services incidental to the supply of the Electric Buses, such as insurance, installation, training and initial maintenance and other such obligations of the Contractor under the Contract;
- (l) “PC” means the Particular Conditions of Contract;
- (m) “Subcontractor” means any natural person, private or state entity, or a combination of the above, to whom any part of the Electric Buses to be supplied or execution of any part of the Related Services is subcontracted by the Contractor;
- (n) “Contractor” means the natural person, private or state entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Authority and is named as such in the Contract Agreement;

- (o) "The Named Place of Destination"/ "Project Site," where applicable, means the place(s) **named in the PC**.
- 2. Contract Period and Contract Documents**
- 2.1 The Contract Period starts from the date of signing of the Contract with the concerned Authority till expiry of the O&M Service Period. The Contract Period includes 1) Prototype Inspection, 2) Development of Charging Infrastructure, 3) Delivery and Final Acceptance of entire Tendered Quantity, 4) Complete Bus Warranty, 5) O&M Service, 6) Extended/ Additional Warranty for ITS equipment, 7) Extended/ Additional Warranty for Bus Structure and 8) Extended/ Additional Warranty for Traction Batteries as provided in the RFP.
- 2.2 The obligation of the Contractor for O&M Service Period shall start for a Contracted Bus or a lot of Contracted Buses from the date of its Final Acceptance by the Authority. The O&M Service Period shall be considered for 9 years from the date of Final Acceptance Certificate issued by the Authority for the last Contracted Bus or a last lot of Contracted Buses and commissioning of all the Contracted buses in the normal operations of the Authority ("FCOD").
- 2.3 The Contractor shall provide Comprehensive Operation and Maintenance Service for the above-mentioned period over and above the services for the different Warranties specified in the RFP.
- 2.4 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.
- 3. Fraud and Corruption**
- 3.1 The KfW requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility.
- 4. Interpretation**
- 4.1 If the context so requires it, singular means plural and vice versa.
- 4.2 Incoterms
- (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms;
- (b) The terms CIP and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms **specified in the PC** and published by the International Chamber of Commerce in Paris, France.
- 4.3 Entire Agreement
- The Contract constitutes the entire agreement along with its schedules between the Authority and the Contractor and supersedes all communications, negotiations and agreements

(whether written or oral) of the parties with respect thereto made prior to the date of Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

4.5 Non-waiver

(a) Subject to GC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract;

(b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Contractor and the Authority, shall be written in the language **specified in the PC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Contractor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Contractor.

6. Consortium,

6.1 If the Contractor is a Consortium, all of the parties shall be jointly and severally liable to the Authority for the fulfilment of the provisions of the Contract. The Authority shall communicate, make payment to only with the Lead Member of the Consortium and consider the Lead Member liable for the performance of the all the Non-Lead Member. The composition or the constitution of the Consortium, shall not be altered without the prior consent of the Authority during Contract Period. In case of the any consortium member files bankruptcy as per the applicable laws in India or its country of Origin, such member shall be replaced

by a new member having eligibility and qualification criteria as provided in the RFP. Replacement of the Lead Member shall not be permitted in any case during the Contract Period with Prior consent of the Authority. The designated party to act as Lead Member with full authority shall be **specified in the PC**.

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| 7. Eligibility | 7.1 All Electric Buses and Related Services to be supplied under the Contract and financed by the KfW shall have their origin in any eligible source as specified in the PC . For the purpose of this Clause, origin means the country where the Electric Buses have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components. |
| 8. Notices | <p>8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the PC. The term “in writing” means communicated in written form with proof of receipt.</p> <p>8.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.</p> |
| 9. Governing Law | 9.1 The Contract shall be governed by and interpreted in accordance with the laws of the Authority’s Country, unless otherwise specified in the PC . |
| 10. Settlement of Disputes | <p>10.1 The Authority and the Contractor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.</p> <p>10.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Authority or the Contractor may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Electric Buses under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the PC.</p> <p>10.3 Notwithstanding any reference to arbitration herein,</p> <p>(a) The parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and</p> <p>(b) The Authority shall pay the Contractor any monies due to the Contractor.</p> |

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| <p>11. Inspections and Audit by the KfW</p> | <p>11.1 The Contractor shall keep and shall make all reasonable efforts to cause its Subcontractors to keep accurate and systematic accounts and records, in respect of the Electric Buses in such form and details as will clearly identify relevant time changes and costs.</p> <p>11.2 The Contractor shall permit, and shall cause its Subcontractors and consultants to permit, the KfW and/or persons appointed by the KfW to inspect the Contractor's offices and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the KfW if requested by the KfW.</p> |
| <p>12. Scope of Supply</p> | <p>12.1 The Electric Buses, O&M Service and Related Services to be supplied shall be as specified in the Schedule of Requirements.</p> |
| <p>13. Delivery and Documents</p> | <p>13.1 Subject to GC Sub-Clause 33.1, the Delivery of the Electric Buses and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Contractor are specified in the PC.</p> |
| <p>14. Contractor's Responsibilities</p> | <p>14.1 The Contractor shall supply all the Electric Buses and Related Services included in the Scope of Supply in accordance with GC Clause 12, and the Delivery and Completion Schedule, as per GC Clause 13.</p> |
| <p>15. Contract Price</p> | <p>15.1 Prices charged by the Contractor for the Electric Buses supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Contractor in its bid, with the exception of any price adjustments authorized in the PC.</p> |
| <p>16. Terms of Payment and Reimbursement</p> | <p>16.1 The Contract Price Payments, shall be paid as specified in the PC.</p> <p>16.2 The Contractor's request for payment shall be made to the Authority in writing, accompanied by invoices describing, as appropriate, the Electric Buses delivered and Related Services performed, and by the documents submitted pursuant to GC Clause 13 and upon provision of O&M Service and upon fulfilment of all other obligations stipulated in the Contract.</p> <p>16.3 The Authority shall make the payment after deduction of Liquidated Damages, Statutory deduction and adjustment if any, and if applicable. The currencies in which payments shall be made to the Contractor under this Contract shall be those in which the bid price is expressed.</p> <p>16.4 In the event that the Authority fails to pay the Contractor any payment for Supply of Buses by its due date or within the period set forth in the PC, the Authority shall pay to the Contractor interest on the amount of such delayed payment at the rate shown in the PC, for the period of delay until payment</p> |

has been made in full, whether before or after judgment or arbitration award.

- 16.5 In the event of any reimbursement, guarantee or similar claimable payments and any insurance payments under this Contract, payment shall be effected as **specified in the PC**.
- 16.6 The Contractor shall be required to submit invoice as per the payment terms provided in GC 16.1 towards supply of Electric Buses to MTC. The MTC, after verification of the Invoice amount and calculation of deductible Liquidated Damages pursuant to the provisions of the RFP from the submitted invoices, shall release the Payment Advisory to the PIU/ TDFC in Chennai. The payment shall be released to the Contractor by the PIU/ TDFC within the time period specified in the GC 16.1 after due deduction of applicable Liquidated Damages and other applicable statutory deductions notified by competent Authority from time to time such as Tax Deduction at Source or Withholding Tax for a Foreign based Contractor etc.
- 16.7 The payment of O&M services shall be made by the MTC only as per terms of the GC 16.1. KfW shall not make any payment related O&M Services. The Payment for O&M service shall commence with deployment of each lot of buses into the routine Operations.
- 16.8 The Per km rate for O&M services as specified in the LOA, shall be revised annually on the Anniversary of the FCOD and till the expiry or termination of the Contract. The formula for rate revision is provided **in the PC**.

17. Taxes and Duties

- 17.1 For Electric Buses manufactured outside the Authority's Country, the Contractor shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Authority's Country.
- 17.2 For Electric Buses manufactured within the Authority's country, the Contractor shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Electric Buses to the Authority.
- 17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Contractor in the Authority's Country as **specified in the PC**, the Authority shall use its best efforts to enable the Contractor to benefit from any such tax savings to the maximum allowable extent.

18. Performance Security

- 18.1 The Contractor shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount **specified in the PC**.
- 18.2 The proceeds of the Performance Security shall be payable to the Authority pursuant to GC 16.6 (reimbursement) as

compensation for any loss resulting from the Contractor's failure to complete its obligations under the Contract.

- 18.3 The Performance Security shall be denominated in the currency(ies) of the Contract and shall be in one of the formats **stipulated by the Authority in the PC**, or in another format acceptable to the Authority.
- 18.4 The Performance Security shall be discharged by the Authority and returned to the Contractor not later than twenty-eight (28) days following the date of Completion of the Contractor's performance obligations under the Contract, including any warranty and O&M Service obligations, unless **specified otherwise in the PC**.
- 18.5 Authority shall be entitled, and it shall be lawful on his part to encash the amount of Performance Security in whole or in part in event of any default, failure or neglect on part of Contractor in fulfilment or performance in any manner whatsoever of Contractor's obligations under the contract under reference or any part thereof to satisfaction of the Authority. Authority shall also be entitled to deduct from the amount of Performance Security any loss or pre-estimated Liquidated damages for the events included in GC 27.1 and as mentioned elsewhere in the Contract which Authority may suffer or be put to by reason of or due to any act or other default, recoverable by Authority from the Contractor in respect of the contract under reference and in either of the events aforesaid to call upon the Contractor to maintain the amount of performance security at its original limit by furnishing fresh Bank Guarantee of additional amount, provided further that the Authority shall be entitled to recover any such claim from any sum then due or which at any time thereafter may become due to the Contractor under this or any other Contracts with the Authority.
- 18.6 The Bank Guarantee shall remain in full force and effect during the period that would be taken for satisfactory performance and fulfilment in all respects of the contract i.e., till satisfactory commissioning of the buses at Authority's works and thereafter successful completion of O&M Service Period as Specified in the GC Clause 2.2.
- 18.7 As and when, an amendment is issued to the contract, having an impact on amount and validity of Performance Security, Contractor shall, within fifteen days of receipt of such an amendment furnish to Authority an amendment to Bank Guarantee rendering the same valid for the contract as amended.
- 18.8 Fresh Performance Security: In the event of encashment of Performance Security by Authority pursuant to an Encashment Notice issued, Contractor shall within 30 (thirty) days of Encashment Notice furnish to Authority fresh Performance Security. The provisions set forth in above shall apply mutatis mutandis to such fresh Performance Security.

19. Copyright

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Authority by the Contractor herein shall remain vested in the Contractor, or, if they are furnished to the Authority directly or through the Contractor by any third party, including Contractors of materials, the copyright in such materials shall remain vested in such third party.

20. Confidential Information

20.1 The Authority and the Contractor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Contractor may furnish to its Subcontractor such documents, data, and other information it receives from the Authority to the extent required for the Subcontractor to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Contractor under GC Clause 20.

20.2 The Authority shall not use such documents, data, and other information received from the Contractor for any purposes unrelated to the contract. Similarly, the Contractor shall not use such documents, data, and other information received from the Authority for any purpose other than the performance of the Contract.

20.3 The obligation of a party under GC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- (a) The Authority or Contractor needs to share with the AFD or other institutions participating in the financing of the Contract;
- (b) Now or hereafter enters the public domain through no fault of that party;
- (c) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

21. Subcontracting

21.1 Sub-Contracting for the O&M Services shall not be permitted By the Authority.

21.2 Deleted.

21.3 Deleted.

22. Specifications, Standards and Spare Parts

22.1 Technical Specifications and Drawings

- (a) The Electric Buses and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VII, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Electric Buses' country of origin.
- (b) The Contractor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Authority, by giving a notice of such disclaimer to the Authority.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Authority and shall be treated in accordance with GC Clause 33.

22.2 Spare Parts

- (a) The Contractor shall carry sufficient inventories to assure ex-stock supply of consumables and consumable spares as one of the obligations during O&M Service Period and shall replace such component.
- (b) The Contractor shall be, for a period of years **specified in the PC** from the date of delivery and during the O&M Service Period, under obligation to supply spare parts. However, the Contractor shall, in the event of termination of production of the spare parts:
 - (i) Send an advance notification to the Authority of the pending termination, in sufficient time to permit the Authority to procure needed requirements; and
 - (ii) Furnish, following such termination, at no cost to the Authority, the blueprints, drawings and specifications of the spare parts, if and when requested.

23. Packing and Documents

- 23.1 The Contractor shall provide such packing of the Electric Buses as is required to prevent their damage or deterioration during transit to their named place of destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into

- consideration, where appropriate, the remoteness of the Electric Buses' named place of destination and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, **specified in the PC**, and in any other instructions ordered by the Authority.
- 24. Insurance**
- 24.1 Unless otherwise **specified in the PC**, the Electric Buses supplied under the Contract shall be fully insured - in the currency(ies) of the Contract from an eligible country - against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner **specified in the PC**.
- 25. Transportation**
- 25.1 Unless otherwise **specified in the PC**, responsibility for arranging transportation of the Electric Buses shall be in accordance with the specified Incoterms.
- 25.2 The Contractor may be required to provide any or all of the following services, including additional services, if any, **specified in PC**:
- (a) Performance or supervision of on-site assembly and/or start-up of the supplied Electric Buses;
 - (b) Furnishing of tools required for assembly and/or maintenance of the supplied Electric Buses;
 - (c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Electric Buses;
 - (d) Performance or supervision or maintenance and/or repair of the supplied Electric Buses, for a period of time agreed by the parties, provided that this service shall not relieve the Contractor of any warranty obligations under this Contract; and
 - (e) Training of the Authority's personnel, at the Contractor's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Electric Buses.
- 25.3 Prices charged by the Contractor for incidental services, if not included in the Contract Price for the Electric Buses, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Contractor for similar services.
- 26. Inspections and Tests**
- 26.1 The Contractor shall at its own expense and at no cost to the Authority carry out all such tests and/or inspections of the Electric Buses and Related Services as are **specified in the PC**.
- 26.2 The inspections and tests may be conducted on the premises of the Contractor, and/or at the named place of destination, and on the Authority's Premises after delivery of the Electric

Buses as **specified in the PC**. Subject to GC Sub-Clause 26.3, if conducted on the premises of the Contractor, all reasonable cost of travel and conveyance, accommodation, other facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors/Inspection team at no charge to the Authority.

26.3 Deleted.

26.4 The Contractor shall carry out inspection as per the timeline specified in section III- Schedule of Requirement. The Contractor shall give a reasonable advance notice, including the place and time, to the Authority. The Contractor shall obtain from any relevant third party or other Original Equipment Manufacturer any necessary permission or consent to enable the Authority or its designated representative to attend the test and/or inspection.

26.5 The Authority may require the Contractor to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Electric Buses comply with the technical specifications, codes and standards under the Contract, provided that the Contractor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price pursuant to the provision for testing provided in the section III- Schedule of Requirement. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Contractor's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

26.6 The Contractor shall provide the Authority with a report of the results of any such test and/or inspection.

26.7 The Authority may reject any Electric Buses or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Contractor shall either rectify or replace such rejected Electric Buses or parts thereof or make alterations necessary to meet the specifications at no cost to the Authority, and shall repeat the test and/or inspection, at no cost to the Authority, upon giving a notice pursuant to GC Sub-Clause 26.4.

26.8 The Contractor agrees that neither the execution of a test and/or inspection of the Electric Buses or any part thereof, nor the attendance by the Authority or its representative, nor the issue of any report pursuant to GC Sub-Clause 26.6, shall release the Contractor from any warranties or other obligations under the Contract.

27. Liquidated Damages

27.1 Except as provided under GC Clause 46, if the Contractor fails to deliver any or all of the Electric Buses by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, or fails to perform its obligation for

O&M Service as specified in the GC Clause 2.2, the Authority may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage **specified in the PC** of the delivered price of the delayed Electric Buses or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage **specified in those PC**. Once the maximum is reached, the Authority may terminate the Contract pursuant to GC Clause 35.

28. Warranty

- 28.1 The Contractor warrants that all the Electric Buses are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GC Sub-Clause 22.1(b), the Contractor further warrants that the Electric Buses shall be free from defects arising from any act or omission of the Contractor or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of named place of destination.
- 28.3 Various warrantee under the Contract shall be as specified in the PC.
- 28.4 The Authority shall give notice to the Contractor stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Authority shall afford all reasonable opportunity for the Contractor to inspect such defects.
- 28.5 Upon receipt of such notice, the Contractor shall, within the period **specified in the PC**, expeditiously repair or replace the defective Electric Buses or parts thereof, at no cost to the Authority.
- 28.6 If having been notified, the Contractor fails to remedy the defect within the period specified in the **PC**, the Authority may proceed to take within a reasonable period such remedial action as may be necessary, at the Contractor's risk and expense and apply liquidated damages as per the GC 27 and without prejudice to any other rights which the Authority may have against the Contractor under the Contract.

29. Authority's Responsibilities

- 29.1 The Authority shall provide E-Bus Depot at Adyar and Central for maintenance, over-night charging, intermittent/ opportunity charging and parking of the Contracted Buses in Chennai.
- 29.2 The Authority shall allot 60 minutes for intermittent/ opportunity charging.
- 29.3 The Authority at its own cost, however in consultation with the Contractor, shall plan, design, develop, operate and maintain the Electric Infrastructure at the Depot as the E-Bus Support Infrastructure including but not limited to the 1) Access of Bulk

Power of 11kV / 33 kV and 2) procurement and installation of Transformer.

- 29.4 The Authority shall bear the cost of electricity consumed in charging of Electric Buses and Auxiliary use for Depot lighting, depot equipment', water supply and utilities under this Contract during the O&M Service Period subject to the limit provided as follows;

Energy Efficiency (EE)* (Units/Km)	Provision
EE = up to 1.3	Acceptable Range of EE in which Authority bears the full cost of electricity consumption for charging the bus batteries
EE > 1.3	Contractor bears full cost of additional cost incurred for electricity consumption beyond EE of 1.3 units/km

**The monthly average Energy Efficiency of the entire e-bus fleet deployed in the operation from a particular depot shall be considered for evaluation.*

- 29.5 The Authority shall, in consultation with Contractor, prepare and reserve right to amend the Bus Operation Schedule, route planning and Bus Deployment Pattern throughout the contract period within the City of Chennai
- 29.6 The Authority shall assure 72,000 km per year per Contracted Bus for Comprehensive Maintenance Service during the O&M Service Period. The Authority shall make payment to the Contractor based on Annual Assured km, however subject to adjustment of excess or unutilized km as per the provision of the RFP.
- 29.7 The Authority shall make timely payment for the Supply of the Contracted Buses and for the O&M Service of above Buses as per provisions of the RFP.

30. Contractor's Responsibilities

- 30.1 The Contractor shall execute the scope of work and other obligations as specified in the RFP.
- 30.2 The Contractor at its own cost, however in consultation with the Authority, shall plan, design, develop, operate and maintain the Depot and Charging Infrastructure as per layout and scope of work provided in the Section X and XI - Contract Condition for Depot Improvement works and Schedule of Requirement. It shall include, but not limited to 1) procurement and installation of HT – LT Panels 2) procurement and installation of site level cable distribution to provide plug and play charging facilities to the Contractor 3) develop ancillary civil infrastructure to support the components mentioned in the Depot Improvement Works:

Schedule of Requirement including platforms, rooms, cable tranches, sheds, paved surface as per the requirement and 4) Procurement and install Green and Renewable Energy Generation equipment such as Solar Panel at the Depots and charging infrastructure.

- 30.3 The Contractor shall effect and maintain at its own cost, all risk Insurance pertaining to the Contracted Buses and any claim, damages that may incur during the Bus Operations and Maintenance of the Contracted Buses in Chennai.
- 30.4 In case of any event of any failure, or damages or completion of useful life of the traction batteries during O&M Service Period the Contractor shall also bear all the cost of Battery Replacement in the Contracted Buses
- 30.5 The Contractor shall be entirely responsible for execution of the Contract strictly in accordance with the terms of Technical Specification, Comprehensive Maintenance Condition and General Conditions of Contract, Instruction to Bidder and other conditions of contract.
- 30.6 Contractor shall be responsible for taking all necessary approvals and permissions from the Government of India and from the Government of Tamil Nadu, as the case may be and shall be responsible and liable for payment of all statutory and non-statutory dues during the performance of its obligations under the contract
- 30.7 The Contractor shall provide complete assistance, hand holding and technical know-how at the time of replacement of Traction Batteries during the O&M Service Period.
- 30.8 The Contractor shall appoint an ESHS expert in accordance with provision of GC 4.1 (g) for Depot Improvement Works.

31. Quality Assurance Plan and quality of Material

- 31.1 The materials to be used in manufacturing of buses shall conform to the specified Bureau of Indian Standards (BIS)/ Automotive Industry Standards (AIS) surpassing the performance & other requirements as given in the Bus Code AIS 052. In absence of above specifications, Association of State Road Transport Undertakings (ASRTU) Specifications could be followed. Wherever Indian standards are not available, internationally acceptable standards may be referred/indicated such as ECE, JIS, DIN, ASTM, ISO etc. for quality assurance of material. Indian and International standards wherever indicated in Technical Specification shall be conforming to the Standards as amended up to date/ or latest. Wherever the standards of any item have not been notified as International/ National Standard etc. the Bidder shall provide actual specifications of that item along with the drawings of the items indicating all relevant details. In this case, the Bidder shall also submit the certificate for non-availability of International/National standard etc. The Bidder shall be required to satisfy about all the relevant standards for the material to be used in manufacturing of buses before submitting their Bids.
- 31.2 The Contractor can use materials out of the lot, which has been approved by a lab. It is necessary to furnish latest Lab Test

Reports from CIRT, Pune/ARAI, Pune/ ICAT, Manesar/ BIS approved Labs/NABL approved Labs to the Authority for the Material used in the Manufacturing of the buses during any stage of factory inspections provided in the Contract.

- 31.3 Random samples of items as per list (Table A of Part 2 of Form 11, Section IV) shall be picked up by Authority's representative and the manufacturer jointly and sealed for onward transmission by the manufacturer to the lab for inspection as per the required specification/ standards. 'ISI' or 'E' marked items of the concerned country used in manufacturing of Bus need no testing except flammability test and testing of all type of fuses.
- 31.4 Vehicle Manufacturers shall be required to obtain type approval of all safety critical items/ materials from the authorized testing agencies before use. The Vehicle Manufacturers shall be required to provide a list of such items along with their Certificates to the Authority.
- 31.5 The cost of all tests, analysis, and patent rights shall be borne by the Manufacturer.
- 31.6 Contractor shall formulate a Quality Assurance Plan (QAP) to ensure quality product conforming with Part G of the RFP. QAP shall cover quality assurance procedures to be followed during all stages of design, planning, procurement, manufacture, supply and commissioning. QAP shall be submitted by the Contractor to Authority within two weeks of signing of Contract.

32. Manufacturing of Fully Built Buses

- 32.1 The Contractor shall manufacture the Chassis of the Fully Built Bus at fully owned inhouse manufacturing facility only.
- 32.2 The Contractor shall construct the Bus Body of the Fully Built Bus at fully owned inhouse Bus Body Building/manufacturing facility or at the Bus Body Building Facility owned by its Associates.
- 32.3 For the purpose hereof, the word "Associate" shall mean, in relation to the Contractor, a firm which controls the Contractor (i.e., Parent/Holding Company) or is controlled by the Contractor (i.e., subsidiary), or is under the common control with the Contractor (i.e., sister concern).

As used here, the expression "control" means, with respect to Contractor which is a company, (i) the ownership of common shareholders, directly or indirectly (i.e. together with one or more of its subsidiary/Holding companies), of at least 50% of the voting shares/shareholding of the firm in question OR (ii) the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

(In the event of any ambiguity or dispute, the provisions of Companies Act 2013, appropriately applied in context, shall prevail)

**33. Alteration,
Addition/
Deletion,
Deviation,
Defects/
Deficiencies**

- 33.1 The Contractor shall manufacture the Bus strictly in accordance with the technical specifications of the contract. Contractor is not allowed to make any alteration, addition/ deletion, and deviation or leave any defect/ deficiency in the manufacturing of the Bus.
- 33.2 The Contractor shall note that the Bus shall be manufactured and supplied to the Authority with zero defects. In case, any defects/ deficiencies/ discrepancies are brought to the notice of the Contractor during inspection at various stages, the same shall be immediately removed in all the buses under manufacturing before clearance is given by the Authority. In case, any defects/ deficiencies observed at various stages and not rectified by the Contractor before the commissioning of the completed buses at Designated Locations for Delivery Contractor shall be solely responsible for any mishap/ mis-happening and liable for levy of damages/ compensation for the damages caused and the same shall be recovered from the outstanding payments/ performance security etc.
- 33.3 The Contractor shall note that in case of defects/ deficiencies not attended/ rectified by him at his works during Bus manufacturing, the same shall result in delay in releasing the payment for the Bus in order to enable the Authority to work out the cost of recovery to be made from his bills.
- 33.4 However, in case any alteration/ addition/ deletion/ deviation, defects/ deficiencies in any manner are found or detected in the Bus at the time of commissioning of the Bus, Authority shall have the right to recover full cost of the material/ fitment etc. with additional 25% of the cost of the material/ fitment etc. as compensation/ damages from bills of Contractor towards rectifications at his cost. The Authority shall also have a right to make recovery as determined by the MD of the MTC or his authorized representative after costing for defects/ deficiencies, deviations, alterations etc.
- 33.5 For purpose of recovery of compensation and damages, no notice shall be required to be issued to Contractor. However, after cost is assessed and evaluated as per joint inspection carried out in presence of Contractor's representative, the Contractor shall be sent a statement in respect of recovery/ deductions made with details of defects & deficiencies etc. Assessment of the cost of material fitment etc shall be made by the MD of the MTC or his authorized representative, which shall be final and binding upon the Contractor.

**34. Inspection of
Buses at
Destination
Station**

- 34.1 On receipt of Buses at the place of delivery, these shall be jointly inspected by the Contractor and the Authority for completeness and satisfactory condition of all equipment/ components. Damages, defects and deficiencies, if any, shall be noted and the Contractor shall initiate immediate action for making good the same under advice from Authority within

mutually agreed time period. Any delay commissioning of these buses due to any such reason shall be to Contractor's account and shall be dealt with by the Authority as per Conditions of the Contract.

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| <p>35. Provisional Receipt Certificate</p> | <p>35.1 Only upon receipt of documentary evidences of the after sales network and spare parts inventory in Tamil Nadu, the Authority shall, through a joint inspection with the Contractor or representative of the Contractor, issue Provisional Receipt Certificate within three working days of receipt of Bus (es) in good conditions along with valid required documents at Designated Locations for Delivery. The Provisional Receipt Certificate issued by the Authority shall not be considered as the Acceptance of the Buses received.</p> |
| <p>36. Removal and Replacement of Rejected Buses</p> | <p>36.1 On rejection of any Bus, subjected to inspection or assessment of performance during commissioning at Authority's premises, such buses shall be repaired or removed and replaced by Contractor at his own cost subject as hereinafter stipulated, within 21 days of the date of intimation of such rejection. If the concerned communication is addressed and posted to Contractor at the address mentioned in contract, it shall be deemed to have been served on him at the time when such communication would in course of ordinary post reach Contractor, provided that where price or part thereof has been paid, the Authority is entitled without prejudice to his other rights to retain rejected buses till either price paid for the rejected buses is refunded by the Contractor or the same quantity of buses are replaced by the Contractor, save that such retention shall not in any circumstances be deemed to be acceptance of buses or waiver of rejection thereof.</p> <p>36.2 All rejected buses shall in any event and circumstances remain and always be at the risk of the Contractor immediately on such rejection. If such buses are not removed by Contractor within the period aforementioned, Inspecting Officer/ Authority may remove the rejected buses and either return same to the Contractor at the risk and cost of the Contractor by such mode of transport as Authority or Inspecting Officer may decide, or dispose of such buses at Contractor's risk and on his account and retain such portion of proceeds, if any, from such disposal as may be necessary to recover any expense incurred in connection with such disposals and any price refundable by Contractor as a consequence of such rejection. Authority shall, in addition, be entitled to recover from the Contractor handling and storage charges @ 0.5% of the price of buses per week or part thereof on the rejected buses after expiry of the time-limit mentioned above.</p> |
| <p>37. Final Acceptance Certificate</p> | <p>37.1 Contractor shall inform the Authority about rectification/ removal of defects/ deficiencies observed during Joint Inspection carried out during issuance of Provisional Receipt Certificate within 07 days from date of such inspection. Thereafter, Final Acceptance Certificate shall be issued by Authority within 15 days after final inspection, satisfactory</p> |

rectification of deficiencies observed during the join inspection as per clause 35.1 above and satisfactory commissioning of buses at Designated Locations for Delivery or any other Place mentioned in the Contract. ("Final Acceptance Certificate")

38. Acceptance of Buses received after the expiry of Delivery Period

- 38.1 Contractor is required to complete supplies within stipulated delivery period. In case Contractor fails to complete the entire/ part quantity of supplies within stipulated delivery period, Authority, at its discretion, may grant extension in delivery period for unsupplied quantity. Such extension in delivery if granted shall be subject to following conditions:
- a. Contractor shall pay and Authority shall recover pre-estimated liquidated damages from Contractor as per clause 19 on buses which the Contractor has failed to deliver within the period fixed for delivery.
 - b. All Government Taxes/ Levies, as applicable, on the date of invoicing of the buses shall be payable to the Contractor.
 - c. Notwithstanding any stipulation in contract for increase in price on any other ground, no such increase in Government taxes / levies etc which takes place after delivery date stipulated in the contract shall be admissible on such of the said buses as are delivered after the said date.
 - d. Authority shall be entitled to benefit of any decrease in price on account of reduction in statutory levies, Custom Duty, GST and duties or on account of any other ground which takes place during the currency of the contract and/ or after expiry of the delivery date stipulated in contract. Contractor shall allow said benefit in his bills and in absence thereof shall certify that no decrease in price on account of any of these factors has taken place.

39. Consequence of Rejection

- 39.1 If any consignment of buses is rejected by Inspecting Officer or by Authority during testing, trials and commissioning and Contractor fails to rectify rejected Bus(es) within 21 days of rejection, Authority shall be at liberty to:
- a. requires the Contractor to replace rejected buses forthwith but in any event not later than a period of 30 days from the date of expiry of the rectification period and Contractor shall bear all costs of such replacement including freight and insurance etc., if any, on such replacement and shall not be entitled to any extra payment on that or any other account; or
 - b. purchases or authorize purchase of quantity of buses rejected of same or similar description (when buses exactly complying with "particulars" are not in opinion of Authority, which shall be final, readily available) without notice to Contractor at his risk and cost and without affecting Contractor's liability as regards supply of any further instalments due under the contract; or
 - c. cancel contract and purchase or authorize purchase of buses of same or similar description (when buses

exactly complying with particulars are not in the opinion of Authority, which shall be final, readily available) at the risk and cost of Contractor. In the event of action being taken under sub-clause (b) above or under this sub-clause (c), the provisions pertaining to timeline of replacement of buses set forth in the preceding sub-clause (a) above shall apply as far as applicable.

40. Quantity Variation

- 40.1 The Authority reserves the right to increase or reduce the number of Contracted Buses as specified in ITB 39.1 after issuance of LOA however before 60 days of completion of delivery of all buses as per the contracted delivery schedule without any change in Unit Price or other Terms & Conditions.
- 40.2 The Price Bid of the Bidder will be used to determine the per Bus cost, and in the event of reduction of number of Buses pursuant to Clause 40.1 above, the total Contract price shall be reduced accordingly.

41. Transfer of Assets during the O&M Service Period

41.1 Handover of the Assets by the Authority

- a. For the purpose of Operation, maintenance and charging, the Authority shall handover the Contracted Buses to the Contractor as per the pre-decided schedule of the Authority, during the O&M Service Period.
- b. For the purposes of maintenance, charging and parking of Contracted Buses, the Authority shall provide Depot including Electric and Charging Infrastructure at Adyar and Central Depot for the O&M Service Period.
- c. It is hereby clarified that the ownership of the Depot, Electric and Charging Infrastructure shall remain vested solely with the Authority at all times. the Contractor shall only have a limited access and right to use the above Infrastructure subject to the terms contained herein during the O&M Service Period. The Contractor shall enter in a separate Depot License agreement with the Authority at time of handover of such Infrastructure as per the format provided in the Attachment 1 to Section IX of the RFP
- d. In the event of Termination or expiry of the Contract, the Contractor shall vacate and hand back such Infrastructure as per the terms contained herein. Upon termination, the Contractor shall not remove any permanent structure created by him to fulfil the obligations as per the terms of this Agreement.
- e. The Contractor shall, develop, operate and maintain the Depot and Charging Infrastructure as per the provision of the RFP. The Authority shall be responsible for providing, operation and maintenance of Electric Infrastructure as described in the clause 29 of GC.
- f. Further the Contractor shall;
 - i. at his own cost and expense maintain the area of the Depot and Charging Infrastructure provided to it under

- the terms of the license agreement and the terms contained herein in good working condition;
- ii. not cause any damage in the area of the any component of asset handed over to it under the terms of the license agreement and the terms contained herein or do any act which will in any way be prejudicial to the rights of Authority or other users/occupants of the same.
- iii. only be responsible to maintain the area of the Depot and Charging Infrastructure which has been specifically allocated and handed over to him by the Authority under the relevant license agreement.
- iv. Deleted.
- g. Deleted.
- h. The Contractor shall not have any right to display advertisement in the Depot and Charging Infrastructure or any part thereof.
- i. It shall be the obligation of the Contractor to whom a Depot and Charging Infrastructure is allotted to allow buses of other Bus Contractors appointed by the Authority to park and share the facilities developed at the Bus Depot by the Contractor. It is likely that Authority may ask multiple Contractors to share Depot facilities to optimize Bus Schedules. In such case different Contractors may decide the terms if any between them which are most suitable in their opinion.

41.2 Hand-back of Assets on Termination by the Contractor

- a. After the successful completion of the O&M Service Period, the Contractor shall hand over all the Authority's assets under its possession in sound condition.
- b. In case of an early termination of the Contract before completion of the O&M Service Period, for whatever reason, the Contractor shall hand over to the Authority free from Encumbrances the peaceful possession of Depot and Charging Infrastructure in sound condition.
- c. In case of completion of O&M Service Period or an early termination of the Contract before completion of O&M Service Period, for whatever reason, the Contractor shall handover free from Encumbrances the peaceful possession of all Contracted Buses in sound roadworthy condition.
- d. The Contractor shall have no right to seek the transfer of the Bus Parking Spaces or any other Movable or immoveable asset that may be provided by the Authority to the Contractor, and the Authority shall retain the title, and ownership in relation to such assets at all times.
- e. Any immovable infrastructure, which may be constructed by the Contractor shall be transferred by the Contractor to the Authority.

- f. In order to ensure that all the vehicles, that have been operated and maintained by the Contractor, are returned to the Authority in a condition that satisfies the following conditions.

The Authority shall conduct inspection of All vehicles in the following manner:

- Internal and External: Minimum Indicative List but not limited to
 - Body work and Structural Defects including dents, scratches and rust.
 - Vehicle interior, including seats, floor, support bars, lighting, roof leakage, etc.
- Mechanical: Minimum Indicative List but not limited to
 - The vehicle will be inspected, the minimum requirement is an annual Fitness Certificate as prescribed by Ministry of Transport pass rate criterion, without any advisory action required at the end of O&M period (after 9 years from Date of Operations).

The minimum legal standards shall be emphasised at the time inspection. Following shall be the stages of inspection;

a) Inspection

- i) Prior to returning the vehicle(s) to the Authority, the vehicle(s) will go through a thorough inspection, to satisfy the Authority that the equipment is in a roadworthy condition. The scope of the inspection should at least include all those items that are inspected at annual test, this includes conducting a laden roller brake test when appropriate for the type of vehicle.
- ii) The inspection should be made to manufacturers' recommended tolerances to ensure that each item covered by the safety inspection is inspected properly and limits of wear and tolerance are adhered to.
- iii) The vehicle inspection will be made jointly by the Contractor and the Authority. The Authority's representative will be part of the audit team, the name and signature of the Authority's audit team member should be recorded on the inspection sheet.
- iv) The name and signature of the Contractor's team present during the inspection, should be recorded on the inspection sheet.
- v) The result of the inspection will be recorded, including photographic evidence, on the inspection sheet, highlighting areas of concern.
- vi) Any work identified for rectification is recorded and the contractor is required to put right in a timely manner (exact timings to be inserted).
- vii) A full inspection of the body work will be carried out in good lighting under cover. Any damage, damaged windows/glass, dents, scratches to paint work damage to

- graphics and rust etc. should be noted on the inspection sheet.
- viii) A full inspection of the interior should be carried out in good lighting. Any items required to be rectified should be noted, including damage to floor, seats in need of repair, cleanliness etc.
 - ix) If required, the vehicle kWh recording, and battery degradation figures should be recorded.
 - x) As per the example inspection sheet, each vehicle inspection should be identifiable by registration, ID number or VIN number for example.
- b) Resulting rectification work
- i) Following the inspection, the agreed work is to be carried out in a timely manner, but no longer than (*insert timings*).
 - ii) If during the inspection, any questionable parts are found in use on the vehicle, these parts will be inspected, including reviewing paperwork to ensure quality level as per contract/RFP.
 - iii) If it is found that there are parts on the vehicle of inferior quality, the parts will be replaced with parts of the correct quality level.
 - iv) Rectified work is jointly re-inspected by both parties and agreed work completed is signed off before vehicle handover is completed.
- c) Additional Items
- i) All items supplied with the vehicle should also be returned, which might include:
 - Emergency hammers.
 - First aid kit.
 - Fire extinguishers.
 - Spare wheel.
 - Spare wheel jack.
 - Keys/spare keys if supplied.
- d) Liquidated Damages not rectifying the work
- i) In the event of Contractor not rectifying work pursuant to the provision above, the Authority, without any prejudice to the Contractor, shall reserve rights to deduct cost of such pending rectification of work by way of encashing the Performance Security and/or from the due payment of O&M services as per the provisions of the RFP.

42. Contract Conditions for Comprehensive

42.1 The specific Contract Conditions for O&M Service of E-uses shall be as specified in Attachment 2 to Section IX of the RFP.

Maintenance of E-buses

- 43. Patent Indemnity** 431 The Contractor shall, subject to the Authority's compliance with GC Sub-Clause 29.2, indemnify and hold harmless the Authority and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Authority may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) The installation of the Electric Buses by the Contractor or the use of the Electric Buses in the country where the Site is located; and
 - (b) The sale in any country of the products produced by the Electric Buses.

Such indemnity shall not cover any use of the Electric Buses or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Electric Buses or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Contractor, pursuant to the Contract.

- 43.2 If any proceedings are brought or any claim is made against the Authority arising out of the matters referred to in GC Sub-Clause 29.1, the Authority shall promptly give the Contractor a notice thereof, and the Contractor may at its own expense and in the Authority's, name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 43.3 If the Contractor fails to notify the Authority within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Authority shall be free to conduct the same on its own behalf.
- 43.4 The Authority shall, at the Contractor's request, afford all available assistance to the Contractor in conducting such proceedings or claim, and shall be reimbursed by the Contractor for all reasonable expenses incurred in so doing.
- 43.5 The Authority shall indemnify and hold harmless the Contractor and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Contractor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other

intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Authority.

44. Limitation of Liability

- 44.1 Except in cases of criminal negligence or wilful misconduct,
- (a) The Contractor shall not be liable to the Authority, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Contractor to pay liquidated damages to the Authority; and
 - (b) The aggregate liability of the Contractor to the Authority, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Contractor to indemnify the Authority with respect to patent infringement.

45. Change in Laws and Regulations

- 45.1 Unless otherwise specified in the Contract, if after the date of twenty-eight (28) days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Authority's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Contractor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GC Clause 15.

46. Force Majeure

- 46.1 The Contractor shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delays in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 46.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Contractor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Contractor. Such events may include, but not be limited to, acts of the Authority in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 46.3 If a Force Majeure situation arises, the Contractor shall promptly notify the Authority in writing of such condition and the cause thereof. Unless otherwise directed by the Authority

in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

47. Change Orders and Contract Amendments

47.1 The Authority may at any time order the Contractor through notice in accordance GC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) Drawings, designs, or specifications, where Electric Buses to be furnished under the Contract are to be specifically manufactured for the Authority;
- (b) The method of shipment or packing;
- (c) The place of delivery; and
- (d) The Related Services to be provided by the Contractor.

47.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Contractor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Contractor for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Contractor's receipt of the Authority's change order.

47.3 Prices to be charged by the Contractor for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Contractor for similar services.

47.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

48. Extensions of Time

48.1 If at any time during performance of the Contract, the Contractor or its subcontractors should encounter conditions impeding timely delivery of the Electric Buses or completion of Related Services pursuant to GC Clause 13, the Contractor shall promptly notify the Authority in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Contractor's notice, the Authority shall evaluate the situation and may at its discretion extend the Contractor's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

48.2 Except in case of Force Majeure, as provided under GC Clause 32, a delay by the Contractor in the performance of its Delivery and Completion obligations shall render the Contractor liable to the imposition of liquidated damages pursuant to GC Clause 27, unless an extension of time is agreed upon, pursuant to GC Sub-Clause 47.1.

49. Termination**49.1 Termination for Contractor's Event of Default**

- (a) The Authority, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor, may terminate the Contract in whole or in part if
 - (i) the Contractor fails to deliver any or all of the Electric Buses within the period specified in the Contract, or within any extension thereof granted by the Authority pursuant to GC Clause 34;
 - (i) The Contractor fails to setup after sales network and spare parts inventory in Tamil Nadu within the timeline specified in Clause 1.2 (f) and after the expiry of the remedial period provided in GC 27.1 (Point 6);
 - (ii) The Contractor outsources or sublet Chassis Manufacturing to any sub-contractor and Bus Body Building activity to a sub-contractor who is not its Associate as per the definition provided in the Agreement;
 - (iii) Continuous inferior performance in the meeting the service levels for O&M Service;
 - (ii) In case of pre-decided Liquidated Damages exceeds the limit specified in the GC 27.1;
 - (iv) Contractor is in breach of any of its obligations under this Contract and the same has not been remedied for more than 60 (sixty) days;
 - (v) A resolution for voluntary winding up has been passed by the shareholders of the Contractor;
 - (vi) Any petition for winding up of Contractor has been admitted and liquidator or provisional liquidator has been appointed or Operator has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Contractor under this Contract;
 - (vii) Contractor fails to comply with the Applicable laws, rules and regulations;
 - (viii) Any representation made or warranties given by the Contractor under this Contract or under the RFP document is found to be false or misleading;
 - (ix) Contractor fails to maintain/ refurbish/ replenish the Performance security as per terms of this Contract;
 - (x) Contractor suspends or abandons the Delivery of the Contracted Buses or Service during Warranty

Period without the prior consent of Authority, provided that the Contractor shall be deemed not to have suspended/ abandoned Delivery of Buses or Services during Warranty Period if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Contract by the Authority;

- (xi) The Contractor repudiates this Contract or otherwise evidences an intention not to be bound by this Contract;
- (xii) The Contractor failed to make any payments/damages/damages due to Authority within period specified in this Contractor or indicated by Authority without any valid reason;
- (xiii) The Contractor failed to perform any of the Contractor's obligations, which has a Material Adverse Effect on the Contract;
- (xiv) Contractor creates an Encumbrance over the Contracted Buses;
- (xv) Contractor fails to adhere to the timelines set forth in the Contract for performance of Contractor's obligations thereunder;
- (xvi) Any other default/breach of its obligation by the Contractor, for which default/breach termination has been prescribed in terms of this Contract;
- (xvii) If the Contractor fails to perform any other obligation under the Contract; or
- (xviii) If the Contractor, in the judgment of the Authority has engaged in fraud and corruption, as defined in GC Clause 3, in competing for or in executing the Contract.

49.2 Termination for Authority's Event of Default

- (i) The Contractor, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Authority, may terminate the Contract if:
- (ii) The Authority is in Material breach of any of its obligations under this Contract and has failed to cure such breach within sixty (60) days of occurrence thereof;
- (iii) The Authority has unlawfully repudiated this Contract or otherwise expressed its intention not to be bound by this Contract;

- (iv) The Authority fails to perform any other obligations under the Contract

49.3 Termination for Convenience

- (a) The Authority, by notice sent to the Contractor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Authority's convenience, the extent to which performance of the Contractor under the Contract is terminated, and the date upon which such termination becomes effective;
- (b) The Electric Buses that are complete and ready for shipment within twenty-eight (28) days after the Contractor's receipt of notice of termination shall be accepted by the Authority at the Contract terms and prices. For the remaining Electric Buses, the Authority may elect:
 - (i) To have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) To cancel the remainder and pay to the Contractor an agreed amount for partially completed Electric Buses and Related Services and for materials and parts previously procured by the Contractor.

50. Consequences of Termination

50.1 Without prejudice to any other right or remedies which the Authority may have under this Contract, upon occurrence of an Contractor Event of Default, the Authority shall be entitled to terminate this Contract by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days or reasonable period at sole discretion of Authority to the Contractor to remedy the default ("Remedial Period") and/or make representations, and may after the expiry of such Remedial Period on non-remedy of breach/default at the satisfaction of the Authority, whether or not it is in receipt of such representation, issue Termination Notice and then terminate the Contract

50.2 In the event of termination due to Contractor Event of Default, Authority shall have the right to:

- a. invoke and retain the Performance Guarantee amount in full;
- b. Take the peaceful and encumbrance free possession of the assets including Buses, Depots, Electric Infrastructure and Charging Infrastructure from the Contractor;

- c. Make Payment for the buses delivered by the Contractor and to which the Final Acceptance Certificate has been issued by the Authority;
- d. Save and Except provisions of sub-clause (c) above, the Authority shall not be liable to pay any other termination payment to the Contractor; or
- e. Blacklist the Contractor.

50.3 In the event the Authority terminates the contract in whole or in part, pursuant to sub-clause 36.1, Authority may enter into fresh contract with any other Contractor for completing unfulfilled portion of contract and Contractor (whose Contract is terminated) shall be liable to Authority for any excess costs for such buses, their commissioning for Warranty. However, Contractor shall continue performance of the Contract to the extent not terminated.

50.4 Without prejudice to any other right or remedies which the Contractor may have under this Contract, upon occurrence of an Authority Event of Default, the Contractor shall be entitled to terminate this Contract by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Contractor shall by a notice inform the Authority of its intention to issue such Termination Notice and grant 15 (fifteen) days or reasonable period to the Authority to remedy the default ("Remedial Period") and/or make representations, and may after the expiry of such Remedial Period on non-remedy of breach/default at the satisfaction of the Contractor, whether or not it is in receipt of such representation, issue Termination Notice and then terminate the Contract.

50.5 In the event of termination due to Force Majeure, Authority Event of Default and termination for convenience Authority shall;

- a. Refund the Performance Guarantee amount in full after deduction of any due payable by the Contractor;
- b. Take the peaceful and encumbrance free possession of the assets including Buses, Depots, Electric Infrastructure and Charging Infrastructure from the Contractor;
- c. Make Payment for the buses delivered by the Contractor and to which the Final Acceptance Certificate has been issued by the Authority;
- d. Make payment due for O&M Service till the termination of the Contract;
- e. Save and Except provisions of sub clause (c) and (d) above, the Authority shall not be liable to pay any other termination payment to the Contractor;

51. Severability

51.1 If Depot Improvement Works Contract in full or part of it, shall be declared, terminated or unenforceable, the same shall not affect the Bus Supply and O&M Service Contract herein which

shall be considered severable from such termination and shall remain in full force and effect.

51.1 If any provision of this Contract shall be declared illegal, void or unenforceable, the same shall not affect the other provisions herein which shall be considered severable from such provision and shall remain in full force and effect.

52 Exclusion of Consequential Losses

52.1 Notwithstanding anything to the contrary contained in this Contract, the indemnities herein provided shall not include any claim or recovery in respect of; any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Contract.

53. Assignment

53.1 Neither the Authority nor the Contractor shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

54. Export Restriction

54.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Authority, to the country of the Authority, or to the use of the products/Electric Buses, systems or services to be supplied, which arise from trade regulations from a country supplying those products/Electric Buses, systems or services, and which substantially impede the Contractor from meeting its obligations under the Contract, shall release the Contractor from the obligation to provide deliveries or services, always provided, however, that the Contractor can demonstrate to the satisfaction of the Authority and of the KfW that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/Electric Buses, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Authority's convenience pursuant to Sub-Clause 35.3.

Section IX. Particular Conditions of Bus Supply and O&M Service Contract

The following Particular Conditions of Contract (PC) shall supplement and / or amend the General Conditions of Contract (GC). Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

GC 1.1(i)	The Authority's country is: <i>India</i>		
GC 1.1(j)	The Authority for different jurisdictions and objective shall be as follows:		
	S. No.	Responsibilities and Obligations as per the RFP	Authority
	1	Finalization and submission of Final draft RFP, Obtaining No-Objection approval from KfW, Issuance of the RFP, Conducting Prebid meeting, carryout the bid evaluation, selection of Successful Bidder, Conducting Pre-award Discussion (if any) Issuance of LOA and Coordination and contract management.	Institute of Road Transport (IRT)
	2	Signing of Contract, issuance of Purchase Order and management and enforcement of contract.	Managing Director MTC, Chennai.
	3	Payment to the Contractor against supply of Buses and Depot Improvement Works.	Joint Managing Director, Tamil Nadu Transport Development Finance Corporation Ltd. (TDFC Ltd.)
	4	Payment to the Contractor against O&M Services	Managing Director MTC, Chennai.
	5	Dispute Resolution	Managing Director MTC, Chennai and Institute of Road Transport (IRT)
GC 1.1 (o)	The Named Place of Destination(s) is: <i>Chennai, Tamil Nadu</i> The Project Site(s) is: Central Workshop, MTC Limited, Chromepet, Chennai – 600 044		
GC 4.2	The version edition of Incoterms shall be Incoterms 2010.		
GC 5.1	The governing and communication language shall be English.		
GC 6.1	The designated party to act as lead firm with full authority is: <i>[Insert complete legal name of the lead firm]- To be inserted at the time of signing of the Contract</i>		

GC 7.1	<p>Goods and services from countries under embargo from Germany, the European Union or the United Nations are not eligible.</p> <p>Goods and services from countries which are legally barred in the country of the contracting agency.</p>
GC 8.1	<p>For <u>notices</u>, the <u>Authority's</u> address shall be:</p> <p>Attention: <i>Managing Director,</i> <i>Metropolitan Transport Corporation (MTC) Ltd.,</i> <i>No. 2, Pallavan Illam,</i> <i>Chennai – 600 002.</i> <i>Tamil Nadu, India</i> Telephone: 044-23455858/ 23455859 Electronic mail address: mtc.chn@gmail.com</p> <p>For <u>notices</u>, the <u>Contractor's</u> address shall be:</p> <p>Attention: <i>[Insert full name of person, if applicable]</i> Street Address: <i>[Insert Street address and number]</i> City: <i>[Insert name of city or town]</i> ZIP Code: <i>[Insert postal ZIP code, if applicable]</i> Country: <i>[Insert name of country]</i> Telephone: <i>[Include telephone number, including country and city codes]</i> Electronic mail address: <i>[Insert e-mail address, if applicable]</i></p>

GC 9.1	<ol style="list-style-type: none"> 1. The governing law shall be the law of <i>India</i>. 2. Irrespective of the place of delivery and the place of payment under the contract, contract shall be deemed to have been made in Chennai from where the 'Letter of Acceptance' of the Bid has been issued and where the contract is to be performed by supplying, commissioning and maintaining the buses. 3. Jurisdiction of Courts. - The Courts at Chennai, Tamil Nadu, the place from where the 'Letter of Acceptance' of the Bid has been issued) and where the contract is to be performed by supplying and commissioning of the buses, alone shall have exclusive jurisdiction to decide any dispute arising out of or in respect of the contract. 4. Compliance with provisions of Contract Labour (Regulation and Abolition) Act, 1970. <ol style="list-style-type: none"> 4.1. The Contractor shall: <ol style="list-style-type: none"> a) Comply with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and Contract Labour (Regulation and Abolition) Central Rules, 1971, as modified from time to time, wherever applicable or as per labour laws applicable in the country of origin of the Contractor and shall also indemnify Authority from and against any claims under the aforesaid Act and the Rules. b) Obtain a valid license under the aforesaid Act as modified from time to time before commencement of the contract and continue to have a valid License until completion of contract. Any failure to fulfil this requirement resulting in non-execution of the contract shall attract penal provisions of the contract. c) Pay to labour employed by it directly or through his authorized network/ Service Provider the wages as per provisions of the aforesaid Act and Rules wherever applicable. The Contractor shall notwithstanding provisions of contract to the contrary, cause to be paid wages to labour indirectly engaged on the contract including any engaged by his authorized network/ Service Provider in connection with said contract, as if the labour had been immediately employed by him. d) Comply with or cause to be complied with provisions of aforesaid Act and Rules wherever applicable in respect of all labour directly or indirectly employed in the contract for performance of the Contractor's part of Contract. 4.2. In every case in which, by virtue of provisions of aforesaid Act or Rules, Authority is obliged to pay any amount of wages to a workman employed by the Contractor or his authorized network/ Service Provider in execution of the contract or to incur any expenditure in providing welfare and health amenities required to be provided under the aforesaid Act and the Rules or to incur any expenditure on account of contingent liability of the Authority due
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	<p>to the Contractor's failure to fulfil his statutory obligations under the aforesaid Act or the Rules, Authority shall recover from the Contractor, the amount of wages so paid or the amount of expenditure so incurred, and without prejudice to the rights of the Authority under sub-Part (2) of Part 20, and sub-Part (4) of Part 21, of the aforesaid Act, Authority shall be at liberty to recover such amount or part thereof by deducting it from the amount of Performance Guarantee Bond and/or from any sum due by the Authority to the Contractor whether under the contract or otherwise. Authority shall not be bound to contest any claim made against him under sub- Part 2 of Part 20 and sub-Part 4 of Part 21 of the aforesaid Act except on the written request of the Contractor and upon his giving to the Authority full security for all costs for which Authority might become liable in contesting such claim. The decision of the Authority regarding the amount actually recoverable from the Contractor as stated above, shall be final and binding on the Contractor.</p>
GC 10.2	<p>The rules of procedure for arbitration proceedings pursuant to GC Clause 10.2 shall be as follows:</p> <p>1. Arbitration</p> <p>1.1. Arbitrators</p> <p>Any Dispute which is not resolved amicably as provided in Clause 54.1 shall be finally settled by binding arbitration under the Arbitration and Conciliation (Amendment) Act, 2019. The Arbitration shall be conducted by an Arbitration Tribunal consisting of three arbitrators, one to be appointed by each Party and the third arbitrator being appointed by the two arbitrators so appointed ("Arbitration Tribunal"). In case of any difficulties in appointment of Arbitration Tribunal, the provisions of the Arbitration and Conciliation (Amendment) Act, 2019 shall prevail. The decision of the Arbitration Tribunal shall be final and binding.</p> <p>1.2. Place of Arbitration</p> <p>The place of arbitration shall be Chennai.</p> <p>1.3. Language</p> <p>The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.</p> <p>1.4. Procedure</p> <p>The procedure to be followed in the arbitration by the Sole Arbitrator shall be in accordance with the Arbitration and Conciliation (Amendment) Act, 2019 and as may be decided by the Arbitration Tribunal.</p> <p>1.5. Enforcement of Award</p> <p>Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any Court or Tribunal. The Parties hereto agree that the</p>

	<p>arbitral award may be enforced against the Parties to the arbitration proceedings or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any Court having jurisdiction thereof.</p> <p>1.6. Fees and Expenses</p> <p>The fees and expenses of the Arbitration Tribunal and all other expenses of the arbitration shall be initially borne and paid by the respective Parties equally subject to determination by the Arbitration Tribunal. The Arbitration Tribunal may provide in the arbitral award for the reimbursement to the prevailing party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by the said Party.</p> <p>1.7. Performance during Arbitration</p> <p>Pending the submission of and/ or decision on a dispute, difference or claim or until the arbitral award is published; the Parties shall continue to perform all of their obligations under this Contract without prejudice to a final adjustment in accordance with such award.</p>
GC 13.1	<p>For Goods supplied from abroad:</p> <p>Upon shipment, the Contractor shall notify the Authority and the Insurance Company by cable or by electronic way previously agreed between the parties the full details of the shipment, including contract number, description of Goods, quantity, the mode of transport, the bill of lading number and date, place of loading, date of shipment, place of discharge, etc. The Contractor shall mail the following documents to the Authority, with a copy to the Insurance Company:</p> <ul style="list-style-type: none"> (i) Original and <i>Three</i> copies of the Contractor's invoice¹⁷ showing Goods' and Related Services' description, quantity, unit price, total amount, number of packages, names of the exporter and the consignee; Goods and Related Services must be carefully described (accurate, specific, and complete description of merchandise); (ii) Original negotiable and <i>three</i> non-negotiable copies (stamped and dated according to the original) of the clean, on-board bill of lading marked "freight prepaid" or equivalent (air waybill, road waybill, FCR, CMR), showing gross and net weights, volume of measurement, marks and identification, name and address of importer of consignee; (iii) Original and <i>Three</i> copies of the packing list identifying contents of each package; packing and weighing list shall describe accurately and in detail the contents of each package / case included in the shipment and give the net and gross weights; (iv) Original insurance certificate; (v) Original Manufacturer's or Contractor's warranty certificate; (vi) Original inspection certificate, issued by the nominated inspection agency and the Contractor's factory inspection report;

¹⁷If required for due process (e.g., customs clearance in the Authority's country), the invoice can be split into two invoices, one showing CIP values and the other local services (inland transportation, installation, training, etc.).

	<p>(vii) Certified certificate of origin: original and <i>Three</i> copies; origin to be certified by the Chamber of Commerce in the Contractor's country; and</p> <p>(viii) Any other document that may be required in specific cases.</p> <p>The above documents shall be received by the Authority at least one week before arrival of the Goods at the place of arrival and, if not received, the Contractor will be responsible for any consequent expenses.</p> <p>For Goods from within the Authority's country:</p> <p>Upon delivery of the Goods EXW or to the transporter, the Contractor shall notify the Authority and submit the following documents to the Authority:</p> <p>(i) Original and <i>Three</i> copies of the Contractor's invoice showing Goods' and Related Services' description, quantity, unit price, and total amount;</p> <p>(ii) Original delivery note, railway receipt, or truck receipt;</p> <p>(iii) Original insurance certificate</p> <p>(iv) Original Manufacturer's or Contractor's warranty certificate;</p> <p>(v) Original inspection certificate, issued by the nominated inspection agency, and the Contractor's factory inspection report;</p> <p>(vi) Certified certificate of origin: original and <i>Three</i> copies; origin to be certified by the Chamber of Commerce in the Contractor's country; and</p> <p>(vii) Any other document that may be required in specific cases.</p> <p>The above documents shall be received by the Authority before shipping of the Goods and, if not received, the Contractor will be responsible for any consequent expenses.</p>				
GC 15.1	The prices charged for the Goods supplied and the related Services performed <i>shall not</i> be adjustable.				
GC 16.1	<p>GC 16.1—The method and conditions of payment to be made to the Contractor under this Contract shall be as follows:</p> <p>Contractor</p> <p>1. Payment for Supply of Buses</p> <table border="1"> <thead> <tr> <th>Payment</th><th>Payment Amount and Timeline</th></tr> </thead> <tbody> <tr> <td>First Part of Payment</td><td>50% of the Value of Buses delivered within 45 days from the date of Final Acceptance Certificate as per Clause 37 of GC upon submission of the required documents and invoices by the Contractor. .</td></tr> </tbody> </table>	Payment	Payment Amount and Timeline	First Part of Payment	50% of the Value of Buses delivered within 45 days from the date of Final Acceptance Certificate as per Clause 37 of GC upon submission of the required documents and invoices by the Contractor. .
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	<table border="1" data-bbox="504 194 1342 389"> <tr> <td data-bbox="504 194 884 389">Second Part of Payment</td><td data-bbox="884 194 1342 389">50% of the Value of Buses delivered within 30 days after completion of 3 months of Successful Operation of such Buses.</td></tr> </table> <p>2. Payment during O&M Service Period.</p> <p>a. Monthly Payment towards O&M Service Provided during the entire O&M Service Period.</p> <p>b. The Monthly Payment for O&M Service shall be made based on the following formula; Monthly Payment = $R_{KM} \times B_n \times (AAK_n/12 \text{ months})$</p> <p>Whereas:</p> <p>R_{KM} = Rate per Km (exclusive of GST) applicable for the year in which payment is made. B_n = Number of Buses Serviced by the Contractor. AAK_n = Annual Assured km per bus i.e. 72,000 km per bus per year</p> <p>c. Payment for Unutilized Kilometres: In the event that the Authority is unable to demand from the Operator the operations of the Bus trips such that the number of kilometres operated per Bus in one year are not equal to the Annual Assured Bus Kilometres, Authority will pay to the Operator, for such unutilized km, based on valid evidences presented by the Operator, an amount which shall be determined as follows:</p> <p>Annual Assured Payment Amount for Unutilised Kms = $0.75 \times (AAK - AKO) \times R_{KM}$</p> <p>Where,</p> <p>AAK = Annual Assured Bus Kilometres X No. Of buses operated.</p> <p>AKO = Actual Bus Kilometres Operated by all Buses during the relevant period of 12 (Twelve) months from FCOD.</p> <p>R_{KM} = Rate per Km (exclusive of GST) applicable for the year.</p> <p>It should be noted that the Annual Assured Payment Amount will not be payable for any shortfall in Kilometres of the Fleet that arises due to:</p> <p>i. <i>Default of the Operator under this Agreement</i></p>	Second Part of Payment	50% of the Value of Buses delivered within 30 days after completion of 3 months of Successful Operation of such Buses.
Second Part of Payment	50% of the Value of Buses delivered within 30 days after completion of 3 months of Successful Operation of such Buses.		

	<p>ii. <i>Non-availability of Contracted Buses for reasons attributable to maintenance or accidents</i></p> <p>iii. <i>Breach of law by the Operator</i></p> <p>iv. <i>Occurrence of a Force Majeure Event.</i></p> <p>d. Payment for Excess Kilometres:</p> <p>If the Buses operated under this Agreement exceed the Annual Assured Bus Kilometres, then the Kilometre rate payable applicable for such additional kilometres in excess of the Annual Assured Bus Kilometres shall be calculated as follows;</p> <p>Annual Assured Payment Amount for Excess Kms = $0.85 \times (AKO - AAK) \times R_{KM}$.</p> <p><i>Where,</i></p> <p>AKO = Actual Bus Kilometres Operated by all Buses during the relevant period of 12 (Twelve) months from FCOD that has triggered this provision</p> <p>AAK = Annual Assured Bus Kilometres X No. Of buses operated.</p> <p>R_{KM} = Rate per Km (exclusive of GST) applicable for the year.</p> <p>e. The determination of unutilized and excess km shall be done at each anniversary of the FCOD during the contract period. The Authority shall provide the Operator with a notice of the calculation with the supporting data (the kilometres travelled by each of the Contracted Buses comprising the Available Fleet).</p> <p>f. The Authority shall have right to compute on its own and verify the Annual Assured Kilometres. The Authority shall compute and provide to the Operator, every quarter from the FCOD, the total number of Kilometres that the Buses has travelled for the aforesaid period. Such calculation shall be made using GPS and in case of absence of GPS, with the help of Authority staff or its authorized agency.</p> <p>g. The Contractor shall submit Monthly invoice within seven days of the completion of month from the date of commencement of O&M Service Period. The invoice shall be accompanied with self-attested compliance report towards Key Performance Indicator, Service Level Agreement.</p>
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	<p>h. Authority does not expect GST to be applicable on O&M Service. If applicable, it will be payable at the applicable rate over the above the Base per km Rate upon being satisfied by the Authority as to its applicability but will not be part of financial evaluation for comparison of bids.</p> <p>i. The Authority shall release the payment towards invoices submitted within 30 days of the date of receipt of invoice after deduction of applicable Liquidated Damages as per the provisions of the RFP.</p> <p>j. The Authority shall not provide any price escalation on the Per km Rate during the O&M Service Period.</p> <p>The Contractor shall bear all the risks pertaining to foreign exchange during the contract period</p>
GC 16.1	<p>Payment to the Contractor of the amounts due in each currency shall be made into the following bank accounts:</p> <p><i>[Insert bank account details at the time of contract signing]</i></p> <p>Bank charges are for the account of the Contractor, except for the bank charges of KfW as transferring bank only.</p>
GC 16.4	<p>In case of Supply of Buses, the payment-delay beyond the specified period after which the Authority shall pay interest to the Contractor shall be <i>as per timeline specified in GC 16.1.</i></p> <p>The interest rate for payments in local currency that shall be applied 3% above the Bank Rate of which is published by the Reserve Bank of India on time-to-time basis</p>
GC 16.5	<p>Reimbursement payments shall be made to KfW to the following bank account:</p> <p>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</p> <p>Payment to be made for the account of the <i>Transport Development Finance Corporation</i> of <i>[India]</i>.</p>
GC 16.8	<p>$RR_{KM} = [R_{KM}] + [R_{KM} \times 0.35 \times \{((W - W\text{-base})/W\text{-base})\} \times 40\%] + [R_{KM} \times 0.65 \times \{(L - L\text{-base})/L\text{-base}\}]$</p> <p>Where, RR_{KM} is the Revised Kilometre Rate R_{KM} -Base is the Base Kilometre Rate as per LOA. W is the Present Year Wholesale Price Index W-base is the Base Year Wholesale Price Index L is the Present applicable Minimum Wages for the relevant skilled category for drivers and maintenance staff in the State of Tamil Nadu</p>

	L-base is the applicable Base Year Minimum Wages for the relevant skilled category for drivers and maintenance staff in the State of Tamil Nadu.
GC 17.3	The following taxes, duties and fees exemptions apply to the Contract: <i>None in the knowledge of the Authority however, the Contractor shall be permitted to represent in favour of any applicable exemption with valid documentary evidences.</i>
GC 18.1	<p>The Contractor shall submit two separate bank guarantees towards performance securities for the warranty period and O&M service Period.</p> <p>The amount of the Performance Security for warranty Period shall be: 6% of the total Contract Value of the Aggregated Costs of Supply of Electric Buses and Charging solution till the completion of Complete Bus Warranty Period. The Contractor shall refurbish a fresh Performance Security or reduce the security amount to 3% of the Contract value of the Aggregated Costs of Supply of Electric Buses and Charging solution with extended time period ending after 30 days of expiry of the Structure Warranty and as extended for a suitable period by the Contractor in case of any extension of Contracted Delivery Schedule.</p> <p>The amount of the Performance Security for O&M service Period shall be: <i>5% of the Aggregated O&M Service cost during the O&M Service Period.</i></p>
GC 18.3	<p>The Performance Security shall be in the form of: <i>a Bank Guarantee</i></p> <p>The Performance security shall be denominated in <i>Indian Rupees (INR)</i></p>
GC 18.4	Deleted.
GC 22.2(a)	Deleted.
GC 22.2 (b)	The number of years shall be: <i>9 years</i>
GC 23.2	Deleted.

GC 24.1	<p>The insurance coverage shall be as follows:</p> <p>1. Transit insurance during delivery of all Contracted buses:</p> <ol style="list-style-type: none"> a. Transit insurance, till delivery/acceptance of Buses at Authority's premises, shall be arranged by the Contractor at its own cost in a freely convertible currency. Insurance amount shall be equal to the Cost, Insurance and Freight (CIF) basis, or for amount equal to appropriate Contract Price plus additional 10 percent thereof whichever is higher. Contractor shall be responsible for any damages till the ordered quantity of all Buses arrives in safe and sound condition at the Designated Locations \for Delivery as specified by the Authority, complying with all statutory requirements. Insurance documents in original be submitted along with other Bus delivery documents. Insurance charges shall be clearly indicated separately in the break-up of prices. b. For the buses manufactured in India using imported aggregates, in the case of CIP destination contract, marine insurance covering transit risk up to ultimate destination in India shall be arranged and paid for by the Contractor. c. The Authority shall advise Contractor within 30 days of arrival of Buses at Designated Location for Delivery/ Destination, regarding any loss/ damage etc. of Buses and it shall be the responsibility of Contractor to lodge necessary claim on the carrier and/ or insurer and pursue the same. The Contractor shall, however, at his own cost replace/ rectify Buses that are lost/ damaged to the entire satisfaction of the Authority, within 30 days from the date of dispatch of intimation from the Authority, without waiting for settlement of the claim. d. The Contractor shall be entirely responsible for suitable packing wherever required keeping in view the arduous conditions during transportation, handling and storage in tropical conditions (including monsoon) so as to eliminate damage/ deterioration of Buses during transit/ trans-shipment/ handling or storage. <p>2. Insurance of Contracted Buses after Delivery at Designated Locations:</p> <ol style="list-style-type: none"> a. On Final Acceptance of the buses by the Authority, the Contractor shall be required to arrange adequate insurance of Buses till they are deployed in the normal operations as part of the O&M Service.
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	<p>3. Insurance during the O&M Service Period:</p> <ul style="list-style-type: none"> a. The Contractor shall effect and maintain at its own costs, during the O&M Service Period, such insurances for such maximum sums as may be required under this Contract, Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice as provided in the sub-clause (c) below for any claim for damages that may occur due to reasons attributable to the Contractor. b. The Contractor shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Contractor during the Contract Period. The Contractor shall procure that in each insurance policy, the Authority shall be a co-insured / Co beneficiary. c. Without prejudice to the provisions contained in point 1 above, the Contractor shall, during the Contract Period, procure and maintain Insurance Cover including but not limited to the following: <ul style="list-style-type: none"> i. Loss, damage or destruction of the Buses and Maintenance Depots, Electrical, Charging and parking infrastructure; ii. Fire and Perils of the Contracted Buses while in maintenance and/or charging. iii. comprehensive third-party liability insurance for life, goods or property, including injury to or death of personnel of the Authority or others, arising from any accident at the Maintenance Depots or during operation/ running of buses on the designated routes or operation outside the designated routes as approved by the Authority or while transiting buses to a maintenance facility outside the depot or otherwise, caused during maintenance of buses on account of any negligence of the Contractor or a defect or deficiency in a maintenance equipment or procedure or overall maintenance practice as per applicable law. iv. Contractor's all risk insurance with the Authority as co-beneficiary; v. the Contractor's general liability arising out of the Contract; vi. workmen's compensation insurance and other liability as per Workmen's Compensation Act 1923.; and vii. any other insurance that may be necessary to protect the Contractor and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (vi) above.
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	<p>4. Evidence of Insurance Cover</p> <ul style="list-style-type: none"> a. The Contractor shall be responsible to pay the premium regularly and maintain the insurance policies specified above all time during the Comprehensive Maintenance Period. The Contractor shall be solely responsible in case of failure of its renewal. b. The Contractor shall, from time to time, provide to Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by it in accordance with Contract Provisions. c. If Contractor shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto, Authority shall have the option to take or keep in force any such insurance and pay such premium and recover all costs thereof from Contractor. <p>5. Application of Insurance Proceeds</p> <ul style="list-style-type: none"> a. Subject to the provisions of this Contract, all moneys received under insurance policies shall be promptly applied by the Contractor towards repair or renovation or restoration or substitution of the Bus Maintenance, Charging and Parking Infrastructure or any equipment/part thereof or Third-party Property which may have been damaged or required repair/modification. b. The Contractor shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that Maintenance, Charging and Parking Infrastructure, or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted. c. For insurance policies where the Authority is the beneficiary and where it received the insurance proceeds, only such sums as are required from the insurance proceeds for restoration, repair and renovation of the damaged Project Asset shall be applied. <p>6. Validity of Insurance Cover</p> <ul style="list-style-type: none"> a. The Contractor shall pay the premium payable on such insurance Policy/ Policies to keep the insurance in force and valid throughout the O&M Service Period and furnish copies to the Authority for each year/policy period. If at any time the Contractor fails to purchase, renew and maintain in full force and effect, any and all of the Insurances required under this Agreement, Authority may at its option purchase and maintain such insurance and all sums incurred by the Authority therefore shall be reimbursed by the Contractor
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	forthwith on demand, failing which the same shall be recovered by the Authority by encashment of Performance Security, exercising right of set off or otherwise.
GC 25.1	Responsibility for transportation of the Goods shall be as specified in the Incoterms.
GC 25.2	Incidental services to be provided are: None.
GC 26.1	The inspections and tests shall be <i>as specified in Section VII - Schedule of Requirements</i>
GC 26.2	The Inspections and tests shall be conducted at: <i>Chennai</i> .

GC 27.1

The liquidated damage shall be as follows;

1. Liquidated damages (LDs) for delay in completion of delivery:

- a. If the Contractor fails to complete the Delivery of Buses within the timeline provided in the Delivery Schedule specified in the contract, the Authority shall, without prejudice to other remedies under the contract, levy/deduct pre-estimated liquidated damages @ 0.5% per each week of delay or part thereof of the total value of the buses whose supply has been delayed (exclusive of duties & taxes), which the Contractor has failed to deliver within the period fixed for the respective lot of buses in the delivery schedule.
- b. The LDs for the delay in delivery of buses shall be deducted from the payment due to the Contractor, as per the provision of the Contract.

2. Liquidated Damages for not meeting Complete Bus Warranty Conditions and Structure Warranty Conditions:

- a. If the Contractor fails to adhere to the timelines for rectification of defects as specified in GC 28.5 and 28.6, the Authority shall, without prejudice to other remedies under the contract, levy/deduct pre-estimated liquidated damages at 100% of the Average Daily Revenue (for the last 30 days of operation) per bus per day of delay in rectification of defect from the Payment of Comprehensive Maintenance to be made by the Authority to the Contractor and/or from the Performance Security submitted by the Contractor.

3. Liquidated Damages for not meeting ITS Equipment Warranty Conditions:

- a. If the Contractor fails to adhere the Service Levels Agreements and performance parameters (SLA) as specified in Annexure 6 of Attachment 2 to Section IX of the RFP, the Authority shall, without prejudice to other remedies under the contract, levy/deduct pre-estimated liquidated damages from the Performance Security as follows:

S. No.	Component	Liquidated Damages
1	On-Bus AVLS	<ul style="list-style-type: none"> • Under Lower Performance – a penalty of INR 200 and • Under Critical Breach – a penalty of INR 300 shall be imposed.

		2	AVLS OBU/SCU - availability for all functions which includes availability of all associated components like BDC, Microphone, Bus PAS system (4G/GPRS connection availability is excluded from this)	Unavailability of any of the listed component for the one month - a penalty of INR 100 shall be imposed.
		3	On-Board AVLS Unit where immediate corrective action is required	Delay in rectification of defects as specified in Annexure 6 of Attachment 2 to Section IX of the RFP, a penalty of INR 1000 per device per day shall be imposed.
		4	PIS System - Display & Announcement of the Route/ Next Stop Details in the On-Board AVL devices and Correctness of Display fields - Line number & Destination, Via destination, Trip related text message	For every occurrence of unavailability of any of the listed facility, a penalty of INR 100 per device shall be imposed.
		5	PIS display or its associated wiring harness	Delay in rectification of defects as specified in Annexure 6 of Attachment 2 to Section IX of the RFP, a penalty of INR 1000 per device per day shall be imposed.
		6	Over the Air Updating – Updating the Firmware Files to all installed OBUs	For delay in every remaining bus OBITS System firmware update as specified in Annexure 6 of Attachment 2 to Section IX of the RFP, • Under Lower Performance - a penalty of INR 200 per device per day shall be imposed Under Critical Breach – a penalty of INR 300 per device per day shall be imposed
		7	Route/ Route Part Updating	For delay in every remaining bus OBITS System firmware update as specified in Annexure 6 of Attachment 2 to Section IX of the RFP,

			<ul style="list-style-type: none">• Under Lower Under Lower Performance - a penalty of INR 50 per device per day shall be imposed <p>Under Critical Breach – a penalty of INR 100 per device per day shall be imposed</p>
	<p>4. Liquidated Damages for not meeting Service Level Agreement for Comprehensive Maintenance Contract.</p> <p>a. If the Contractor fails to adhere to the Service Level Agreements for Comprehensive Maintenance Contract as specified in Attachment 2 to Section IX of the RFP, the Authority shall, without prejudice to other remedies under the contract, levy/deduct pre-estimated liquidated damages as specified in Annexure 3 to Attachment 2 to Particular Conditions of Contract.</p> <p>5. Liquidated Damages for not meeting Traction Battery Warranty Conditions.</p> <p>b. If the Contractor fails to adhere to the timelines for rectification of defects as specified in Annexure 2 of Attachment 2 to Section IX of the RFP, the Authority shall, without prejudice to other remedies under the contract, levy/deduct pre-estimated liquidated damages at 100% of the Average Daily Revenue (for the last 30 days of operation) per bus per day of delay in rectification of defect from the Payment of Comprehensive Maintenance to be made by the Authority to the Contractor and/or from the Performance Security submitted by the Contractor.</p> <p>6. Liquidated Damages for failing to setup After Sales Network and Spare Parts Inventory</p> <p>a. Upon failing to setup of after sales network within the timeline specified in the RFP, the Authority shall provide a time period of additional 30 days to the contractor as a remedial period to fulfil such obligations. During the remedial period, the Authority shall collect 0.33% of the Performance Security on per day basis as Liquidated Damages.</p>		
GC 27.1	The maximum amount of liquidated damages shall be: 10%		

GC 28.3	<ol style="list-style-type: none"> 1. Complete Bus Warranty Period for any manufacturing Defect in design, material, propulsion system, components, major subsystems and workmanship of the Fully Built Low- Floor Buses, and Charging Solutions except the Bus structure and the onboard ITS equipment ("Complete Bus Warranty Period") shall be as: 2 years or 2,50,000 Km per Bus whichever is later from the issuance of the Final Acceptance Certificate. 2. Additional Warranty for any manufacturing Defect in design, material and workmanship of the Bus structure, structural elements of the suspension and batteries and traction motor cradle shall be for 9 years or 9,90,000 km per Bus whichever is later from the issuance of the Final Acceptance Certificate ("Structure Warranty Period"). 3. Additional Warranty for any manufacturing Defect in design, material and workmanship in the onboard ITS equipment shall be for 5 years from the issuance of the Final Acceptance Certificate as per the provision of the RFP ("ITS Equipment Warranty Period"). 4. An Additional Warranty for any manufacturing Defect in design, material and workmanship of the on-board Bus batteries and Battery Management System (BMS) shall be for 7 years from the issuance of the Final Acceptance Certificate ("Traction Battery Warranty Period").
GC 28.5 and GC 28.6	The period for repair or replacement shall be as Annexure 6 of Attachment 2 to Section IX of the RFP.

Attachment 1 to Particular Conditions of Contract

Draft Depot License Agreement

Metropolitan Transport Corporation (Chennai) Ltd having its office at _____
Chennai (Tamil Nadu), (hereinafter referred to as “The Authority” which expression shall include its successors and permitted assigns);

AND

_____ having its office at [_____] (hereinafter referred to as “the Contractor”, which expression shall include its successors and permitted assigns);

AND WHEREAS

1. The Parties have entered into a Bus Supply and Operation and Maintenance Service Contract (“**Parent Contract**”) dated [__/__/20__] whereby the Authority has appointed the Contractor for implementation of the Scope of Work as defined in the Parent Contract.
2. Pursuant to the Parent Contract, the Authority is providing to the Contractor the right to access, use and the right of way to the bus E- Bus support infrastructure (the details of which are provided in the Annexure 1 to this E-Bus Support Infrastructure License Agreement) (“**E- Bus support infrastructure**”) for the limited purpose of implementation of the Scope of Work as per the Parent Contract.
3. The Parties are hereby entering into this E- Bus support infrastructure License Agreement to specify the terms and conditions of the use of the E- Bus support infrastructure by the Contractor.
4. The actual memorandum of handover of E-Bus support infrastructure to the Contractor along with relevant E- Bus support infrastructure details is placed as Annexure to this Agreement.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. All capitalized words used but not defined herein shall have the meaning specified in the Parent Contract.
2. The Authority hereby provides on a license basis the E- Bus support infrastructure (the details of which are provided in Annexure 1 to this Agreement) and the Contractor hires the E- Bus support infrastructure on the terms and conditions of this License, it being recorded that the Authority warrants that the E- Bus support infrastructure will, save for reasons beyond its reasonable control, be fit for the purpose for which it is to be used by the Contractor, namely to provide a reasonable shelter for the Contracted Buses while not

in use and to facilitate the cleaning, repair, maintenance, parking and charging of the Contracted Buses.

Provided, however, the Contractor shall have no right, title, interest or any ownership rights over the Bus E- Bus support infrastructure or any part thereof.

3. This E- Bus support infrastructure License Agreement shall come into effect on the date of execution of the Parent Contract hereof and shall terminate on the termination or cancellation of this E- Bus support infrastructure License or the Parent Contract for whatever reason, whichever is the earlier (**"E-Bus Support Infrastructure License Period"**).

4. Insurance

- a. The Contractor shall not keep or do in or about the E- Bus support infrastructure anything which is liable to increase any of the risks against which the E- Bus support infrastructure (or any part thereof) is insured for the time being to the extent that such insurance is rendered void or voidable or the premiums of such insurance are, or become liable to be, increased.
- b. Without prejudice to any other right of action or remedy that the Authority may have arising out of a breach of the foregoing provision, the Authority may recover from the Contractor on demand the full amount of any increase in insurance premiums in respect of the E- Bus support infrastructure attributable to such breach.
- c. For the purposes of the above provisions, the Contractor shall be entitled to assume that the E- Bus support infrastructure is at all material times insured against such risks, on such terms, for such amounts, and at such premiums as are for the time being usual in respect of similar buildings in similar locations.
- d. The Contractor shall, in accordance with its obligations pursuant to the Parent Contract, obtain and maintain insurance in relation to the E- Bus support infrastructure as per the provisions of the Parent Contract.

5. Cession and Subletting

The Contractor shall not be entitled to:

- a. cede all or any of its rights or delegate any of its obligations under this E- Bus support infrastructure License Agreement;
- b. sublet the E- Bus support infrastructure in whole or part; or
- c. give up possession and/or control of the E- Bus support infrastructure to any third party, without the Authority's prior written consent.

6. Contractor's Obligations

The Contractor shall at its own cost and expense:

- a. Provide Charging Infrastructure as defined in the Parent Contract.
- b. keep the E- Bus support infrastructure clean, tidy and commercially usable at all times;
- c. be responsible for the handling of all waste and effluent in accordance with the Applicable Law;
- d. not use the E- Bus support infrastructure or allow it to be used, in whole or part, for any purpose other than that of implementing the Scope of Work;
- e. not bring into the E- Bus support infrastructure any article which, by reason of its weight or other characteristics, is liable to cause damage to the E- Bus support infrastructure;
- f. not leave refuse or allow it to accumulate in or about the E- Bus support infrastructure except in the refuse bins provided;
- g. refrain from interfering with the electrical or plumbing serving the E- Bus support infrastructure if so available, except as may be strictly necessary to enable the Contractor to carry out its obligations of maintenance and repair in terms of this Agreement;
- h. not permit any person to permanently dwell in the E- Bus support infrastructure
- i. provide at the Contractor's own expense all electric, fluorescent and incandescent light bulbs required in the E- Bus support infrastructure from time to time;
- j. be liable to pay bills for water, and other utilities on actual basis in relation to the area of the E- Bus support infrastructure/Parking Space allotted to the Contractor;
- k. co-operate with Authority or third party using the E- Bus support infrastructure or a part thereof as notified by the Authority from time to time; and
- l. allow for use of the E- Bus support infrastructure by one or more other bus Contractors at the written request of the Authority, provided that such use shall not materially adversely affect the Contractor's ability to implement the Scope of Work under the Parent Contract.

7. Authority's Obligations

The Authority shall at its own cost and expenses;

- a. Provide Depot including Bus repair and maintenance facility and Electric Infrastructure as defined in the Parent Contract.

- b. Make payment towards electricity cost for charging of buses and other auxiliary uses pertaining to the depot.
- c. Support the Contractor in obtaining any permission and approval from competent Government Authority, required in the implementation of the Scope of Work.

8. Maintenance and Repairs

The Contractor shall at its own expense and without recourse to the Authority:

- a. throughout the License Period maintain in good order and condition the interior and exterior of the E- Bus support infrastructure and all parts thereof, including (without limitation of the generality of this obligation) all appurtenances, fixtures and fittings contained in the Parking Space.
- b. promptly and properly repair or make good all damage occurring in the interior and exterior of the E- Bus support infrastructure from time to time during the License Period, whatever the cause of such damage, and including damage to any part of the interior of the E- Bus support infrastructure or to any window, door, appurtenance, fixture or fitting, and replace all such items (as well as any keys) which have been broken, lost or destroyed (again regardless of cause).
- c. on the termination or cancellation of this E- Bus support infrastructure License Agreement, forthwith return the E- Bus support infrastructure and all such parts thereof (including all keys) to the Authority in good order, condition and repair, normal wear and tear excepted.
- d. The E- Bus support infrastructure shall be deemed, at the commencement of this E- Bus support infrastructure License Agreement, to be in good order and condition except to the extent that the Contractor notifies the Authority in writing within [15 (fifteen)] Business Days after having taken possession of the E- Bus support infrastructure of the need for any repairs to/ in the E- Bus support infrastructure or of the fact that any part of the E- Bus support infrastructure including any appurtenance, fixture or fitting, is damaged, missing, or out of order.
- e. Upon receiving a notification contemplated in sub-clause (d) above, the Authority shall promptly cause the necessary repair or replacement to be effected to the E- Bus support infrastructure at the Authority's own expense.
- f. The Contractor shall be responsible for the maintenance of, and for all repairs and replacements becoming necessary from time to time in or to, the E- Bus support infrastructure and all parts thereof.

- g. In the event the Contractor fail to carry out any of its obligations under this Agreement with regard to any maintenance, repair or replacement, the Authority shall be entitled, without prejudice to any of the Authority's other rights or remedies, to effect the required item of maintenance, repair or replacement and to recover from the Contractor on demand, all reasonable amounts incurred by the Authority in respect thereof.

9. Alterations, additions and improvements

- a. The Contractor shall not make any alterations or additions to the E- Bus support infrastructure without the Authority's prior written consent.
- b. If the Contractor does alter or add to the E- Bus support infrastructure in any way, whether in breach of sub-clause (a) or not, the Contractor shall, if so required in writing by the Authority, restore the E- Bus support infrastructure on the termination or cancellation of this Agreement to the same condition as it was prior to such alteration or addition having been made, normal wear and tear excepted. Unless this Agreement is terminated or cancelled by the Authority as a result of a breach hereof by the Authority, the Authority's requirements aforementioned shall be communicated to the Contractor not less than [10 (ten)] Business Days prior to the termination or cancellation. For the sake of clarity, the Parties agree that this sub-clause (b) shall not be construed as excluding any other or further remedy which the Authority may have in consequence of a breach by the Contractor of sub-clause (a).
- c. Save for any alteration or addition which is removed from the E- Bus support infrastructure as required by the Authority in terms of sub-section (b), all alterations or additions made to the E- Bus support infrastructure shall, on termination or cancellation of this E- Bus support infrastructure License Agreement, become the property of the Authority and may not be removed from the E- Bus support infrastructure at any time. Subject to any prior written agreement to the contrary between the Parties, the Contractor shall not, whatever the circumstances, have any claim against the Authority for compensation for any alterations or additions to the E- Bus support infrastructure.

10. Exclusion of Liability

- a. The Contractor shall have no claim against the Authority for any loss or damage suffered by the Contractor by reason directly or indirectly of:
 - i. any negligent act or omission of the Authority or any agent or servant of, or contractor to, the Authority, including (without limiting the generality of the foregoing) any negligent act or omission of any cleaner, maintenance person,

handyman, artisan, labourer, workman, watchman, guard or commissionaire, excluding gross negligence and/or wilful default;

- ii. any failure or suspension of, or any interruption in, the supply of water, electricity, heating, or any other amenity or charging infrastructure or service to the E- Bus support infrastructure (including, without limiting the generality of the foregoing, any cleaning service), whatever the cause;
- iii. any breakdown of, or interruption or delay in the operation of, any machinery, plant, equipment, installation, or system situated in or on, or serving, the E- Bus support infrastructure, and including (but without limiting the generality of the foregoing) any geyser, boiler, burglar alarm or security installation or system, again regardless of cause;
- iv. any interruption of, or interference with, the enjoyment or beneficial occupation of the E- Bus support infrastructure or any parts of the common E- Bus support infrastructure caused by any building operations or other works to or in the E- Bus support infrastructure, whether by the Authority or by anybody else; or
- v. any other event or circumstance beyond the Authority's reasonable control occurring, or failing to occur, upon, in, or about the E- Bus support infrastructure, whether or not the Authority could otherwise have been held liable for such occurrence or failure, and the Contractor indemnifies the Authority and holds it harmless against any and all liability to any employee or agent of the Contractor, its guests and other invitees, and all other persons who may occupy or be entitled to occupy the E- Bus support infrastructure or any parts thereof through or under the Contractor.

- b. The Authority shall not, however, be excused from specific performance of any of the Authority's obligations under this Agreement, whether express or implied, and particularly (but not only) the Authority's obligations to afford the Contractor occupation and enjoyment of the E- Bus support infrastructure as contemplated by this Agreement.

11. Authority's Right of Entry and Carrying Out of Works

The Authority may at all reasonable times, without thereby giving rise to any claim or right of action on the part of the Contractor or any other occupier of the E- Bus support infrastructure:

- a. enter the E- Bus support infrastructure in order to inspect it, to carry out any necessary repairs, replacements or other works, or to perform any other lawful function in the bona fide interests of the Authority; or

- b. carry out elsewhere on the E- Bus support infrastructure (or any part thereof) any necessary repairs, replacements or other works, provided that the Authority shall ensure that this right is exercised with due regard for, and a minimum of interference with, the beneficial enjoyment of the E- Bus support infrastructure by the Contractor.

12. Damage to or destruction of E- Bus support infrastructure

- a. If the E- Bus support infrastructure is destroyed or so damaged that it can no longer be beneficially occupied, this E- Bus support infrastructure License Agreement shall, unless the Parties agree otherwise in writing, terminate when that happens in respect of that E- Bus support infrastructure.
- b. If the E- Bus support infrastructure is damaged but can still be beneficially occupied, this E- Bus support infrastructure License Agreement shall remain in force and the Authority shall repair the damage without undue delay.

13. Special Remedy for Breach

- a. Should the Contractor be in breach of any of the terms or conditions of this E- Bus support infrastructure License Agreement or the Parent Contract, in any way whatsoever, and fail to remedy such breach within [7 (seven)] Business Days after receiving a written demand that it be remedied, or such longer period as may reasonably require in the circumstances and agreed upon in writing by the Parties, the Authority shall be entitled, without prejudice to any alternative or additional right of action or remedy available to the Authority under the circumstances, to terminate this E- Bus support infrastructure License Agreement with immediate effect, be repossessed of the E- Bus support infrastructure, and recover from the Contractor such damages sustained as a result of the breach and the termination of this E- Bus support infrastructure License Agreement.
- b. Nothing in sub-clause (a) above shall be construed as excluding the ordinary lawful consequences of a breach of this E- Bus support infrastructure License Agreement by either party save any such consequences as are expressly excluded by any of the other provisions of this E- Bus support infrastructure License Agreement and in particular any right of termination of this E- Bus support infrastructure License Agreement on the ground of a material breach of this E- Bus support infrastructure License Agreement.
- c. In the event of the Authority having terminated this E- Bus support infrastructure License Agreement or this Agreement justifiably but the Contractor remaining in occupation of the E- Bus support infrastructure, with or without disputing the termination, the Contractor shall be obliged to pay, all amounts which would have

been due and payable by the Contractor but for the termination, for so long as the Contractor continues to occupy the E- Bus support infrastructure or any part thereof.

14. Right to Negotiate Renewal

If the Parent Contract is renewed and/or extended beyond its Term, the Parties agree to negotiate in good faith for renewal of this E- Bus support infrastructure License Agreement on such terms and conditions as may be agreed between the Parties in writing prior to the expiration of this Agreement.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement by their duly authorised representative on the date first above written:

SIGNED ON BEHALF OF THE AUTHORITY

_____(Signature)
 _____(Name)
 _____(Designation)

SIGNED ON BEHALF OF Contractor by the hand of its authorized representative

_____(Signature)
 _____(Name)
 _____(Designation)

SIGNED ON BEHALF OF SELECTED BIDDER by the hand of its authorized representative

_____(Signature)
 _____(Name)
 _____(Designation)

Annexure 1 to Attachment 1: Details of E- Bus Support Infrastructure handed over to Contractor at the time execution of Agreement

E-bus Support Infrastructure:

Date of Handover	
Address of Parking Space	
Area of Parking Space:	
Facilities	
Utilities	
Security	

We have inspected the above E- Bus Support Infrastructure and are satisfied as to its condition. We undertake to maintain the above premises in good working condition as per standard practices and terms and conditions of the Agreement. We understand that the premises above are only being licensed to us for the purpose of maintenance of the Contracted Buses during the Contract Period and shall not be used for any other purpose. We confirm to return the above premises to the Authority at the end of the Contract Period in the same condition as found when we took over, subject to normal wear and tear for such premises for prescribed uses. The Authority shall not bear liabilities arising from the use of these Premises.

We have accepted the right to use the Depot on _____ (date)

For Contractor

Name, Sign, Time and Place

Details of other depots to be added as they are handed over and to form part of this Agreement.

Attachment 2 to Particular Conditions of Contract

Operation and Maintenance Service Contract

1. Operations & Maintenance Service Contract Conditions, General

For the purposes of this RFP, this operations and maintenance contract (O&MC) is an agreement between MTC, the Authority and owner of the vehicles, and the successful Contractor. The selected Contractor will be the primary operator, assigned to provide ongoing operational and maintenance services for the contract(s) identified in Annexure 1 of this Attachment 2. The contract would be delivered as per the Operational Plan created by the Authority, listed in Annexure 2 of this Attachment 2, with supporting infrastructure. This O&MC ensures that the selected Contractor will deliver services with qualified and compliant staff as stipulated under regulation for the delivery of such services. Quality of service delivery to maintain the Authority's fleet highlighted in this agreement should be as per the conditions listed in this attachment. All vehicles maintained under this agreement will be provided in a safe and roadworthy condition to ensure that Operational services requirements are ensured at all times.

2. Maintenance

2.1 The Maintenance elements of the O&MSCC are now discussed further in this section.

- a) The selected Contractor shall be required to agree to this O&MC for the service delivery of the contract and for the maintenance of the bus for the period discussed in the RFP, for each category of bus. It consists of consumables, spare parts, body repair parts, tyres, battery, lubricants and replacement of assemblies/ subassemblies, IT systems as supplied as part of the original vehicle on board systems, taking into account preventive maintenance, normal wear & tear, major repairs/ over-hauling and break downs etc. inclusive of labour cost.
- b) The buses are expected to be operated on a one or more shift basis, daily. 92% of buses must be made available by the Contractor for operation as per requirement of the Authority on a daily basis.
- c) All supplies of spare parts & other items required for the above O&MC will be arranged by Contractor by using own resources including imports. All spares used shall be of manufacturer's brands or brands as indicated in the bid and/or in the contract. The consumables & lubricants (needed for the Air Con system, etc.) shall be of brands as recommended by the vehicle manufacturer (VM).
- d) The calculations of distance travelled for the purpose of O&MC charged and otherwise shall be on the basis of the revenue earning KMs* operated by the bus. *(Revenue earning means coverage of actual bus Kms in service). Any additional Kms costs must be presented and agreed prior to any consideration of payment. For the purposes of this O&MC, the Kms will be recorded as per 'Section 29- Authority's Responsibility' – Clause 29.6 of Section VIII of the RFP.
- e) the Authority reserve the right to advertise in or use for publicity the interiors and exteriors of the bus, in any form and manner as deemed fit, during the currency of the contract. The Contractor will not claim any share in the revenue arising out of this advertisement / publicity.

- f) the Authority reserves the right to install value added services such as CCTV, Cameras/ Phone/ Entertainment and information equipment's etc. and other ancillary equipment such as Automated Vehicle Tracking System, etc. for any reason including but not limited to enhance safety, for commuter convenience, for better quality of service, to meet statutory requirements, etc. The Contractor shall not be liable to any claim to share in revenue, which may accrue to the Authority due to such aforementioned services/ equipment.
- g) The Authority will carry out audit of the maintenance & repair work undertaken by the Contractor as per their Audit Programme annexure 5 of this Attachment 2, which is as per the standard/norms of vehicles. Refer to the Motor vehicle act and refer to the Authority internal maintenance standards (if any).
- h) The Contractor will be responsible for meeting the cost and consequences, whether Civil or/ and Criminal, of any fine/proceedings etc. owing to any act or negligence on the part of the Contractor under the contract.
- i) Adverse operating conditions shall not affect the Contractual obligations and parameters of performance of the Contractor under the contract. Wear and tear of the bus due to bad road conditions, rains, flooding of roads, heavy traffic etc. will not be a defence on the part of the Contractor for not fulfilling their Contractual obligation.
- j) The technical specifications and other parameters of performance of the bus as provided in the Contract will be maintained by Contractor during the entire O&MC period.

3. Operations and Maintenance Service Contract Conditions (O&MSCC) – Service Agreement

3.1 Objectives of the Service Agreement

Subject to the terms and conditions of this O&MC and in consideration of the payment by the Authority of the price and other charges set out herein, [Contractor] agrees to arrange for the maintenance and repair services described in in Clause 3.5 (Standard Services and Repairs) to be provided for the Vehicle(s) described below.

3.2 Vehicle Description

Make:
Model:
Vehicle type:
Axle configuration:
Engine type:
Fleet number:

Registration number:	Chassis number:	Start mileage:	Delivery Date:
<i>Complete for each vehicle</i>	<i>Complete for each vehicle</i>	<i>Complete for each vehicle</i>	<i>Complete for each vehicle</i>

3.3 Contract Definitions

Commencement date:

Duration in months:

Expiry date:

Annual mileage (kilometres):

Maximum contract kilometres:

3.4 Service Interval

Once every _____ (insert as per manufacturer guidelines) weeks and at least every _____ (insert as per manufacturers guidelines) kms, as per the standard service manual of the Contractor, whichever occurs sooner.

3.5 Standard Services and Repairs

The maintaining of the Authority fleet must follow the guidance of the vehicle manufacturer, using correctly trained technicians. The following preventive maintenance services are included:

- a) Carrying out the servicing and inspections prescribed by the Contractor in service plan applicable for the Vehicle.
- b) Basic Servicing
- c) Intermediate Servicing (Intermediate service shall be determined by the Contractor requirements for specialist cleaning or service component replacement). The servicing requirements for each element of the vehicle will be provided by the Contractor including frequency and specifications of all equipment to be used.
- d) Annual Servicing (Excluding the cost incurred for obtaining Fitness Certificate for the bus. This cost incurred shall be borne by the Contractor).
- e) All materials used in the preventive maintenance within the mandatory warranty period would be original equipment supply only. Outside of the warranty period, alternative non-Contractor supply may be fitted subject to specification and compliance to that of original manufacture.
- f) Caution should always be applied to any components that relate to safety critical areas of the vehicles. Examples: steering brakes suspension battery.

3.6 Special Conditions

- a) Each vehicle O&MC will commence from the 1st day of operation.
- b) Authority will not provide any staff for maintenance, but reserve the contractual right to do so, in case of exceptional circumstances such as pandemic or for the provision of contractual audit of processes to monitor Contractor compliance.
- c) The Contractor should maintain a computerised history record to evident the maintenance/repair/breakdown with consumed/repaired spares of each vehicle during O&MC period and it should be submitted monthly to the Authority's depot [insert address] along with the invoice for Comprehensive Operation and Maintenance.

- d) All types of penalties will be calculated on a monthly basis by the Authority supported with data.
- e) The Contractor should use only new tyres for front axle.
- f) Contractor should provide adequate (24x7) maintenance and other staff at site.
- g) Required vehicle fitness certification work (electrical, mechanical & body) should be carried out by the Contractor within time limit & certification documentation work will be done by the Authority.
- h) Accident damage repair carried out by Contractor and cost of repair will be met by the Contractor.
- i) Contractor has to attend the daily reported minor defects by driver(s) ensuring that safety is ensured at all times without affecting daily output schedule of buses. See annexure 3 of this Attachment 2 for example of defects for electric buses.

4. Operations

4.1 The following section 4 now looks at the operational elements in further detail, the Contractor must ensure adherence particularly, to annexure 1, 2, 3, and 5 of this Attachment 2 at all times.

- a) The service will be delivered as per the Operational Plan (OP) listed in annexure 2 of this Attachment 2.
- b) The Contractor will ensure the correct level of staffing (DRIVERS/Other operational staff) is maintained at all times to deliver services.
- c) During the O&MC period, the Contractor would provide well-trained drivers at the specified depot to operate and/or complete other duties, in the safe delivery of their services.
- d) The drivers will operate the vehicles in a professional way, with suitable support training to ensure that all vehicles and services may be operated in a safe and on time manner at a cost to the Contractor. This will include all mandatory requirements like conducting daily walk around checks to ensure that the safety and serviceability of the vehicle is maintained to undertake its service for the day.
- e) Only approved vehicle type trained drivers will be authorized to drive company vehicles. The Contractor must ensure that the driver of the vehicle have the legal credentials required, to drive the vehicle(s) as listed in this agreement, refer to the Motor Vehicle Act.
- f) The Contractor will ensure staff adhere to the maximum working hours, which will be 8 hours including refreshment and food breaks. In case of emergencies this may be relaxed on a case-to-case basis as per Factory Act, 1948.
- g) The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the O&M Service is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor. The Contractor shall inform the

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

- h) The Contractor shall maintain registers and records of payment of wages, overtime and other remunerations as stipulated by Central Labour Commissioner, Ministry of Labour, Govt. of India. The Contractor shall make himself aware of all labour regulations and their impact on the cost and build up the same in the Contract Price. During the Contract Period, no extra amount in this regard shall be payable to the Contractor, for whatsoever reason including any revision of rates payable to the labour due to revision of rates payable under Minimum Wages Act
- i) The Authority shall provide space on the depot to the Contractor for setting up adequate facilities required for the operational staff (E.g. Rest room etc.), during the O&MC period.
- j) The drivers and other operational staff will act in accordance with the authorities' staff handbook, which acts as an extension to their contract.
- k) Delivery of the service, routes and timetables will be the responsibility of the Contractor, delivered as part of the Authority's operational plan ensuring compliance in working hours and service deliverability to the resources available.
- l) The Authority will provide conductors for the purpose of daily operations.
- m) The Authority will measure the service using the agreed Key Performance Indicators (KPIs) as per the Operational Plan, annexure 2 of this Attachment 2. Failure to meet the correct level of service will possibly result in penalties and if necessary termination of contract. See Liquidated Damages (Annexure 3 of this Attachment 2).
- n) During the O&MC period, the Authority will continue to provide well-trained conductors at the specified depot to support operations and/or complete other duties, in the safe delivery of their services.

5. General Terms & Conditions

- 5.1 The Authority and the selected Contractor agree that by signing this agreement, they have read the General Terms and Conditions, and accepted them. **TERMS & CONDITIONS (To be read along with RFP Terms and Conditions)**
- 5.2 The "General Terms & Conditions for O&MC", herein referred to as the "General Terms and Conditions" apply to the O&MC and shall be considered to form an integral part thereof.
 - a) The selected Contractor shall provide or procure the services mentioned in Clause 3,
 - (i) "3.6 Standard Services and Repairs" for the service at the site specifically identified for this purpose. The services to be provided under this O&MC for the vehicles, shall be only such as is on account of normal wear and tear of the vehicle.

- (ii) Further, such services shall be in accordance with “3.5 Service Interval” and “3.7 Special Conditions”
- b) The selected Contractor reserves the absolute right to decide whether parts need to be replaced or repaired to fulfil its obligation on the services to be provided under the O&MC.
- c) All components, assemblies, parts etc. removed from the vehicle and replaced with a new part under service agreement are properties of Contractor.
- d) The selected Contractor shall be entitled to access to the existing services information including route distances and geo coded references for all bus stops along the length of the service lines to enable effective planning of the services. A collaborate approach to working will be provided by the client in offering access to information to assist the planning process of the future network.
- e) Contractor should maintain their establishment as per Factory Act & Labour Act, any and all other applicable Acts for such establishments at all the times.
- f) The selected Contractor will be responsible for meeting the cost and consequences, whether civil or/ electrical or/ and criminal, fine prosecution etc. owing to any act or negligence on the part of the Contractor or its employees, personnel, etc. under the contract.
- g) The Authority reserves the right to take action under clause “Termination Clause 49” against the Contractor if the performance during contract is found unsatisfactory. See Operational Plan annexure 2, Audit annexure 5 of this Attachment 2, and RFP Termination Clause.
- h) Subcontracting of any of the operational and maintenance works for the O&MC is not allowed. The Contractor shall be solely and fully responsible for the O&MC of the bus.

6. Service Level Agreement

6.1 In addition to the General Terms and Conditions:

- a) The Contractor is required to carry out O&MC for the prescribed time as highlighted in section 2, inclusive of consumables, spare parts, replacement of assemblies /subassemblies, systems & accessories etc. taking into account preventive maintenance, normal wear & tear, major repairs/over-hauling and break downs as well as accidental repairs (mechanical & body), tyres, broken lights and routine body repairs etc. inclusive of labour cost to ensure 92% clean bus availability during warranty period and after warranty period till O&MC period ends.
- b) The contractor must deliver 90% of the scheduled KMs each year as indicated in the Operational Plan.
- c) The contractor must achieve 85% on-time performance of scheduled trips, relating to departing the depot on time, and then commencing all subsequent trips on time as indicated in the Operational Plan, within the agreed parameters (1 minute early or 10 minutes late).
- d) The Contractor has to attend to the daily reported minor defects by driver(s) ensuring that safety is ensured at all times without affecting daily output schedule of buses.

- e) The buses are expected to be operated in a one or more shifts basis, daily (A typical shift is 8 hours per days), in the conditions highlighted in Clause 2.
- f) The maximum response time for maintenance from any of the destinations specified in Clause 2 (i.e. time required for suppliers, maintenance engineers to report to the site after a request is made by phone/ email/ SMS etc.) shall not exceed 2 hours.
- g) For any delay beyond 2 hours without any cogent reason/justification, a fine of the amount equivalent to 50% of an average day's revenue per bus (calculated over the last 30 days of operation) can be attributed to the fine applied on a monthly basis.
- h) During the O&MC period, the Contractor would provide well-trained resident engineers/technicians at the specified depot to attend the maintenance and servicing of buses to ensure quality assurance/control and for checking and preventive maintenance and for breakdown maintenance. During the same, the Contractor would provide well-trained resident drivers/ and other operational staff.
- i) The Contractor shall ensure 92% of clean buses are made available for the operation along with drivers, as per requirement of the Authority during warranty period and after warranty period till O&MC ends. For failing to adhere to 92% fleet availability, a fine of 100% of an average day's revenue (calculated over the last 30 days of operation) per bus, shall be applied on a monthly basis. *

**Example:*

Out of 100 vehicles, 8 Vehicles (8%) can be out of service. If another vehicle is then placed out of service (9 in total), so that fleet availability falls to 91% then 1% = 1 vehicle, is subject to the fine process.

- j) Failure to arrange for an immediate repair/maintenance to keep prescribed percentage of availability, as the case, shall be liable for penalty of 100% of an average day's revenue per bus (calculated over the last 30 days of operation) per day after allowing permissible breakdown days. The amount of penalty will be recovered from outstanding payment of the firm or from bank guarantee during warranty or maintenance period as the case may be, which be calculated on monthly basis.
- k) For every Bus, a maintenance record will be maintained by the Contractor. This is measured as a KPI, and the requirement is 100% compliance.
- l) The vehicle files and maintenance schedule should be inspected, to ensure compliance (including Nil Defect system, maintenance schedule adherence, annual MOT pass certificate, fitness certificate, road tax).
- m) If contractor is failing to deliver contractually on monthly audit, 90 days' notice to rectify may be served. Failure to rectify may lead to use of the termination clause.
- n) The Staff files should be inspected every six months, to ensure compliance with legalities like only approved drivers are being utilised, driving licences and associated legal documentation are in order, etc. Ensure that the drivers are up to date with their training.
- o) Under this agreement 1 breakdown per vehicle per year, aggregated over 24 months is accepted as the permissible breakdown limit.

Note: Any vehicle off the road is included into the allowed 8% vehicle availability calculation for the first 24 months then increasing to 10% forthwith, a breakdown is categorized as a vehicle that has become immobilized, and as a result needs to be recovered to the depot, in that, it can no longer continue in service.

- p) If morning scheduled trips in a day are lost due to breakdown, then it is considered as one breakdown day, if trips scheduled for the day are partially lost due to breakdown, then the breakdown days shall be derived on a pro rate basis.
- q) The permissible breakdown days for the purpose of deriving penalties is the accumulated permissible days for all the vehicles covered under this agreement.
- r) Penalties shall be applicable only for breakdown days, in excess of the accumulated permissible breakdown days. A maximum penalty, of 100% of the average day's revenue (for the last 30 days of operation) per bus shall be applicable for each breakdown day in excess of the accumulated permissible breakdown days. The Breakdown Days shall be signed-off and computed on monthly basis. The Authority will deduct the associated Liquidated Damages for that day.

In event of non-operation of buses in a month due to accident repairs (for minor repair 4 days and major repairs – 8 days), strikes (excluding manufacture/Contractor's labour), public unrest, legal compliances etc. penalty will not be applicable for the days the vehicles are off road. These days will not be considered as breakdown days for the purpose of calculation of penalty.

- s) The Actual breakdown days will be signed off between the parties on a monthly basis and this data would be the basis for arriving at the penalty for breakdown which is calculated and credited to the Authority at the end of each quarter.
- t) If the vehicle is off road for more than 4 days (minor accidents), 8 days (major accidents) for each accident repair then 100% waiver on O&MC fee shall be passed beyond these days for the breakdown period on prorated basis. Credit on O&MC fee waiver shall be passed on to the Authority at the end of the agreement year.
- u) The Authority will carry out compliance audits on the Contractor's service, to ensure continuous and effective maintenance. If serious defects are observed (serious defects are defects that if not rectified immediately, might lead to a serious incident, see annexure 3 point 9 of this Attachment 2), on 3 occasions during a 12-month period, then a formal warning letter to the Contractor will be triggered. Any, and all warning letters registered against the Contractor might lead to the termination of the contract, see Clause 50: Termination for Default.
- v) During the vehicle audit, external damage will be inspected and recorded, to ensure compliance with the "no dent policy".
- w) If contractor is failing to deliver contractually on monthly audit, 90 days' notice to rectify may be served. Failure to rectify, may lead to use of the Termination clause.
- x) The minimum kWh as referred to in the RFP, must be maintained during the operational contract. The conditions of the Energy Efficiency (EE) are to be refereed from the RFP
- y) Payment to the Contractor for the O&MC, shall be made set off with counterclaim, or deduction, as highlighted in Clause 3.6 Special Conditions.

7. Role of the Authority

7.1 Site or designated location

Site means – The Depot or designated location of the Authority, for the purpose of this agreement, as listed in Clause 2 and annexure 6 of this Attachment 2.

7.2 Ensure that all repairs and maintenance work is covered by this agreement and carried out by the Contractor. See Audit annexure 5 of this Attachment 2.

7.3 The Authority will ensure the services are delivered against the operational plan, by measuring the service against the agreed KPIs. See Operational Plan annexure 2 of this Attachment 2.

7.4 The Authority will permit the Contractor and all personnel authorized by the same, entry to any property with appropriate identification for the purpose carrying out their operational duties, or for the purpose of vehicle inspection or maintenance rectification. This will be undertaken with agreement of the depot management at times permissible for such work to be safely undertaken.

7.5 The Authority shall provide space on the depots to the Contractor for development of adequate facilities required for the operational staff such as Staff office. Rest room etc. for staff in its depot during the O&MC period.

8. Role of the Contractor

8.1 In addition to terms & conditions as mentioned in RFP and O&MC, the following obligations of Contractor should be adhered to whilst on site:

- a) The maintenance site support will be limited to carrying out of preventive maintenance as per Clause 3.4 Service Interval. The list of services items is illustrative only and is not exhaustive.
- a) The selected Contractor will position technicians and staff at the site, sufficient as to fulfil its contractual obligations Clause 2.1 and 2.2. Further, the Contractor will ensure the correct level of operational staff are in place to deliver the services as per the operational plan, see annexure 2 of this Attachment 2.
- b) Establish routines and process for all site activities related to the maintenance of the supplied vehicles, and depot management, vehicle parking and health and safety.
- c) Carry out running repairs, emergency repairs, minor repairs.
- d) Deleted.
- e) Deleted.
- f) The selected Contractor will make available any special tools and/or equipment required for fulfilling its obligations under this O&MC.
- g) The selected Contractor shall be responsible for the overall presentation of the vehicle including the vehicles interior and exterior cleanliness. No bus shall leave shift operations unless or until it is properly cleaned and/or maintained. See Audit, annexure 5 of this Attachment 2.

- h) The selected Contractor shall be responsible for the safe delivery and compliance to the Operational Plan. See annexure 2 of this Attachment 2.
- i) The selected Contractor will ensure availability of adequate staff for charging of buses.
- j) The selected Contractor will ensure availability of Manager/ Supervisor with adequate qualification for Operation and Maintenance of buses and for daily coordination with MTC staff and Officials.

9. Deleted.

10. Excluded Services

10.1 The following items/parts/components and services are specifically excluded from the coverage of the O&MC:

- a) The costs of repairs resulting from (including but not limited to) non-blame worthy collision damage, non-blame worthy traffic accidents, fire and lightning strikes & other force majeure conditions.
- b) The costs of repairs or services to - Wind shield glass (unless otherwise it is a manufacturing defect), door glass, window glass, rear view mirror. These items would be covered under the Insurance.

11. Liquidated Damages

11.1 In case the Contractor fails to carry out O&MC services as stipulated in the contract, the Authority reserves the right to arrange for a similar Contractor from alternate sources at the risk, cost and responsibility of the Contractor.

11.2 Limit/cap on Liquidated Damages. The amount of pre-estimated liquidated damages during the Contract Period to be charged under the contract, in terms of Clause 27 of General Conditions of Contract and Annexure 2 (g) of this Attachment 2 of the RFP or other Liquidated Damages provided elsewhere in the RFP shall not exceed 10% of the total value of contract.

In case of any of the above Liquidated Damages exceeds the limit provided above, it shall be considered as Contractor Event of Default. See annexure 3 of this Attachment 2.

12. Confidentiality

12.1 The Contractor shall ensure their related personnel not to, without the prior written consent of the Authority, at any time divulge or disclose for any purpose unconnected with the services, proprietary knowledge obtained during the O&MC services under this contract.

Special circumstances might be accepted if the Contractor needs to share technical information between the primary Contractor and an authorized sub-Contractor. In this case, prior written approval is required.

13. Additional Vehicles added to O&MC

- 13.1** The Authority reserves the right to increase the number of buses for maintenance by 10% of the initially contracted numbers of Buses, at any time till the completion of delivery of the entire number of buses without any change in the Price or other Terms & Conditions.
- 13.2** The increase of quantity shall be incorporated through an amendment. The Contractor will have to deposit performance security of additional amount separately within 21 days from the date of amendment of increased quantity in the same manner & method prescribed in the RFP.

Annexure 1 Indicative Routes* to be operated

List of all routes that will be covered under this agreement are provided below:

S No.	Route Number	From	To	Route length (Km)	Number of Services to be operated	Daily Km to be operated (excluding dead km)
Adyar Depot						
1	19	Thiagaraya Nagar	Thiruporur	42	8	250 km +-10%
2	29C#	Perambur	Thiruvannmiyur	22	3	250 km +-10%
3	91	Tambaram	Thiruvannmiyur	22	8	250 km +-10%
4	91V	Thiruvannmiyur	Guduvanchery	33	2	250 km +-10%
5	95	Tambaram East	Thiruvannmiyur	25	4	250 km +-10%
6	99	Tambaram West	Adyar B.S.	31	3	250 km +-10%
7	102	Broadway	Kelambakkam	39	2	250 km +-10%
8	570	M.G.R Koyambedu	Kelambakkam	42	20	250 km +-10%
Central Depot						
1	A1	M.G.R.Central	Thiruvannmiyur	14	3	250 km +-10%
2	7H	Broadway	J.J.Nagar East	16	1	250 km +-10%
3	7M	Broadway	J.J.Nagar West	16	1	250 km +-10%
4	15	Broadway	M.G.R.Koyembedu	12	3	250 km +-10%
5	15F	Broadway	Vadapalani	18	2	250 km +-10%
6	17D	Broadway	K.K.Nagar	20	2	250 km +-10%
7	E18	Broadway	Guduvanchery	41	5	250 km +-10%
8	21G	Broadway	Vandalur Zoo	41	10	250 km +-10%
9	40A	Anna Square	Pattabiram	34	1	250 km +-10%
10	40H	Anna Square	Pattabiram	35	2	250 km +-10%
11	A51	Broadway	Tambaram West	35	3	250 km +-10%
12	54	Broadway	Poonamallee	30	4	250 km +-10%
13	88K	Broadway	Kundrathur B.S.	30	2	250 km +-10%
14	102	Broadway	Kelambakkam	39	1	250 km +-10%
15	102X	Broadway	Thiruporur	47	3	250 km +-10%
16	109	Broadway	Kovalam	38	3	250 km +-10%
17	221	M.G.R.Central	Thiruporur	50	4	250 km +-10%

**Routes are subject to finalisation*

Annexure 2 Operational Plan

The Operational plan is only an indicative one. The Authority retain full and unrestricted flexibility of route planning.

a) Route mileage

The Contractor shall calculate the route mileage based on the route details provided in Annexure 1 of this Attachment 2

b) Bus stop (inward and outward)

The details of the bus stops on each route shall be provided by the Authority.

c) Conditions

The Contractor shall operate the buses as per the provisions of the RFP. The Contractor shall provide detailed bus schedule in consultation with the Authority at the later stage.

d) Key Performance Indicators (KPIs), Service Level Agreement and Liquidated Damages for bus O&M

S. No.	Key Performance Indicator (KPI)	Description of KPI	Service Level Agreement (SLA)	Associated LD if applicable	Control and Management Tools
1	Operated scheduled KMs	<p>% of scheduled KMs the operator is expected to achieve</p> <p>Monitored to target year on year improvement</p>	<p>(1) Ref Clause 4.1 a) The service will be delivered as per the Operational Plan (OP) listed in annexure 2 of this Attachment 2.</p> <p>(b) The contractor must deliver 90% of the scheduled KMs each month as indicated in the Operational Plan</p>	<p>(1) The contractor must deliver 90% of the scheduled KMs each month. If the contractor delivers below 90%, LD measures will be invoked as per the below: For any services the Contractor fail to deliver as per the (OP), without any cogent reason/justification approved by the authority, a fine to be applied on a monthly basis for the amount equivalent to 100% of the following formula:</p> <p>' Highest EPKM (derived from an average of last 30 days of operation) across all routes wherein scheduled KM are lost X Number of scheduled KM lost'</p> <p>(2) If contractor is failing to deliver the scheduled KMs for any 2 out of 3 consecutive months, 30 days' notice to rectify is may be served. If the contractor still fails to rectify, then it may lead to use of the termination clause.</p>	Measured with mixed technologies such as GPRS and AVL and declared operated mileage.

S. No.	Key Performance Indicator (KPI)	Description of KPI	Service Level Agreement (SLA)	Associated LD if applicable	Control and Management Tools
2	Operational On Time Performance	<p>% of scheduled trips departing on time - within set band of early vs late departures</p> <p>Monitored to target year on year improvement.</p>	<p>(1) Ref Clause 4.1 a) The service will be delivered as per the Operational Plan (OP) listed in Annexure 2 of this agreement.</p> <p>(2) The contractor must achieve 85% on-time performance of scheduled trips, relating to departing the depot on time, and then commencing all subsequent trips on time as indicated in the Operational Plan, within the agreed parameters (1 minute early or 10 minutes late).</p>	<p>(1) For any delay beyond 15 min without any cogent reason/justification approved by the authority, a fine to be applied on a monthly basis for the amount equivalent to 10% of the following formula:</p> <p>' Highest Earnings Per Bus Per Day (derived from an average of last 30 days of operation) across all routes wherein delays are occurred X Number of delays</p> <p>(2) If contractor is failing to deliver contractually for any 2 out of 3 consecutive months, 30 days' notice to rectify may be served. Failure to rectify, may lead to use of the termination clause</p>	Measured with mixed technologies such as GPRS and AVL.

S. No.	Key Performance Indicator (KPI)	Description of KPI	Service Level Agreement (SLA)	Associated LD if applicable	Control and Management Tools
3	Assured Fleet Availability for Operations	% of clean buses / fleet ready with drivers to be operations	(1) Ref: Clause 6.1 g) ' The Contractor shall ensure 92% of clean buses are made available for the operation along with drivers, as per requirement of the Authority during warranty period and after warranty period till O&MC ends.	(1) For failing to adhere to 92% clean fleet availability along with drivers, a fine to be applied on a monthly basis for the amount equivalent to 100% of the following formula: ' Highest Earnings Per Bus Per Day (derived from an average of last 30 days of operation) across all routes wherein buses were not operated X No. of buses not operated'	Measured with mixed technologies such as GPRS and AVL.
4	Number of Vehicle Breakdowns	Number of breakdowns per 10,000 KMs	(1) Ref: Clause 6.1 a) - The Contractor is required to carry out O&MC for the prescribed time as highlighted in section 2, inclusive of consumables, spare parts, replacement of assemblies /subassemblies, systems & accessories etc. taking into account preventive maintenance, normal wear & tear, major repairs/over-hauling and break downs as well as accidental repairs (mechanical & body), tyres,	(1) A maximum penalty, of 100% of the Highest Earnings Per Bus Per Day (derived from the average of the last 30 days of operation) per bus shall be applicable for each breakdown day in excess of the accumulated permissible breakdown days.	Measured with mixed technologies such as GPRS and AVL and declared number of breakdowns.

S. No.	Key Performance Indicator (KPI)	Description of KPI	Service Level Agreement (SLA)	Associated LD if applicable	Control and Management Tools
			<p>broken lights and routine body repairs etc. inclusive of labour cost to ensure 92% availability during warranty period and after warranty period till O&MC period ends.</p> <p>(2) Ref Clause 6.1 j) Under this agreement 1 breakdown per month/ 12 breakdowns per year) for entire fleet, aggregated over 24 months is accepted as the permissible breakdown limit.</p>		
5	Power Consumption for EV fleet	The average consumption in kWh per vehicle per route.	<p>(1) Ref: Section VIII, Clause 29.4</p> <p>(2) The minimum kWh as referred to in the RFP, must be maintained during the operational contract. The conditions of the Energy Efficiency (EE) are to be refereed from the RFP.</p>	(1) If the Power Consumption in kWh per vehicle per route increases from the prescribed value indicated in the RFP (i.e. 1.3 kWh per KM), then the additional electricity cost incurred above the prescribed value will be borne by the contractor.	Minimum kWh measured during audit using Battery Management System (BMS).

S. No.	Key Performance Indicator (KPI)	Description of KPI	Service Level Agreement (SLA)	Associated LD if applicable	Control and Management Tools
6	Battery Range for EV Fleet	% of buses per day with insufficient Battery Level, defined as outside manufactures SOC level	(1) Ref Clause 4.1 a) The service will be delivered as per the Operational Plan (OP) listed in Annexure 2 of this agreement.	(1) If insufficient SOC level leads to failure to deliver services as per Operational Plan (OP)/ fleet availability, the appropriate LD shall be applicable	Measured in live operations with Battery Management Systems (BMS).
7	The Authority will carry out a Physical Audit	Physical Inspection – 10% of the fleet every month 90% compliance pass rate of inspected fleet	(1) Ref: Clause 6.1 p) The Authority will carry out compliance audits on the Contractor's service, to ensure continuous and effective maintenance. (2) If serious defects are observed (serious defects are defects that if not rectified immediately, might lead to a serious incident) on 3 occasions during a 12-month period, then a formal warning letter to the Contractor will be triggered. (3) Any, and all warning letters registered against the Contractor may lead to the termination of the contract as per RFP.	(1) If contractor is failing to rectify the defects after issuance of 3 warning letters. Then may lead to use of the termination clause	Monthly Audit Programme

S. No.	Key Performance Indicator (KPI)	Description of KPI	Service Level Agreement (SLA)	Associated LD if applicable	Control and Management Tools
8	The Authority will carry out an Audit programme	For every Bus, a maintenance record will be maintained by the representatives of the Authority and the Contractor. 100% compliance pass rate of entire fleet	(1) The vehicle files and maintenance schedule should be inspected, to ensure compliance (including Nil Defect system, maintenance schedule adherence, annual MOT pass certificate, fitness certificate, road tax). (2) If contractor is failing to deliver contractually on monthly audit, 90 days' notice to rectify may be served. Failure to rectify may lead to use of the termination clause.	KPI is for targeted improvement. No associated LD.	Monthly Audit Programme
9	The Authority will carry out an Audit programme for Staff files	Staff files Inspected every six months	(1) The Staff files and should be inspected, to ensure only approved drivers are being utilised, compliance and legalities (driving licences and associated legal documentation) every six months. Ensure the drivers are up to date with their training. (2) If contractor is failing to	KPI is for targeted improvement. No associated LD.	Monthly Audit Programme

S. No.	Key Performance Indicator (KPI)	Description of KPI	Service Level Agreement (SLA)	Associated LD if applicable	Control and Management Tools
			deliver contractually on monthly audit, 90 days' notice to rectify may be served. Failure to rectify, may lead to use of the termination clause.		
10	The Authority will carry out an Audit programme for compliance of No Dent Policy	100% "No Dent Policy" of the fleet in service. Fleet availability to remain at 92% throughout the contract.	(1) During the vehicle audit, external damage will be inspected and recorded, to ensure compliance with the "no dent policy". (2) If contractor is failing to deliver contractually on monthly audit, 90 days' notice to rectify may be served. Failure to rectify, may lead to use of the termination clause.	KPI is for targeted improvement. If "No Dent Policy" leads to failure to deliver services as per Operational Plan (OP)/ fleet availability, the appropriate LD shall be applicable	Monthly Audit Programme
11	Commercial Speed	Average speed recorded on the Bus Network.		KPI is for targeted improvement. No direct associated LD.	Measured with mixed technologies such as GPRS and AVL.
12	Number of Collisions / Collision Data	Number of Vehicle Collisions per Actual Total Vehicle KMs.		KPI is for targeted improvement. No direct associated LD.	Measured with mixed technologies such as GPRS and AVL and declared number of collisions/fatal collisions.

S. No.	Key Performance Indicator (KPI)	Description of KPI	Service Level Agreement (SLA)	Associated LD if applicable	Control and Management Tools
					Review the Driver training programme to identify if it is current and effective.
13	Number of Fatal Collisions / Fatal Collision Data	Number of collisions resulting in fatalities per actual total vehicle KMs.		KPI is for targeted improvement. No direct associated LD.	<p>Measured with mixed technologies such as GPRS and AVL and declared number of collisions/fatal collisions.</p> <p>Review the Driver training programme to identify if it is current and effective.</p>
14	Assaults	Number of staff/passenger assaults per KMs travelled.		KPI is for targeted improvement. No direct associated LD.	Measured through received data from the contractor, CCTV and recording equipment and police records/reports.

e) Staffing handbook

The Contractor shall adhere to the Staff Handbook of the Authority dictating driver conduct

Annexure 3 - Service Type

Item	Carrying out of servicing and repair of the vehicle to road standard conditions	Description
a	Basic Servicing requirements	Air conditioning checks and re-gassing, Steering brakes and suspension checks
		General wear and condition checks including battery connections and cables, lubrication of joints as required
		Brake test ,light check, internal seating, exits, graffiti and driver control functionality checks
		Tyre pressure checks and wheel and tyre condition checks
b	Intermediate servicing requirements and Fluids	All of the above including air conditioning pressure checks, changing of filters, operational check
		Tyre rotation if required, Battery security and electrolyte checks and charging analysis review
		Air bag and suspension checks for wear and leaks and steering alignment check. Fault code analysis
c	Annual service requirements and government testing	All of above in basic + intermediate with additional items for annual inspection
		Brake diaphragm replacement every year or mileage specified
		Brake chamber changes every 24 months
		Air dryer if fitted every year or mileage specified
d	All servicing requirements are included subject always to normal wear and tear	Normal wear and tear is defined by the type of operation in which the vehicle is used.
e	Vehicle running defects	Defects repaired nightly as reported by the on-road team
		Defects will be included in the contract as long as normal wear and tear applies to the defect

Annexure 4 - Audit Programme

A person responsible for the audit programme, must be technically competent and operationally aware of the safety standards that apply to the vehicles they examine. They should have been trained in the techniques of vehicle examination, diagnosis and reporting, and possess a sound working knowledge of the relevant inspection manuals.

The Auditor needs to be a recognized member of the Authority staff, with the skill set to recognize good and poor workmanship. There must be a clear end-to-end audit trail that is followed.

Suggest that Audits are carried out:

- Maintenance Audit - Monthly Audits
- Staff File – every six months
- Pre-announced or unannounced checks (i.e. spot checks at any time).

a) Monthly Maintenance Audit

10% of the fleet should be inspected each month.

Physical Inspection - The results of vehicles that pass the audit should be recorded, as well as the results of any non-recorded defects, vehicles in poor condition, and evidence of poor maintenance.

The benchmark of 90% pass rate has been suggested.

Maintenance records – The vehicle files and maintenance schedule should be inspected, to ensure compliance (including Nil Defect system, maintenance schedule adherence, annual MOT pass certificate, road tax).

The benchmark of 100% pass rate has been suggested.

A 100% “no dent policy” for the fleet in service has been agreed, the Contractor needs to put in place a system to ensure compliance.

Battery Degradation – measured through Battery Management Telematics, SMART charging systems.

b) Staff Files

Inspect the staff files twice per year to ensure the operational team and the maintenance team have the required qualification, to carry out their roles in a safe manner (No upper limit set on the number of files inspected).

Example driving license, technician accreditation, rights to work.

Annexure 5 – Items covered in Bus Warranty

Inspection/Service Items			Inspection Frequency						
Item	Item for Inspection	Comment	4 weeks / 12,000 km	3 months / 36,000 km	12 months / 144,000 km	24 months / 288,000 km	Warranty Duration (months)	O&MC	Other
Mechanical									
1	Emergency button		x				24	x	
2	Condition of the brake system's components		x				24	x	
3	Brake Chamber (replacement)					x	24	x	
4	Brake diaphragms (replacement)				x		24	x	
5	Condition of the brake discs and brake pads		x					x	
6	Tyre pressure, tread depth, wheel bolts & nuts, wheel & cover (if applicable)		x				24	x	
7	Tyre Rotation (if required)			x					x
8	Hub bearing		x				24	x	
9	Header tank, filler cap		x				24	x	
10	Radiator, mounting, filler cap assembly, coolant hoses & mountings		x				24	x	

Inspection/Service Items			Inspection Frequency						
11	Coolant pump and mountings		x				24	x	
12	Steering pump, hydraulic hoses, hydraulic reservoir		x				24	x	
13	Fire suppression system's components		x				24	x	
14	Air compressor		x				24	x	
15	Air compressor hoses, piping, mountings		x					x	
16	Air dryer			x			24	x	
17	Reservoirs, drain valves		x				24	x	
18	Steering shaft		x				24	x	
19	Steering lock stops, pressure relief				x		24	x	
20	Condition of tie rod assembly		x				24	x	
21	Steering box, mountings & bolts, drop arm clearance, nut & lock position		x				24	x	
22	Clearance of steering lever, mountings & bolts(if applicable)		x				24	x	
23	King pin clearance, king pin screw(upper)		x				24	x	

Inspection/Service Items			Inspection Frequency						
24	Footbrake valve		x				24	x	
25	Front axle mounting, towing mount, compressed air charging coupling		x				24	x	
26	Front axle mounting bolts, torque arms & bushes		x				24	x	
27	Condition of the double wishbone system (if applicable)		x				24	x	
28	Levelling valve & linkage, diaphragms & mountings, ride height		x				24	x	
29	Air spring assembly, ride height		x				24	x	
30	Dampers, rubber bushes, bolts, Torsion bar, bushes & bolts		x				24	x	
31	Clearance of differential, oil seal, gasket, flange bolts (if applicable)		x				24	x	
32	Electric traction motor		x				96	x	
33	Vent hose & filter(if applicable)		x				24	x	

Inspection/Service Items			Inspection Frequency						
34	Gearbox components , flange, oil seal, gasket (if applicable)		x				24	x	
35	Condition of prop shaft, bolts, universal joint & spline (if applicable)		x				24	x	
36	Air leakage		x					x	
37	Function of quadruple circuit protection valve, low air pressure warning light and sound, air pressure gauge		x				24	x	
38	Handbrake valve		x				24	x	
39	Reservoirs & mountings, pipe & mountings, drain the water in reservoirs		x				24	x	
40	Hoses, mountings		x				24	x	
41	Quadruple circuit protection valve (Compressed air must be released)		x				24	x	
42	Doors operation		x				84	x	
43	Condition of Driver's pedals		x				24	x	
44	Suspension air bags,			x			24	x	

Inspection/Service Items			Inspection Frequency						
	linkages, and alignment checks								
45	Vehicle recovery - toe in/out	Contract exclusion	N/A	N/A	N/A	N/A			x
Electrical									
46	Conventional Battery		x				24	x	
47	Battery		x				96	x	
48	Battery security and electrolyte checks and charging analysis review		x				24	x	
49	Speedometer and Tachograph		x				24	x	
50	Instrument cluster		x				24	x	
51	SOC meter		x				24	x	
52	Dashboard display		x				24	x	
53	Battery mains switch		x				24	x	
54	Function of BSA		x				24	x	
55	Kneeling function		x				24	x	
56	Wiper motor		x				24	x	
57	A/C control		x				24	x	
58	Demister		x				24	x	
59	CCTV		x				24	x	
60	Horn		x				24	x	
61	Exterior lights	If Standard	x				24	x	
62	Gear selector button		x				24	x	
63	Fare display, other	Warranty to be	x				N/A		x

Inspection/Service Items			Inspection Frequency						
	coinbox features	covered by Coin box provider							
64	Wheelchair manual ramp		x				24	x	
65	Interior lights	Non-LED (longer if LED)	x				24	x	
66	Push bell to stop		x				24	x	
67	A/C operational (pressure test and filter change)			x			24	x	
68	Heating		x				24	x	
69	Public announcement		x				24	x	
70	MMOB (if applicable)		x				60	x	
71	Exterior destination display		x				60	x	
72	Indicators		x				24	x	
73	Brake lights		x				24	x	
74	Reverse lights		x				24	x	
75	Rear bonnet warning light		x				24	x	
76	Battery terminal		x				96	x	
77	Battery management system		x				96	x	
78	Electrical wiring (high voltage)		x				24	x	

Inspection/Service Items			Inspection Frequency						
79	Charging point		x				24	x	
80	Condenser		x				12	x	
Body									
81	Mirrors and mounting		x				24	x	
82	Bumper panel Front/rear		x				24	x	
83	Access flaps		x				24	x	
84	Splash pans, mudflaps and mounting		x				24	x	
85	Side lockers (if applicable)		x				24	x	
86	Logos and graphics		x				NA		x
87	Battery carrier		x				24	x	
88	Longitudinal members & cross members		x				24	x	
89	Seatbelts		x				120	x	
90	Adjustable driver's seat		x				24	x	
91	Licence plate		x				24	x	
92	Windscreen		x				24		x
93	Other glass panels		x				24		x
94	Emergency Engine Stop		x				24	x	
95	Emergency exits		x				24	x	
96	Fire extinguishers		x				24		x
97	First Aid Box		x				12		x
98	Handrails		x				24	x	
99	Passenger seat belts (if applicable)		x				60	x	
100	Door seals and hinges		x				24	x	

Inspection/Service Items			Inspection Frequency						
101	Ceiling		x				24	x	
102	Emergency hammers		x				24		x
103	Disabled seat		x				24	x	
104	Internal destination display		x				24	x	
105	Internal battery access flap		x				24	x	
106	Coinbox	Warranty usually covered by Coin box provider	x				N/A		x
107	Paint		x				12	x	
108	MMOB mounting		x				24	x	
109	Floorboards		x				96	x	
110	Chassis		x				96	x	
111	Body structure		x				96	x	
112	Rust and Corrosion (Chassis)		x				216	x	
113	Rust and Corrosion (Body)		x				96	x	
114	Body Damage	Contract exclusion	x				N/A		x
115	Vandalism	Contract exclusion	x				N/A		x

Inspection/Service Items			Inspection Frequency						
11 6	Driver Vehicle Abuse	Contract exclusion	x				N/A		x
11 7	Cleaning	Contract exclusion, Usually a separate contract	x				N/A		x

*Note: 'x' denotes the occurrence of inspections and coverage under O&M

Annexure 6 – Key Performance Indicators (KPIs), Service Level Agreement and Liquidated Damages for on-board ITS equipments

Contractor shall assure the repair period of Bus shall not affect the 92% fleet available for operations during the Service Hours of MTC.

Contractor shall observe following service levels for the on board ITS equipment during the Warranty Period.

S.No.	Module	Service Level Description	Measuring Duration	Baseline Minimum	Lower Performance	Critical Breach	Definition	Liquidated Damages		
								Baseline Performance	Lower Performance	Critical Breach
1	AVLS	Availability of on-bus AVLS device for operational purpose	Daily	99.90%	99.89% to 99.00%	<99%	AVLS unit is deemed to be operational when it is able to provide/ send GPS data to server with time stamp	a) Accurate KM Reports from on On-Board AVL Devices b) Hourly Data Packets	For every On Board-AVL devices under the Lower Performance, a penalty of INR 200 shall be imposed.	For every On Board-AVL devices under the Critical breach, a penalty of INR 300 shall be imposed.
2	AVLS	AVLS OBU/SCU availability for all functions which includes availability of all associated components like BDC, Microphone, Bus PAS system (4G/GPRS connection availability is excluded from this)	Per occurrence	-	-	-	AVL OBU Availability is defined as the proper functioning of the OBU with all its features & functions along with required hardware & software as per the functional & technical specifications defined in the bidding documents	Physical incidents recorded at OCC through ground staff of operator	For every occurrence of unavailability of any of the listed component for the one month, a penalty of INR 100 shall be imposed.	
3	AVLS	Replacement Time of Malfunction AVLS Unit where Immediate corrective action is required	Per occurrence	1 day			A device is reported to be Malfunction after initial attempt of fixing is done by Bus ITS service provider and now has to undergo replacement	Date and Timestamp of Issue logged at OCC helpdesk.	For every On Board-AVL Device beyond the baseline performance, a penalty of INR 1000 per device per day shall be imposed.	

S.No.	Module	Service Level Description	Measuring Duration	Baseline Minimum	Lower Performance	Critical Breach	Definition	Liquidated Damages		
								Baseline Performance	Lower Performance	Critical Breach
							nt of major part replacement			
4.	PIS	Display & Announcement of the Route/ Next Stop Details in the On-Board AVL devices and Correctness of Display fields – Line number & Destination, Via destination, Trip related text message	Per occurrence	-	-	-	Display of additional text message means that the message to asked by authority in writing to display on fleet of respective STU via over the air configuration on bus PIS display	Physical incidents recorded at OCC through ground staff of operator.	For every occurrence of unavailability of any of the listed facility, a penalty of INR 100 per device shall be imposed.	
5.	On-bus PIS	Replacement Time of Malfunction PIS display or its associated wiring harness	Per occurrence	1 day	-	-	Malfunction PIS is defined as the PIS which is not able to power-on or frequently getting faulty due to any abrupt behaviour of other components or fault in wiring harness which requires immediate replacement of items to perform as per operational requirement.	Physical incidents recorded at OCC through ground staff of operator	For every PIS device beyond the baseline performance, a penalty of INR 1000 per device per day shall be imposed.	
6.	Over the Air Updating	Updating the Firmware Files to all installed OBUs	Per Occurrence/ Direction Given by the respective STU	<1 Day	>1 Day to <3 Days	>3 Days	Updating the Firmware Files is defined as the firmware Updating to the OBU from the date of		For every remaining bus OBITS system firmware Updating a penalty of INR 200 per device per day	For every remaining bus OBITS system firmware, updating a penalty of INR 300 per device

S.No.	Module	Service Level Description	Measuring Duration	Baseline Minimum	Lower Performance	Critical Breach	Definition	Liquidated Damages		
								Baseline Performance	Lower Performance	Critical Breach
							direction given by the respective STU		shall be imposed.	per day shall be imposed
7.	Route/ Route Part Updating	Updating of Route/ Route Part to all OBUs	Per Occurrence/ Direction Given by the respective STU	<2 Day	>2 Day to <5 Days	>5 Days	Updating the Route Files is defined as the route hex files Updating to the OBU from the date of direction given by the respective STU		For every remaining bus OBITS system firmware Updating a penalty of INR 50 per device per day shall be imposed.	For every remaining bus OBITS system firmware Updating a penalty of INR 100 per device per day shall be imposed.

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General Conditions

1. General Provisions

1.1 Definitions

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

1.1.1 The Contract

1.1.1.1 “Contract” means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance. The Contract requires the non-objection by the Bank for becoming eligible for any disbursement under the Bank's loan.

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

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

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

1.1.1.5 “Specification” means the document showing standards, grades and measurement submitted by the Contractor at the time of finalisation of design and drawings

1.1.1.6 “Drawings” means the drawings of the Works, as included in the Contract and submitted by the Contractor for approval of the Authority and any additional and modified drawings submitted by (or on behalf of) the Contractor in accordance with the Contract as Good For Construction and As Built Drawings.

1.1.1.7 “Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 “Tender” means the RFP dated 11/01/2024, IRT Tender No.: 16/E-Bus/CP/IRT/2024; KfW Ref. No.: BMZ209919234/KFW510081 in its entirety and all other documents as included in the Contract.

1.1.1.9 “Bill of Quantities” mean the document so named submitted by the Contractor along with drawings at all stage of approvals by the Authority and at the time of submission of invoice/Bill for work completed.

1.1.2 Parties and Persons

- 1.1.1.10 “Contract Data” means the pages completed by the Employer entitled contract data which constitute Part A of the Particular Conditions.
- 1.1.1.11 “Daywork Schedule” and “Schedule of Payment Currencies” mean the documents so named (if any) which are comprised in the Schedules.
- 1.1.2.1 “Party” means the Employer or the Contractor, as the context requires.
- 1.1.2.2 “Employer” means the person named as employer in the Contract Data and the legal successors in title to this person.
- 1.1.2.3 “Contractor” means the person(s) named as contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).
- 1.1.2.4 “Engineer” means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Contract Data, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [Replacement of the Engineer].
- 1.1.2.5 “Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor’s Representative], who acts on behalf of the Contractor.
- 1.1.2.6 “Employer’s Personnel” means the Engineer, the assistants referred to in Sub-Clause 3.2 [Delegation by the Engineer] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer’s Personnel.
- 1.1.2.7 “Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
- 1.1.2.8 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.
- 1.1.2.9 “DB” means the person, or three persons appointed under Sub-Clause 20.2 [Appointment of the Dispute Board] or Sub-Clause 20.3 [Failure to Agree on the Composition of the Dispute Board].
- 1.1.2.10 “FIDIC” means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.
- 1.1.2.11 “Bank” means the financing institution (if any) named in the Contract Data.

1.1.3 Dates, Tests, Periods and Completion

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

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

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

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

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

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

1.1.3.6 “Tests after Completion” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification after the Works or a Section (as the case may be) are taken over by the Employer.

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

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

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

1.1.4 Money and Payments

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

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

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

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

- 1.1.4.5 “Final Statement” means the statement defined in Sub-Clause 14.11 [Application for Final Payment Certificate].
- 1.1.4.6 “Foreign Currency” means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.
- 1.1.4.7 “Interim Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment], other than the Final Payment Certificate.
- 1.1.4.8 “Local Currency” means the currency of the Country.
- 1.1.4.9 “Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment].
- 1.1.4.10 “Provisional Sum” means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].
- 1.1.4.11 “Retention Money” means the accumulated retention moneys which the Employer retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].
- 1.1.4.12 “Statement” means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate.
- 1.1.5 Works and Goods**
 - 1.1.5.1 “Contractor’s Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
 - 1.1.5.2 “Goods” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
 - 1.1.5.3 “Materials” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.
 - 1.1.5.4 “Permanent Works” means the permanent works to be executed by the Contractor under the Contract.
 - 1.1.5.5 “Plant” means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Employer and relating to the construction or operation of the Works.
 - 1.1.5.6 “Section” means a part of the Works specified in the Contract Data as a Section (if any).
 - 1.1.5.7 “Temporary Works” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.
 - 1.1.5.8 “Works” mean the Permanent Works and the Temporary Works, or either of them as appropriate.

1.1.6 Other Definitions

- 1.1.6.1 “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
- 1.1.6.2 “Country” means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.
- 1.1.6.3 “Employer’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Employer.
- 1.1.6.4 “Force Majeure” is defined in Clause 19 [Force Majeure].
- 1.1.6.5 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.6 “Performance Security” means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].
- 1.1.6.7 “Site” means the places where the Permanent Works are to be executed, including storage and working areas, and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.
- 1.1.6.8 “Unforeseeable” means not reasonably foreseeable by an experienced contractor by the Base Date.
- 1.1.6.9 “Variation” means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].
- 1.1.6.10 “Notice of Dissatisfaction” means the notice given by either Party to the other under Sub-Clause 20.4 [Obtaining Dispute Board’s Decision] indicating its dissatisfaction and intention to commence arbitration.
- 1.1.6.11 Exceptionally Adverse Climatic Conditions” means: hurricane, heavy rainfall, flooding and earthquake.

1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) Words indicating one gender include all genders;
- (b) Words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “Written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and
- (e) The word “tender” is synonymous with “Bid” and “tenderer” with “Bidder” and the words “tender documents” with “bidding documents”.

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

1.3 Communications

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

- (a) In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Contract Data. In case of electronic transmission, these communications shall be in the form of an un-editable record attached to an electronic mail, such as a PDF document for instance, and any other communication transmitted in a different manner, such as the email body text, shall not be construed as communication under the Contract ; and
- (b) Delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Data. However:
 - (i) If the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) If the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Engineer or the other Party, as the case may be.

1.4 Law and Language

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

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

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

1.5 Priority of Documents

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

- (a) The Contract Agreement;
- (b) The Letter of Acceptance;
- (c) The Letter of Tender (Financial Proposal);
- (d) The Letter of Tender (Technical Proposal);
- (e) The Contract Data – Part A;
- (f) The Particular Conditions – Part B;

- (g) The General Conditions;
- (h) Technical Specification;
- (i) QSHE Manual;
- (j) The Drawings;
- (k) The Priced Bill of Quantities and Schedules;
- (l) The Tender submitted by the Contractor;
- (m) Any other documents forming part of the Contract.

Subject to the above, in case of ambiguities or discrepancies within this Contract, the following shall apply:

- (i) between two or more Clauses of this Contract, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (ii) between the written description on the Drawings and the Specifications, the latter shall prevail;
- (iii) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (iv) between any value written in numerals and that in words, the latter shall prevail.

1.6 Contract Agreement

The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Section 3. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

1.7 Assignment

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

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

1.8 Care and Supply of Documents

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

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

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

If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party

shall promptly give notice to the other Party of such error or defect.

1.9 Delayed Drawings or Instructions

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

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]

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

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

1.10 Employer's Use of Contractor's Documents

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

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

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

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

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

- 1.11 Contractor's Use of Employer's Documents** As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.
- 1.12 Confidential Details** The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.
- Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.
- 1.13 Compliance with Laws** The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Particular Conditions:
- (a) The Employer shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or to be) obtained by the Employer; and the Employer shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
 - (b) The Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.
- 1.14 Joint and Several Liability** If the Contractor constitutes (under applicable Laws), consortium:
- (a) These persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;
 - (b) These persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and
 - (c) The Contractor shall not alter its composition or legal status without the prior consent of the Employer.

1.15 Inspections and Audit by the Bank

The Contractor shall permit and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit, KfW and/or persons appointed by the KfW to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the Bid, and to have such accounts and records audited by auditors appointed by KfW if requested by KfW.

2. The Employer

2.1 Right of Access to the Site

The Employer shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the Contract Data. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Employer is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Employer shall do so in the time and manner stated in the Specification. However, the Employer may withhold any such right or possession until the Performance Security has been received.

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

If the Contractor suffers delay from failure by the Employer to give any such right or possession, the Contractor shall give notice to the Engineer in a period of 30 days of such occurrence. After receipt of such notice, the Engineer shall proceed to determine any extension of time to which the Contractor is entitled and shall notify the Contractor accordingly.

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

Notwithstanding the actual Access Date, whether before or after the stipulated Access Dates, the Employer shall not accept any increase in cost to the Employer.

The Engineer shall grant the Contractor right of access to or possession of Sites progressively after award of the work.

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

2.2 Permits, Licences or Approvals

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

- (a) Copies of the Laws of the Country which are relevant to the Contract but are not readily available, and
- (b) Any permits, licences or approvals required by the Laws of the Country:
 - (i) Which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws];
 - (ii) For the delivery of Goods, including clearance through customs, and

- (iii) For the export of Contractor's Equipment when it is removed from the Site.

2.3 Employer's Personnel

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

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

2.4 Employer's Financial Arrangements

The Depot Improvement works shall be funded by the Authority.

2.5 Employer's Claims

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

The notice shall be given as soon as practicable and no longer than 42 days after the Employer became aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

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

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

3. The Engineer

3.1 Engineer's Duties and Authority

The Employer/MTC has appointed Implementation Consultant ("IC") who shall act as and shall carry out the duties assigned to Engineer in the Contract. The Engineer word, wherever mentioned in the Contract, shall mean and shall be referring to the IC hereinafter. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the

Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Employer shall promptly inform the Contractor of any change to the authority attributed to the Engineer.

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

Except as otherwise stated in these Conditions:

- (a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;
- (b) The Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;
- (c) Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and
- (d) Any act by the Engineer in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

The following provisions shall apply:

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

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

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

The Engineer shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Employer.

3.2 Delegation by the Engineer

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

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

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

3.3 Instructions of the Engineer

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

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

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

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

3.4 Replacement of the Engineer

If the Employer intends to replace the Engineer, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to

raise objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection.

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

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

4. The Contractor

- 4.1 Contractor's General Obligations** The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.

Following shall be the obligations of the Contractors

General Obligations:

- a) Carryout Depot Improvement works as per the Scope of Work at the depots under the jurisdiction of Metropolitan Transport Corporation (MTC) - Chennai selected for improvement as follows:
 - I. Adyar- located at Shastri Nagar, Adyar, Chennai, Tamil Nadu- 600020;
 - II. Central- located at Pallavan Salai, Chennai, Tamil Nadu- 600003.
- b) Planning and Construction of all civil and electrical works envisaged under the depot improvement including installation of Transformer, chargers, laying of cables, construction of workshop and other associated facilities, etc.;
- c) All the improvement works shall be strictly conducted in accordance with the layout plan to be mutually finalised between the Successful Bidder and MTC. Indicative layout plans are included in the RFP for reference, provided by MTC (refer 6: Layout for Depot Improvement Works of Section VII: Schedule of Requirements). The Contractor has the right to change the indicative depot layout based on the site assessment and conditions (subject to approval of the Authority). However, the below listed components in the depot layout are prohibited for any sort of change:
 - I. 33kV Outdoor RMU/RMG panel;
 - II. HT Multi- Panel (33 kV, LBS);
 - III. DG Set;
 - IV. Onan Transformer (33KV/ 11KV);
 - V. Sub- Station Building;
 - VI. Battery and Charger Room.
- d) The Contractor shall conduct site visits to the depots with coordination with MTC and submit a Good for Construction (GFC) Drawing to MTC for approval;

- e) The Contractor will have to obtain the completion certificate from MTC as per local laws applicable;
- f) The Contractor will not conduct any commercial activity at the depots unless required for the Improvement Works;
- g) The Contractor shall appoint a ESHS Expert for the entire contract period to ensure effective management of Environmental, Social, Health and Safety (ESHS) safeguard aspects in project lifecycle (i.e., Preconstruction-Construction and Operation Phases) with respect to scope of work of O&M Contractor till the period of their engagement. The key purpose of this position would be -
 - 1) Effective and adequate implementation of safeguard measures
 - 2) To ensure regulatory compliance with respect to National Regulation and Funding Agency's requirements
 - 3) To ensure review of adequacy of Environmental, Social, Health and Safety Management Plan (ESHSMP) implementation
 - 4) Taking corrective action (as necessary) and
 - 5) Extend support to ensure regular reporting to stakeholders including regulators and funding agency

The ESHS expert shall be At least Post Graduate in Environmental Science / Environmental Engineering / Environmental Management/ Environmental Health and Safety Management/ other related discipline, with minimum 10 years of hands-on experience in Environmental and Social safeguard management-related activities for large construction/ transportation/ roads and highway projects. The Expert shall also have experience in projects funded by Multilateral Funding Agencies. The ESHS expert shall be expected to execute following responsibility;

- 1) Preparation of site-specific Environmental and Social Management Plans (ESMPs)
 - 2) Effective ESHSMP implementation at Depots during the construction and operation stage (as detailed out in RFP and ESHSMP Document)
 - 3) Securing and Maintenance of records of regulatory permits/ approvals taken during the construction phase
 - 4) Conduct Environmental Monitoring during construction phase
 - 5) Provide required data/ information to relevant stakeholder (like Branch Manager, Implementation Consultant & Accompanying Measure Consultant etc.)
 - 6) Submit monthly progress report to Branch Managers
 - 7) Participate in Stakeholder Engagement
 - 8) Establish Grievance Redressal Mechanism (GRM) for the Contractor's Staff
- h) The Contractor will comply to applicable security, environmental and safety compliance directives, safety plan, alcohol and drug free workspace and any other local laws or standards to be followed during the construction period;
- i) The Contractor will coordinate all the work on the depot during the construction stage with the Depot Manager or any other personnel designated by MTC;
- j) During the construction stage, the operation and maintenance of the existing buses on the depot will not be affected. The Contractor will submit a detailed work plan along with the interim

- depot operation and traffic management plan for the construction period to MTC for approval;
- k) The Contractor will assist MTC in obtaining any safety or environmental certification required to facilitate the new charging infrastructure.
 - l) The Contractor shall undertake an assessment of all existing underground utilities and conduct all surveys necessary at its own cost and coordinate with all utility agencies for required relocations (if any);
 - m) The Contractor shall complete all the construction and electrical work in the time specified in the RFP;
 - n) The Contractor shall submit final depot layout (as- built drawings) with all civil and electrical works to MTC upon completion of the project.
 - o) The Contractor will ensure that all components supplied for the construction and installations will be fit for purpose to undertake the role in which it is designed.
 - p) The Contractor should be taking up necessary measures with respect to fire safety and emergency preparedness during construction phase in compliance with ESHSMP and regulatory requirement.
 - q) The contractor shall also ensure that the provisions of the ESHSMP with respect to the fire safety – emergency preparedness and relevant fire regulations including condition precedents of fire NOC with respect to their part of operation throughout the Contract Period.

Specific Obligations:

The Contractor shall oblige to the following during the construction stage:

- a) Participate in all on-site meetings with officials/ representatives of MTC to review the site conditions, access requirements, construction progress and potential conflicts;
- b) Provision of temporary sheds for storage for materials brought by him on site. The Contractor shall have separate godowns for storage of cement and other materials;
- c) All materials used during the construction stage shall be accompanied with the necessary test certificates (if any);
- d) Maintain the register of major materials used during the construction stage. These registers shall be made available for inspection and verification by MTC as and when required;
- e) All water pumping arrangement, temporary structures, temporary diversions, etc. shall be undertaken by the Contractor at no additional cost to MTC;
- f) All obstructions such as electric cables, telephones lines, water and sewer lines, manhole, natural drainage culverts, storm water drains or any other utility coming in the way shall be carefully looked after against any damages which otherwise will have to be made to its original condition at his own cost;
- g) Make necessary arrangements/ provisions for land, housing, water supply, sanitation, etc. for his employees and labour at his own expenses. The Contractor shall directly pay to the authorized concerned all the rent, taxes and other charges as applicable and agreed between him and the authorized concerned;
- h) Comply with all requirements for a healthy environment at arrangements made by the Contractor for his employees and labour as per local laws;
- i) At his own cost shall make all the necessary arrangements for prevention of Coronavirus or any other pandemic as per

- guidelines issued by Government of India or Government of Tamil Nadu;
- j) At his own cost make necessary arrangements for water required for construction, drinking and for labour camps. MTC shall not take any responsibility for supply of water to the Contractor during the entire work period.
 - k) Carry out the line of works and shall be responsible for accuracy of it. He shall employ a qualified engineer for this purpose as well as for supervision of works;
 - l) Submit a detailed work plan as per total duration specified by MTC in the RFP for completion of the project including details of the milestones and timeframes of physical stages of each of the work. In addition, the Contractor shall timely provide the information pertaining to any required approvals to drawings, samples, materials, equipment's, etc.
 - m) In the event of failing to execute and complete the work as per the scheduled work plan submitted by the Contractor, MTC is liable to enforce a penalty amounting to 10% of the total tender cost;

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

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

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

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

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

- (a) The Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- (b) These Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;

- (c) The Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- (d) Prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the “as-built” documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

4.2 Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the Contract Data and denominated in the currency(ies) of the Contract. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply. The Performance Security shall be a separate Bank Guarantee which shall be submitted in addition to the Performance Security for Bus Supply and O&M Service Contract.

The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance and shall send a copy to the Engineer. The Performance Security shall be issued by a Nationalised or Scheduled Bank in India selected by the Contractor and requiring the Bank's non-objection and shall be in the form annexed to the Particular Conditions.

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

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

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

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

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

4.3 Contractor's Representative

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

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

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

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

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

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

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

4.4 Subcontractors

The Contractor can subcontract whole or part of the installation of the Electric Transformer only at the Depot(s) Works to AA category/ Certified Contractor empanelled by TANGEDCO with prior approval of the Authority.

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

- (a) The Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
- (b) The prior consent of the Engineer shall be obtained to other proposed Subcontractors;
- (c) The Contractor shall give the Engineer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and

- (d) Each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Employer].

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

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

It shall be obligatory for the Contractor to obtain Notice of No Objection from the Engineer for the selection of the Subcontractor and vendors for all items of work, if the name of the Sub-contractor and vendor is not named in the Contractor's Proposal and the works to be done including purchase of materials and equipment are in accordance with the Standards specified in the Contract. List of such major items for subcontracting shall be drawn up by the Contractor in consultation with the Engineer. The terms and conditions of the sub-contract / vending agreement are the sole prerogatives of the Contractor and are deemed to be included in the Contract Price.

The Contractor shall ensure that their sub-contractors, material/equipment suppliers and other agencies deployed by them in connection with execution of the Contract do not make any claim or raise any dispute before Employer. For this, necessary provision is to be made in the agreement between Contractor and their Subcontractors / other agencies. Similarly, the agreement should also incorporate the provision of dispute resolution. An undertaking in the following format shall be submitted by Contractor in respect of each such agency:

Name of work

In connection with above work, M/s , Contractor has/is engaging M/s , as sub-contractor (material /equipment supplier or service provider). For this, the terms and conditions of agreement include necessary provisions for resolution of dispute if any arising between Contractor and subcontractor. It is confirmed by the subcontractor that any claim/dispute arising out of the above work shall be resolved in terms of agreement and shall not be raised before Employer and also shall not make any claim against Employer before any forum/court.

Unless explicitly agreed to by the Engineer, the Undertaking for ESHS Specifications apply to all Subcontractors and Suppliers used for the execution of the Works. The Contractor is fully liable for all actions, non-compliance and negligence by Subcontractors and Suppliers their representatives, employees and workers, to the same degree as it would be held liable for its own actions, non-compliance or negligence or that of its own representatives, employees or workers.

4.5 Assignment of Benefit of Subcontract

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

4.6 Co-operation

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

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

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

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

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

4.7 Setting Out

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

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

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

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]; and

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

4.8 Safety Procedures

The Contractor shall:

- (a) Comply with all applicable safety regulations;
- (b) Take care for the safety of all persons entitled to be on the Site;
- (c) Use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;

- (d) Provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [Employer's Taking Over]; and
- (e) Provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land; and
- (f) Ensure compliance with the Undertaking for ESHS Specifications.

4.9 Quality Assurance

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

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

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

Within 28 days from Notice to Proceed, the contractor shall submit a detailed Field Quality Plan (FQP) and Quality Assurance manual for approval by Engineer/Employer.

4.10 Site Data

The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

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

4.11 Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

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

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

4.12 Unforeseeable Physical Conditions

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.

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

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

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

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

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

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

This provision applies if unforeseeable physical condition continues for more than a period of 60 days in continuation. Contractor shall be entitled to claim as per clause 8.4

4.13 Rights of Way and Facilities

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

4.14 Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

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

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

4.15 Access Route

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

Except as otherwise stated in these Conditions:

- (a) The Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- (b) The Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- (c) The Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;
- (d) The Employer does not guarantee the suitability or availability of particular access routes; and
- (e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

4.16 Transport of Goods

Unless otherwise stated in the Particular Conditions:

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

4.17 Contractor's Equipment

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

4.18 Protection of the Environment

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

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

These provisions are complemented by those listed under the Undertaking for ESHS Specifications which the Contractor must ensure compliance with.

4.19 Electricity, Water and Gas

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

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

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

4.20 Employer's Equipment and Free-Issue Materials

Deleted.

4.21 Progress Reports

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the

Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

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

Each report shall include:

- (a) Charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]);
- (b) Photographs showing the status of manufacture and of progress on the Site;
- (c) For the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) Commencement of manufacture;
 - (ii) Contractor's inspections;
 - (iii) Tests; and
 - (iv) Shipment and arrival at the Site;
- (d) The details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
- (e) Copies of quality assurance documents, test results and certificates of Materials;
- (f) List of notices given under Sub-Clause 2.5 [Employer's Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];
- (g) Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.
- (i) matters requested under the Undertaking for ESHS Specifications.

4.22 Security of the Site

Unless otherwise stated in the Particular Conditions:

- (a) The Contractor shall be responsible for keeping unauthorised persons off the Site, and
- (b) Authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified

to the Contractor, by the Employer or the Engineer, as authorised personnel of the Employer's other contractors on the Site.

4.23 Contractor's Operations on Site

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

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

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

4.24 Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

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

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

5. Nominated Subcontractors

5.1 Definition of "nominated Subcontractor"

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

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

5.2 Objection to Nomination

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

agrees in writing to indemnify the Contractor against and from the consequences of the matter:

- (a) There are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- (b) The nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or
- (c) The nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
 - (i) Undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract;
 - (ii) Indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities; and
 - (iii) Be paid only if and when the Contractor has received from the Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

5.3 Payments to nominated Subcontractors

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

5.4 Evidence of Payments

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

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

then the Employer may (at his sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The

Contractor shall then repay, to the Employer, the amount which the nominated Subcontractor was directly paid by the Employer.

6. Staff and Labour

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

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

- 6.2 Rates of Wages and Conditions of Labour** The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor. The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

The Contractor and his Subcontractors shall maintain registers and records of payment of wages, overtime and other remunerations as stipulated by Central Labour Commissioner, Ministry of Labour, Govt. of India. The Contractor shall make himself aware of all labour regulations and their impact on the cost and build up the same in the Contract Price. During the Contract Period no extra amount in this regard shall be payable to the Contractor, for whatsoever reason including any revision of rates payable to the labour due to revision of rates payable in Minimum Wages Act.

- 6.3 Persons in the Service of Employer** The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

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

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

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

- (a) Otherwise stated in the Contract;
- (b) The Engineer gives consent; or

- (c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.

6.6 Facilities for Staff and Labour

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

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the Site, except with the prior and express Engineer's consent after consultation with the Employer. The Employer and/or the Engineer may inspect the living quarters from time to time in order to verify their compliance with the Laws and the Contract. The Contractor shall accordingly grant the Employer and/or the Engineer full access to the living quarters as and when they require.

6.7 Health and Safety

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

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

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

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

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

diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labour.

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

These provisions are complemented by those listed under the Undertaking for ESHS Specifications which the Contractor must ensure compliance with,

6.8 Contractor's Superintendence

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

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

6.9 Contractor's Personnel

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

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

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person. The replaced key personnel shall be equal to or better than the original proposed key personnel in terms of experience and qualification. Consent of such replaced personnel shall be obtained from the Engineer by the Contractor before putting such replaced personnel in place. Any cost and time effect of such suspension of part of the Works shall be borne by the Contractor.

6.10 Records of Contractor's Personnel and

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month,

Equipment	in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.
6.11 Disorderly Conduct	The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.
6.12 Foreign Personnel	The Contractor may bring into the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.
	The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.
6.13 Supply of Foodstuffs	The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.
6.14 Supply of Water	The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.
6.15 Measures against Insect and Pest Nuisance	The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.
6.16 Alcoholic Liquor or Drugs	The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel.
6.17 Arms and Ammunition	The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.
6.18 Festivals and Religious Customs	The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.
6.19 Funeral Arrangements	The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.
6.20 Prohibition of Forced or Compulsory Labour	The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.
6.21 Prohibition of Harmful Child Labour	The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the Country have provisions for employment of minors,

the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

6.22 Employment Records of Workers

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

6.23 Workers' Organisations

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

6.24 Non-Discrimination and Equal Opportunity

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

7. Plant, Materials and Workmanship

7.1 Manner of Execution

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

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

7.2 Samples

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

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

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

7.3 Inspection

The Employer's Personnel shall at all reasonable times:

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

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

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

7.4 Testing

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

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

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

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

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

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

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

7.5 Rejection

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

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

7.6 Remedial Work

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

- (a) Remove from the Site and replace any Plant or Materials which is not in accordance with the Contract;
- (b) Remove and re-execute any other work which is not in accordance with the Contract; and
- (c) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

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

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

7.7 Ownership of Plant and Materials

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

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

7.8 Royalties

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

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

8. Commencement, Delays and Suspension

8.1 Commencement of Works

Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:

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

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

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

As defined in the Undertaking for ESHS Specifications, no physical work may commence on any Project Area until such time the Contractor has prepared and submitted to the Engineer the PA-ESMP and the Engineer has approved this.

8.2 Time for Completion

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

- (a) Achieving the passing of the Tests on Completion; and
- (b) The work shall be completed as per milestones provided below based on execution of Bill of Quantity/ Physical Completion;

S. No.	Timeline starting from the Commencement of work (C)	Physical Completion to be achieved.
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1	C+30 days	25% of the total BOQ
2	C+60 days	50% of the total BOQ
3	C+90 days	75% of the total BOQ
4	C+120 days	100% of the total BOQ

- (c) Completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

8.3 Programme

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

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

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

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

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

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

8.4 Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

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

The Contractor shall not be entitled for extension of time for the failures / defaults for the reasons attributable to the Contractor. The Contractor, subject to other provisions in the Contract, is entitled for extension of time in accordance with this Sub-Clause only for the actual number of days of an event that entitled the Contractor to apply for extension of time and the Contractor shall not be entitled for extension of time towards consequences of such actual delay. Save as the same, if the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5 Delays Caused by Authorities

If the following conditions apply, namely:

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

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

8.6 Rate of Progress

If, at any time:

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

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

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

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

8.7 Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion] and does not complete the works within the stipulated time or within the extended time of contract pursuant to Sub-Clause 8.4 [Extension of Time for Completion], the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Contract Data, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Contract Data.

Delay damages for failure to achieve the Milestones in accordance with the Time for Completion set forth in Sub-Clause 8.2 [Time for Completion] shall be withheld from the Contractor's Interim Payment Certificate(s) for every day which shall elapse between the relevant Time for Completion until the Milestone has been achieved.

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.

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

8.8 Suspension of Work

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the

Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

As an example, and without limitation to other possible causes, any suspension of work caused by any failure from the Contractor to comply with the obligations stated:

- (a) Under the Undertaking for ESHS Specifications (if any), i of a level 3 non-compliance;
- (b) Under Sub-Clause 4.8 as to safety procedures;
- (c) Under Sub-Clause 4.9 as to the quality assurance;
- (d) Under Sub-Clause 4.18 as to the protection of the enviro
- (e) Under Sub-Clause 6.7 as to health and safety;

shall be considered as cause of suspension which is the responsibility of the Contractor

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].

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 Woks 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, or
- (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, or
- (h) Violations of Environment act & laws or causing damage to the environment, flora & fauna of surrounding area, or
- (i) 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 reason of suspension is not attributable to the Contractor.

8.10 Payment for Plant and Materials in Event of Suspension

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

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

8.11 Prolonged Suspension

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

8.12 Resumption of Work

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

9. Tests on Completion

9.1 Contractor's Obligations

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

The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of

the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.

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

9.2 Delayed Tests

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

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

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

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4 Failure to Pass Tests on Completion

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

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

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

10. Employer's Taking Over

10.1 Taking Over of the Works and Sections

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

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

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

- (a) Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- (b) Reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

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

10.2 Taking Over of Parts of the Works

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

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

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

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

as soon as practicable before the expiry date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.

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

10.3 Interference with Tests on Completion

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

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

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

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

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

10.4 Surfaces Requiring Reinstatement

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

11. Defects Liability

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

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

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

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

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

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

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

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

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

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

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

11.5 Removal of Defective Work

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

11.6 Further Tests

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

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

11.7 Right of Access

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

11.8 Contractor to Search

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

11.9 Performance Certificate

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

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including

remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

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

11.10 Unfulfilled Obligations

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

11.11 Clearance of Site

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

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

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

12. Measurement and Evaluation

12.1 Works to be Measured

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

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

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

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

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

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

being requested to examine the records, they shall be accepted as accurate.

12.2 Method of Measurement

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

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

Measurements shall be entered in the Measurement Book or other Form approved by the Employer and signed and dated by the Representatives of the Contractor and the Engineer respectively.

12.3 Evaluation

The quoted rates shall remain firm irrespective of any variations in the individual quantity. The Contractor needs to quote sustainable rates for individual items since individual items can vary to any limit. No compensation becomes payable in case the variation of the final executed contract value is within the limit of (+) or (-) 25% of awarded contract value.

Compensation due to variation of final executed value in excess of the limits defined above shall be as follows:

- (a) In case the finally executed contract value reduces below the lower limit of Contract Value due to quantity variation specified above, the contractor will be eligible for compensation @ 15% of the difference between the lower limit of the contract value (i.e. {-} 25%) and the actual executed value.
- (b) In case the finally executed contract value increases above the upper limit of Contract Value ({+}25%) due to quantity variation specified above, there will be no revision in the rates within the contract period including any extended period apart from the escalation provisions if any.

Rates for extra works due to (1) non availability of BOQ (Rates Schedules), or (2) change in specification of materials/works, (3) rectification /modification/dismantling and re-erecting etc, due to no fault of contractor, shall be in the order of the following:

- (i) Item rates are to be derived from similar nature of items in the BOQ (Rate Schedule) with applicable escalation derived from all India consumer price index for wholesale commodities. As per CPWD-DSR-2021 (or latest edition) with applicable escalation derived, Notification issued by the office of CPWD for cost index in that region where the project is being executed. This arrived rate shall be reduced by 18% to account for GST. GST shall be paid extra.
- (ii) Where the above methods are not possible to adopt item rates are to be worked out on the basis of prevailing market rates mutually agreed between MTC and contractor, plus 10% towards contractor's overhead and profit. The Contractor shall furnish sufficient information in terms of rates/prices of the works, equipment/components manufactured by the contractor or sourced from the Vendors/Subcontractors such as: estimated man-hours, man-hours rates for manufactured items, design costs, basic rate

of materials, sub-assemblies, taxes, duties, overheads & profiles and inflation rate, so as to establish the reasonableness of the variation price. In assessing work covered by any sub-contract, the Engineer shall have, where he deems necessary, access to the original sub-contract conditions, rates, prices and details of the variation claimed and may direct the Contractor to provide a copy of the same, to assist in evaluating any Variations.

12.4 Omissions

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

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

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

13. Variations and Adjustments

13.1 Right to Vary

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

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each Variation may include:

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

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

13.2 Value Engineering

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

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

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

- (a) The Contractor shall design this part;
- (b) Sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply; and
- (c) If this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
 - (i) Such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost]; and
 - (ii) The reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

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

13.3 Variation Procedure

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

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

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

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

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

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.

13.4 Payment in Applicable Currencies

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

13.5 Provisional Sums

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

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

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

13.6 Daywork

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

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

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer

accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

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

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

13.7 Adjustments for Changes in Legislation

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 MTC for reimbursement of tax or reassessment of offer.

13.8 Adjustments for Changes in Cost

No adjustment for changes in the cost is permitted.

14. Contract Price and Payment

14.1 The Contract Price

Unless otherwise stated in the Particular Conditions:

- (a) The Contract Price shall be the Lumpsum Bid Price for Depot Improvement Works accepted by the Authority and be subject to adjustments in accordance with the Contract;
- (b) The Contractor shall pay all taxes, duties, levies, cess and fees required to be paid by him under the Contract except GST, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];
- (c) Any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
 - (i) Of the Works which the Contractor is required to execute, or
 - (ii) For the purposes of Clause 12 [Measurement and Evaluation]; and
- (d) The Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum

price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates but shall not be bound by it.

14.2 Advance Payment

Ten percent (10%) of the Total Contract Price will be paid to the Contractor as interest free advance loan in two instalments (5% each) as given in Contract data /PCC: Part A, on compliance of following:

- (a) Acceptance of Letter of Intent / LOA and Signing of Contract Agreement.
- (b) Submission of an unconditional Bank Guarantee for an amount equal to 110% of advance loan, which shall be initially kept valid up to ninety (90) days beyond the schedule date of successful completion. However, in case of delay in completion of work as per Contract, the validity of this advance Bank Guarantee shall be extended by the period of such delay.
- (c) Submission of an unconditional Bank Guarantee(s) towards Performance Security / security deposit in respect of Contract initially valid up to thirty (30) days after the end of Defects Liability Period covered under the Contract. The proforma of Bank Guarantee is enclosed for Performance Security/security deposit.
- (d) Repayment of Mobilization advance:
 - (i) The recovery of mobilization advance shall commence from the next interim payment following that in which the total of all certified payments (excluding the advance payment and deductions and repayments of retention) exceeds 20% of the original contract value.
 - (ii) The mobilization advance shall be recovered by deduction of 20% of the amount of each interim payment, until total of the mobilization advance is recovered.
 - (iii) The advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount Less Provisional Sums has been certified for payment.
 - (iv) The Advance Bank guarantee shall be returned on repayment of Mobilization advance.

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

- (e) Interest in case of delay in repayment of Advances:
 - 1) Should there be delay in the progress and completion of work, as a result of which it is not possible to recover the advance and interest thereon, before the date of completion stipulated in the Contract, then the interest to be charged from the Contractor on the remaining portion of the advance beyond the original completion date specified in the Contract, shall be the State Bank of India Base Rate plus 3% per

annum or 12% per annum, whichever is higher up to the date of actual recovery affected by the MTC.

- 2) 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 Base Rate, 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.
- 3) 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 the number of copies specified in the Contract Data to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports].

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

- (a) The estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in subparagraphs (b) to (h) below);
- (b) Any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];
- (c) Any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;
- (d) Any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];
- (e) Any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];
- (f) Any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and
- (g) The deduction of amounts certified in all previous Payment Certificates

- (h) Any amount to be deducted for taxes/ cess etc. in accordance with the applicable laws.

14.4 Deleted

14.5 Plant and Materials intended for the Works

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

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

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

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

and either:

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

or

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

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

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

14.6 Issue of Interim Payment Certificates

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

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

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

- (a) If anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- (b) If the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.
- (c) In the event of an unresolved level 3 non-compliance specified in the Undertaking for ESHS Specifications, the Engineer shall reduce the value of the Interim Payment Certificates as follows:
 - i. If Level 3 Non-conformity not resolved after the first occurrence: 33,3% for the first Interim Payment Certificate
 - ii. If Level 3 Non-conformity still not resolved: 66,6% for the second Interim Payment Certificate
 - iii. If Level 3 Non-conformity still not resolved: 100% for the third Interim Payment Certificate

If the Level 3 Non-conformity is still not resolved after the last Interim Payment Certificate in (iii) above then payments will be suspended indefinitely until such time as the Level 3 Non-conformity has been resolved.

Following the resolution of the Level 3 Non-Conformity the reduction(s) will be included in the next Interim Payment Certificate for payment. No

interest will be paid on any reductions or suspended payment amounts

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

14.7 Payment

The Employer shall pay to the Contractor:

- (a) The first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;
- (b) The contractor shall be paid monthly running bill/ milestone-based bill of 90% of the value of work actually executed on site provided the work has been executed to the satisfaction of the engineer within 30 days of submission of the detailed bill, invoice and supporting documents. 10% of the monthly running bill shall be retention money till accumulated retention money is 5% of awarded contract price. From the gross amount payable, recovery such as advances, 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; and

- (c) The amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor].

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

14.8 Delayed Payment

If the Contractor does not receive payment/certificate for acceptance of payment in accordance with the Clause 14.7 above, the Contractor shall be entitled to receive interest on the amount unpaid during the period of delay as per the Contract Data. This period of delay shall be deemed to commence from the first working day after 30 calendar days from the date of issue of the Interim Payment Certificate.

The claimed interest shall be payable to the Contractor only if it is determined by the Engineer that the delays are solely attributable to the Employer.

14.9 Payment of Retention Money

- 1) Employer shall release 50 % the retention money subject to the following:
 - i. Contractor has submitted Final Bill.
 - ii. Employer /Engineer has furnished the Taking Over Certificate.
- 2) Employer shall release balance 50 % the retention money subject to the following
 - i. Guarantee period (Defect liability period-DLP) as per contract has expired.
 - ii. Defect liability period shall be 1 (one) year from the date of taking over certificate.
 - iii. Contractor has furnished 'Discharge Certificate as per clause 14.12.
 - iv. Contractor has carried out the works required to be carried out by him during the period of Guarantee (DLP) and all expenses incurred by Employer on carrying out such works is included for adjustment from the Guarantee money refundable.

**14.10 Statement
at
Completion**

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

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

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 28 days from receipt of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

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

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

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

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

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

14.14 Cessation of Employer's Liability The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

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

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

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

- (a) If the Accepted Contract Amount was expressed in Local Currency only:
 - (i) The proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for

calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;

- (ii) Payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and
- (iii) Other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a) (i) above;
- (b) Payment of the damages specified in the Contract Data, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- (c) Other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (d) If any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (e) If no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

15. Termination by Employer

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

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

- (a) Fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct];
- (b) Abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract;
- (c) Without reasonable excuse fails:
 - (i) To proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension]; or
 - (ii) To comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it;
- (d) Subcontracts the whole of the Works or assigns the Contract without the required agreement;
- (e) Becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or

manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or

- (f) Gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - (i) For doing or forbearing to do any action in relation to the Contract; or
 - (ii) For showing or forbearing to show favour or disfavour to any person in relation to the Contract,

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

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

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

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

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

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

On termination of contract due to Contractor's default, the performance security shall be forfeited by encashing the bank guarantee and the balance work shall be got done independently without risk and cost of the failed Contractor.

15.3 Valuation at Date of Termination

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

15.4 Payment after Termination

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

- (a) Proceed in accordance with Sub-Clause 2.5 [Employer's Claims];
- (b) Withhold further payments to the Contractor until the 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 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) Recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.
- (d) 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 representation of the losses suffered by the Employer and are not by way of penalty.

15.5 Employer's Entitlement to Termination for Convenience

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

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

15.6 Corrupt or Fraudulent Practices

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

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

For the purposes of this Sub-Clause:

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

In addition to the provisions of this Sub-Clause, the Contractor is also bound by the provisions found under Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility.

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.

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

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

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the

above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

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

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]; and

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 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 agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

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

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the

Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

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

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

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

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

- (a) Return the Performance Security to the Contractor;
- (b) Pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release];

17. Risk and Responsibility

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

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

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

Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].

**17.2 Contractor's
Care of the
Works**

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

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

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

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

**17.3 Employer's
Risks**

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

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

17.4 Consequences of Employer's Risks

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

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

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

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

17.5 Intellectual and Industrial Property Rights

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

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

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

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

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

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.6 Limitation of Liability

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

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

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

17.7 Use of Employer's Accommodation/ Facilities

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

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

18. Insurance**18.1 General Requirements for Insurances**

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

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

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

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

Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

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

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

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

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

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

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

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

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

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

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

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 including transit insurances shall invariably be effected with an Indian Insurance Company.

18.2 Insurance for Works and Contractor's Equipment

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

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

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

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

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

defective condition due to a defect in its design, materials or workmanship;

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

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

18.3 Insurance against Injury to Persons and Damage to Property

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

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

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

- (a) Shall be effected and maintained by the Contractor as insuring Party;
- (b) Shall be in the joint names of the Parties;
- (c) Shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract; and
- (d) May however exclude liability to the extent that it arises from:
 - (i) The Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works;
 - (ii) Damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects; and
 - (iii) A cause listed in Sub-Clause 17.3 [Employer's Risks], except to the extent that cover is available at commercially reasonable terms.

18.4 Insurance for Contractor's

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and

Personnel expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

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

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

19. Force Majeure

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

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

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

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

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

- The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.
- Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
- 19.3 Duty to Minimise Delay**
- Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.
- A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.
- 19.4 Consequences of Force Majeure**
- If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]; and
 - (b) If the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].
- After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 19.5 Force Majeure Affecting Subcontractor**
- If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.
- 19.6 Optional Termination, Payment and Release**
- If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].
- Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:
- (a) The amounts payable for any work carried out for which a price is stated in the Contract;
 - (b) The Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the

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

- (c) Other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
- (d) The Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works site/ destination; and
- (e) The Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

19.7 Release from Performance

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

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

20. Claims, Disputes and Arbitration

20.1 Contractor's Claims

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

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

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

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

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

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

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

Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

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

If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer to the Dispute Board in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision].

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 Board

Disputes shall be referred to a DB for decision in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision]. The Parties shall appoint a DB by the date stated in the Contract Data.

The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a

professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

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

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

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Attachment 1 to these General Conditions of Depot Improvement Works Contract, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, 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 jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this 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 DB (including each member) shall expire when the discharge referred to in Sub-Clause 14.12 [Discharge] shall have become effective.

20.3 Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

- (a) The Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of Sub-Clause 20.2 [Appointment of the Dispute Board];
- (b) Either Party fails to nominate a member (for approval by the other Party), or fails to approve a member nominated by the other Party, of a DB of three persons by such date;
- (c) The Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date; or
- (d) The Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment;

then the appointing entity or official named in the Contract Data shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. 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.

20.4 Obtaining Dispute Board's Decision

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 certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

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

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

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. 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 DB's decision, then either Party may, within 28 days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give a Notice of Dissatisfaction to the other Party.

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 Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute 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.

If the DB 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 DB's decision, then the decision shall become final and binding upon both Parties.

20.5 Amicable Settlement

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

(a) Disputes shall be settled through two stages:

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

(b) Amicable Settlement / Conciliation:

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

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

The Conciliation shall be undertaken by one Conciliator selected from a panel of Conciliators maintained by the Employer. The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner.

(c) Amicable settlement / Conciliation Procedure:

The Employer shall maintain a panel of Conciliators, who shall be from serving or retired engineers of Government Departments, or of Public Sector Undertakings. Out of this panel, a list of three Conciliators shall be sent to the Contractor who shall choose one of them to act as Conciliator and conduct conciliation proceedings/ in accordance with "The Arbitration and Conciliation Act, 1996 and any amendments ", of India.

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

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

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

When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties. As far as possible, the conciliation proceedings should be completed within 60 days of the receipt of notice by the Conciliator.

(d) Termination of conciliation/Amicable settlement proceedings:

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

The conciliation proceedings shall be terminated:

- (1) by the signing of the settlement agreement by the parties on the date of agreement; or
- (2) by written declaration of the conciliator, after consultation with the parties, to the effect further efforts at conciliation are no longer justified, on the date of declaration; or
- (3) by a written declaration of the parties to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration; or by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration. Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties. The costs shall be borne equally by the parties unless settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

20.6 Arbitration

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

- (a) If the contract is with foreign contractors,

International arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules;
- (b) If the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country. The laws of the country mean "The Arbitration and Conciliation Act -1996" (as amended from time to time) and in accordance with this sub clause 20.6.

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

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

witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

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

**20.7 Failure to
Comply with
Dispute
Board's
Decision**

In the event that a Party fails to comply with a final and binding DB decision, 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 [Arbitration]. Sub-Clause 20.4 [Obtaining Dispute Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.

**20.8 Expiry of
Dispute
Board's
Appointment**

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 DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

- (a) Sub-Clause 20.4 [Obtaining Dispute Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply; and
- (b) The dispute may be referred directly to arbitration under Sub-Clause 20.6 [Arbitration].

Attachment 1 to General Conditions of Depot Improvement Works Contract

A General Conditions of Dispute Board Agreement

1. Definitions

Each "Dispute Board Agreement" is a tripartite agreement by and between:

- (a) The "Employer";
- (b) The "Contractor"; and
- (c) The "Member" who is defined in the Dispute Board Agreement as being:
 - (i) The sole member of the "DB" and, where this is the case, all references to the "Other Members" do not apply, or
 - (ii) One of the three persons who are jointly called the "DB" (or "Dispute Board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Attachment. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) The Commencement Date defined in the Contract;
- (b) When the Employer, the Contractor and the Member have each signed the Dispute Board Agreement; or
- (c) When the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Engineer. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

- (a) Experienced in the work which the Contractor is to carry out under the Contract;
- (b) Experienced in the interpretation of contract documentation; and

- (c) Fluent in the language for communications defined in the Contract.
- 4. General Obligations of the Member**
- The Member shall:
- (a) Have no interest financial or otherwise in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
 - (b) Not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
 - (c) Have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
 - (d) Not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
 - (e) Comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
 - (f) Not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
 - (g) Not while a member enters into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
 - (h) Ensure his/her availability for all site visits and hearings as are necessary;
 - (i) Become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
 - (j) Treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
 - (k) Be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).
- 5. General Obligations of the**
- The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation

Employer and the Contractor

with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) Be appointed as an arbitrator in any arbitration under the Contract;
- (b) Be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) Be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

- (a) A retainer fee per calendar month, which shall be considered as payment in full for:
 - (i) Being available on 28 days' notice for all site visits and hearings;
 - (ii) Becoming and remaining conversant with all project developments and maintaining relevant files;
 - (iii) All office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
 - (iv) All services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in

which the Member resigns or the Dispute Board Agreement is otherwise terminated.

- (b) A daily fee which shall be considered as payment in full for:
 - (i) Each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the Site, or another location of a meeting with the Other Members (if any);
 - (ii) Each working day on Site visits, hearings or preparing decisions; and
 - (iii) Each day spent reading submissions in preparation for a hearing;
- (c) All reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in subparagraph (b) of this Clause;
- (d) Any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the Contract Data shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a Site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing

charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7. Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 (a) - (d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

9. Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

PROCEDURAL RULES

Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the Site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

The timing of and agenda for each Site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of Site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.

Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each Site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

If any dispute is referred to the DB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:

- (a) Act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case; and
- (b) Adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

The Employer and the Contractor empower the DB, among other things, to:

- (a) Establish the procedure to be applied in deciding a dispute;
- (b) Decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it;
- (c) Conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules;
- (d) Take the initiative in ascertaining the facts and matters required for a decision;
- (e) Make use of its own specialist knowledge, if any;
- (f) Decide upon the payment of financing charges in accordance with the Contract;

- (g) Decide upon any provisional relief such as interim or conservatory measures; and
- (h) Open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.

The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

- (a) It shall convene in private after a hearing, in order to have discussions and prepare its decision;
- (b) It shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) If a member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision; unless:
 - (i) Either the Employer or the Contractor does not agree that they do so; or
 - (ii) The absent Member is the chairman and he/she instructs the other Members not to make a decision.

Section XI. Particular Conditions of Depot Improvement Works Contract

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

Part A - Contract Data

Conditions	Sub-Clause	Data
Employer's name and address	1.1.2.2 & 1.3	Metropolitan Transport Corporation, Chennai
Engineer's name and address	1.1.2.4 & 1.3	To be inserted.
Bank's name	1.1.2.11	KfW Development Bank("KfW")
Borrower's name	1.1.2.12	Government of Tamil Nadu
Time for Completion of the Works	1.1.3.3	<u>120 days from the Date of Agreement</u>
Defects Notification Period	1.1.3.7	730 days (2 Years).
Sections	1.1.5.6	<i>Not Applicable</i>
Electronic transmission systems	1.3	{Insert relevant e-mail ID}
Contractor's name and address	1.3	To be inserted after signing of the Contract
Governing Law	1.4	Chennai, Tamil Nadu, India
Ruling language	1.4	English
Language for communications	1.4	English
Time for Access to the Site	2.1	30 Days after Commencement Date
Engineer's Duties and Authority	3.1 (B)(ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of 10% shall require approval of the Employer.
Performance Security	4.2	The Performance Security will be in the form of an unconditional bank guarantee in the amount(s) of 10% percent of the Contract Price ("Performance Security").
Progress reports	4.21	Frequency of progress reports: <i>15 days</i> .
Normal working hours	6.5	8 hours per shift
Effective access to the Site	8.1(c)	<i>To be inserted by the Authority</i>

Conditions	Sub-Clause	Data
Delay damages for the Works	8.7 & 14.15(b)	0.33 % of the Contract Price per day.
Maximum amount of delay damages	8.7	10 % of the final Contract Price.
Provisional Sums	13.5.(b) (ii)	10%
Contract Price	14.1(b)	The Contractor shall pay all taxes, duties, levies, cess and fees required to be paid by him under the Contract except GST, and the Contract Price shall not be adjusted for any of these costs except as stated in provision related to Adjustments for Changes in Legislation
Total advance payment	14.2	10 % Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable. 5% at the time of signing of t Contract and 5% at the time of commencement of work.
Application for Interim Payment Certificates Copies of Statement	14.3	Two (2) soft (digital) copy(ies) and Two (2) hard (paper) copy(ies)
Percentage of Retention	14.3(c)	10% of the Invoice Value
Limit of Retention Money	14.3(c)	10% of the Accepted Contract Amount
Minimum Amount of Interim Payment Certificates	14.6	10% of the Accepted Contract Amount
Contractor's Bank Account	14.7	_____ [insert bank account details at the time of contract signing]
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	The Reserve Bank of India
Delayed Payment	14.8	RBI Bank Rate + 3%
Statement at Completion No. of Copies	14.10	Two (2) soft (digital) copy(ies) and Two (2) hard (paper) copy(ies)

Conditions	Sub-Clause	Data
Application for Final Payment Certificate No. of Copies	14.11	Two (2) soft (digital) copy(ies) and Two (2) hard (paper) copy(ies)
Maximum total liability of the Contractor to the Employer	17.6	<i>2 times of the accepted contract value.</i>
Periods for submission of insurance: a. evidence of insurance b. relevant policies	18.1	15 days 30 days
Maximum amount of deductibles for insurance of the Employer's risks	18.2(d)	<i>10%</i>
Minimum amount of third-party insurance per occurrence	18.3	<i>10%</i>
Date by which the DB shall be appointed	20.2	28 days after the Commencement date
The DB shall be comprised of	20.2	Three Members
List of potential DB sole members	20.2	<i>None</i>
Appointment (if not agreed) to be made by	20.3	<i>MTC</i>
Arbitration institution	20.6(a)	<i>As per applicable law in India.</i>
Arbitration rules	20.6(a)	the Arbitration and Conciliation Act, 1996
Place of arbitration	20.6	<i>Chennai.</i>

Section XII. Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

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Form 1. Letter of Acceptance

[Use letterhead paper of the Authority]

[Insert date]

To: *[Insert name and address of the Contractor]*

Subject: **Notification of Award Contract No. *[Insert contract number]***

This is to notify you that your Bid dated _____ *[Insert date]* for execution of the _____ *[Insert name of the contract and identification number, as given in the PC]* for the Accepted Contract Amount of _____ *[Insert contract price in numbers and words including code and name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by the undersigned Authority.

You are requested to furnish the Performance Security within twenty-eight (28) days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section X, Contract Forms, of the Bidding Documents.

Authorized Signature:

Name and Title of Signatory:

Name of Institution:

Attachment: Contract Agreement¹

¹ If the Authority cannot send the contract agreement together with the letter of acceptance, it must be sent electronically to the Supplier within a reasonable period of time not exceeding ten days; for the purpose of issuing the required Performance Guarantee, the supplier must be advised of the Contract date.

Form 2. Contract Agreement

THIS AGREEMENT made

the *[Insert number]* day of *[Insert: month]*, *[Insert: year]*.

BETWEEN

- (1) _____ *[Insert complete name of Authority]*, a/ an _____ *[Insert description of type of legal entity, for example, an agency of the Department of _____ of the State of _____ {Insert name of Country of Authority}, or corporation incorporated under the laws of _____ {Insert name of Country of Authority}]* and having its principal place of business at _____ *[Insert address of Authority]* (hereinafter called "the Authority"), and
- (2) _____ *[Insert name of Contractor]*, a corporation incorporated under the laws of _____ *[Insert: country of Contractor]* and having its principal place of business at _____ *[Insert address of Contractor]* (hereinafter called "the Contractor").

WHEREAS the Authority invited bids for certain Electric Buses and ancillary services, viz., _____ *[Insert brief description of Electric Buses and Services]* and has accepted a Bid by the Contractor for the supply of those Electric Buses and Services in the sum of _____ *[Insert Contract Price in words and figures, expressed in the Contract currency(ies)]* (hereinafter called "the Contract Price").

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
 - (a) The Letter of Acceptance;
 - (b) The Bid Submission Form and Appendix to Bid Submission Form (including the signed Declaration of Undertaking);
 - (c) The RFP in its entirety including all parts and sections, attachments, annexure, bidding forms and contract forms
 - (d) The Addenda Nos. _____ (if any);
 - (e) Section VIII. General Conditions of Bus Supply and O&M Service Contract (BSO&M-GC);
 - (f) Section IX. Particular Conditions of Bus Supply and O&M Service Contract (BSO&M-PC);
 - (g) Section X, General Conditions of Depot Improvement Works Contract (DIW-GC)
 - (h) Section XI: Particular Conditions of Depot Improvement Works Contract (DIW-PC)
 - (i) The Specification (including Schedule of Requirements and Technical Specifications);
 - (j) The completed Bidding Forms (including Price Schedules); and
 - (k) Any other document listed in GC as forming part of the Contract.

3. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Authority to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Authority to provide the Electric Buses and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Authority hereby covenants to pay the Contractor in consideration of the provision of the Electric Buses and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ *[Insert the name of the Contract governing law country]* on the day, month and year indicated above.

For and on behalf of the Authority²:

Signed: *[Insert signature]*

In the capacity of *[Insert title or other appropriate designation]*

In the presence of *[Insert identification of official witness]*

For and on behalf of the Contractor:

Signed: *[Insert signature of authorized representative(s) of the Contractor]*

In the capacity of *[Insert title or other appropriate designation]*

In the presence of *[Insert identification of official witness]*

[Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.]

² In cases where the Authority is different from the Beneficiaries of the Contract, it may be advisable to have authorized representatives from the Beneficiary Institutions sign as witnesses, accepting the Electric Buses to be supplied.

Form 3. Performance Security for Bus Supply and O&M Service Contract

Beneficiary: *[Insert name and Address of Authority]*

Date: *[Insert date of issue]*

PERFORMANCE 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 and address of Contractor, which in the case of a Consortium shall be the name and address of the Consortium]* (hereinafter called "the Applicant") has entered into Contract No. _____ *[Insert reference number of the contract]* dated _____ *[Insert contract date]* with the Beneficiary, for the supply of _____ *[Insert object of the contract and brief description of Electric Buses and related Services]* (hereinafter called "the Contract"). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required for _____ *[Insert percentage in words and figures]* % of the contract price.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of _____ *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of _____ *[Insert name of the Authority and the Authority's country]*.

[For guarantees issued in local currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to, for the account of _____ *[Insert name of the Authority and the Authority's country]*.

This guarantee shall expire not later than *[Insert expiry date]*⁴.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

³ This guarantee shall be issued in the contract currency only.

⁴ Pursuant to GC Clause 18.4 the guarantee shall be valid for at least 28 days from the date of contractual contract completion (including warranty obligations).

[As preferred option regarding guarantee rules insert⁵: 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.]

Place, date

Guarantor's authorized signature(s)

⁵ In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

Form 4. Performance Security for Depot Improvement Works

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

PERFORMANCE 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 and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. _____ *[Insert reference number of the contract]* dated _____ *[Insert contract date]* with the Beneficiary, for the execution of _____ *[Insert object of the contract and brief description of Works]* (hereinafter called "the Contract"). Furthermore we understand that, according to the conditions of the Contract, a performance guarantee is required for _____ *[Insert percentage in words and figures]* % of the contract price.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of _____ *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

[For guarantees issued in foreign currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to _____ *[Either insert the account on which payments are to be made with prior approval from KfW or, if no particular account is provided, insert instead:]* KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of _____ *[Insert name of the Purchaser and the Purchaser's country]*.

[For guarantees issued in local currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to _____ *[Insert the account on which payments are to be made]*, for the account of _____ *[Insert name of the Purchaser and the Purchaser's country]*.

This guarantee shall expire not later than *[Insert expiry date]*⁷.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

⁶ This guarantee shall be issued in the contract currency only.

⁷ The guarantee shall be valid for at least 28 days from the date of contractual contract completion (including warranty obligations).

[As preferred option regarding guarantee rules insert⁸: 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.]

Place, date

Guarantor's authorized signature(s)

⁸In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

Form 5. Advance Payment Security

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

ADVANCE PAYMENT 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 and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. _____ *[Insert reference number of the contract]* dated _____ *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called "the Contract"). Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of _____ *[Insert amount and currency in words and figures]*⁹, representing _____ *[Insert percentage in words and figures]* % of the contract price, is to be made against an advance payment guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of _____ *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

The advance payment guarantee shall come into force and effect as soon as the advance payment has been credited to the Applicant on its account. Minor deductions of the above-mentioned amount notably due to bank fees shall have no effect on the entry into force.

[For guarantees issued in foreign currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to _____ *[Either insert the account on which payments are to be made with prior approval from KfW or, if no particular account is provided, insert instead:]* KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of _____ *[Insert name of the Purchaser and the Purchaser's country]*.

[For guarantees issued in local currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to _____ *[Insert the account on which payments are to be made]*, for the account of _____ *[Insert name of the Purchaser and the Purchaser's country]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) per cent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the _____ *[Insert date]*, whichever is earlier. Consequently, any

⁹This guarantee must be issued in the contract currency only.

demand for payment under this guarantee must be received by us at this office on or before that date, by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

[As preferred option regarding guarantee rules insert¹⁰: 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.]

Place, date

Guarantor's authorized signature(s)

¹⁰In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

Form 6. Retention Money Security

Beneficiary: *[Insert name and Address of Purchaser]*

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 and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. _____ *[Insert reference number of the contract]* dated _____ *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the 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.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *[insert guarantee amount and currency in words and figures]*¹¹ 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 the Beneficiary needing to prove or show grounds for the demand or the sum specified therein.

The retention money guarantee shall come into force and effect as soon as the second half of the Retention Money has been credited to the Applicant on its account. Minor deductions of the above-mentioned amount notably due to bank fees shall have no effect on the entry into force.

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to _____ *[either insert the account on which payments are to be made with prior approval from KfW or, if no particular account is provided, insert instead:]* KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of _____ *[Insert name of the Purchaser and the Purchaser's country]*.

[For guarantees issued in local currency insert the following:

¹¹The Guarantor shall insert an amount representing the amount of 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 and denominated in the contract currency(ies) only.

In the event of any claim under this guarantee, payment shall be effected to _____
[Insert the account on which payments are to be made], for the account of _____
[Insert name of the Purchaser and the Purchaser's country].

This guarantee shall expire not later than _____ *[Insert expiry date]*¹².

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

[As preferred option regarding guarantee rules insert¹³: 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.]

 Place, date

 Guarantor's authorized signature(s)

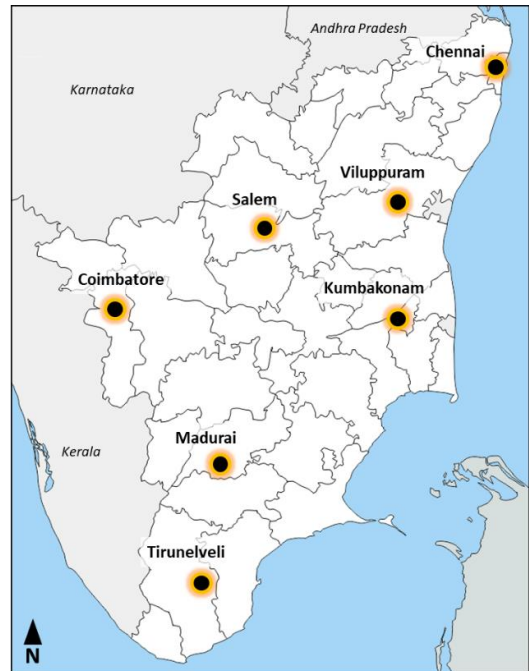
¹²Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in the Appendix to Bid. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to 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."

¹³In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of [Insert country of jurisdiction]. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

PART 4 – Project Details and Key RFP Provisions

Section XIII. Project Details

- a) Tamil Nadu is spread across a geographical area of 1.3 lakh square kilometres with a population of ~72 million people as per 2011 census. The Tamil Nadu Transport Department is responsible for regulating and operating intra-city bus transportation in major cities as well as inter-city and rural transport services in some regions. The Transport Department provides urban and mofussil bus services through seven State Transport Undertakings (STUs), collectively known as the Tamil Nadu State Transport Cooperation ("TNSTC").
- b) TNSTC moves more than 16.5 million commuters per day in entire Tamil Nadu. The STUs operates collective fleet of 21,000 diesel buses through 321 depots and over 100 workshops/other facilities, making it India's largest bus operator.
- c) In order to improve attractiveness, the Government of Tamil Nadu has planned to overhaul the state's delivery of bus transport by prioritising climate friendly modernisation and improved service quality of public bus services in major cities through fleet replacement and expansion, to cope with an increasing population and travel demand in the state.
- d) With this context, Government of Tamil Nadu has signed a project-specific loan and grant financing agreement with the KfW and German Ministry for Economic Cooperation and Development in August 2019. KfW is a German State-owned investment and development bank established in 1948 in Frankfurt, Germany. KfW is committed to improve economic, social and environmental living conditions across the globe. KfW will be providing the capital assistance to Govt of Tamil Nadu for procurement buses under the financial cooperation agreement.
- e) The financing agreement covers Inter-governmental Cooperation for "Climate-friendly Urban Mobility" programs through procurement of around 2200 Diesel buses and 500 Electric buses over a period of two years. The KfW has also extended financial assistance for development of depot infrastructure to support the modernised the bus based public transport system.
- f) As part of the Modernisation Plan, TNSTC has issued the RFP for centralised procurement of 100 (nos.) Low-Floor, Fully Built, AC, Pure Electric Buses for Metropolitan Transport Corporation (Chennai) Ltd and Charging Solution providing urban bus services in the city of Chennai, Tamil Nadu. It is the first Phase of Procurement of total 500 Pure Electric buses under the Modernisation Plan.
- g) The proposed buses are planned for urban city bus operations to improve accessibility for differently abled persons, elderly, children and women.



- h) The Institute of Road Transport (IRT) was established in 1976 under the Control of Government of Tamil Nadu and has been registered as a society under the Indian Societies Registration Act 1860. It functions as the institutional knowledge partner of the Transport Department. With regard to this project, it will be in charge of the procurement process as a procurement agency/ issuing agency on behalf of the Transport Department.

Section XIV. Key RFP Provisions

- a) The RFP is for Design, Manufacture and Supply of 100 (nos.) Low Floor, 12 metre. long, pure Electric, fully built, AC Buses and Charging Solution along with development of charging and other supporting infrastructure and Comprehensive Operation and Maintenance Service as per the bus specification provided in Part 2 of the RFP.
- b) The Contractor/ Successful Bidder shall be required to provide electric buses technology and bus charging solutions which is most suitable to support the average daily operation of the Electric Buses as per the provisions of the RFP. The Authority encourages energy efficient and cost-effective comprehensive electric bus technology solutions from the eligible bidders.
- c) The Contractor/ Successful Bidder shall also carry out Comprehensive Operations and Maintenance of electric buses and Charging Infrastructure for 9 years after deployment of all the buses ("Final Deployment") and provide the training support to MTC, Chennai, Staff and officials with regard to operation and maintenance of e-buses, battery management system and charging infrastructure during the Comprehensive Maintenance Period.
- d) The Authority shall adopt an online, single stage – Three Packets Bid System (Viz. Qualification, Technical and Commercial Bid), International Competitive Bidding (ICB) process. The interested and eligible bidders meeting pre-qualification and qualification criteria set forth in the RFP are requested to submit their duly signed bids as per the format and timeline specified in the RFP.
- e) The Bidders can submit their queries and suggestion pertaining to the RFP documents before and during the Pre-bid meeting.
- f) Consortium is permitted as per the provisions specified in the Part 3 and reiterated as follows;

Bidding Conditions for a Single Bidder and a Consortium

1. If the Bid is by a Single Bidder, the Bid needs to be submitted by only a Vehicle Manufacturer only, who is meeting the prescribed Qualification Criteria for Vehicle Manufacturer and who shall supply the Contracted Buses under this RFP ("Single Bidder").
2. If the Bid is through a Consortium, with maximum three (3) members are permitted to participate. The combinations of consortium members permitted are as follows.
 - a. Vehicle Manufacturer and a Bus Operator; (or)
 - b. Vehicle Manufacturer and an Energy Solution Provider (ESP); (or)
 - c. Vehicle Manufacturer, Bus Operator and Energy Solution Provider (ESP)
3. The Vehicle Manufacturer shall mandatorily be the Lead Member of the Consortium ("Lead Member").
4. The Vehicle Manufacturer and ESP can be Foreign Bidders, however, the Bus Operator shall mandatorily be a Domestic (Indian) firm.
5. The Vehicles Manufacturer shall be mandatorily the Lead Member of the Consortium ("Lead Member").

6. The Vehicle Manufacturer and ESP can be the Foreign Bidder however the Bus Operator shall be mandatorily a Domestic (Indian) firm.
7. The Bus Operator can be an independent entity or a Special Purpose Vehicle controlled by a Vehicle Manufacturer.
8. As used here, the expression "Control" means, with respect to the SPV of the Vehicle Manufacturer (i) the ownership of the Vehicle Manufacturer or its common shareholders, directly or indirectly (i.e. together with one or more of its subsidiary/ Holding companies), of at least 50% of the voting shares/ shareholding of the SPV in question OR (ii) the Vehicle Manufacturer has right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.
9. The Energy Solution Provider shall be a firm involved in the provision of Electric Vehicle Battery/ Battery Management System/ Charging solutions/ services for operation and maintenance of charging station or all comprehensive Energy Solution.
10. The ESP not meeting the conditions specified in sub-clause (5) above shall not be considered eligible as consortium members.
11. Bids of the non-eligible consortium members shall be summarily rejected.
12. Replacement in any of the Consortium members shall not be permitted throughout the Contract Period subject to the provision of the RFP and without prior approval of the Authority
13. The role and responsibility of any member must be commensurate with the technical/ financial capabilities that such member is contributing towards meeting the qualification criteria. Each consortium member is liable to contribute resources in terms of knowledge, skills and trained manpower commensurate with its role and responsibilities during the Contract Period.
14. The Consortium member shall enter into a Joint Bidding Agreement before submission of the Bid as per the format provided in 10 of Section IV the RFP. Consortium Members shall be jointly and severally liable for execution of the contractual obligations. Further the non-lead member of the Consortium shall issue a Power of Attorney in favour of the Lead Member.
15. The Bids of the Single Bidders and the Consortiums not meeting the above requirements shall be summarily rejected by the Authority.
16. The Electric Buses shall be operated as Town Buses or Urban Buses in the city of Chennai for Average daily operation of 200 km. The electric buses shall be deployed and Operated from Central and Adyar depots of MTC. The opportunity for charging of the electric buses shall arise 1) during the night and 2) maximum 30 minutes during the day at depot or termini which excludes to and fro travelling time between charging location and Bus Stations/ termini.
17. The Authority shall assure 72,000 km per year per ("Annual Assured km") Contracted Bus for O&M Service during the O&M Service Period. The Authority shall make payment to the Contractor based on Annual Assured km only.

18. The Bidder quoting lowest Total Prices as provided in the RFP, for 1) supply of Buses and Charging Solution (inclusive of all taxes, except GST, insurance and transportation cost, extended/additional warranty period and any other cost applicable for the delivery of buses), 2) Cost of Depot Improvement Works and 3) Aggregated Cost of Bus Operation and Comprehensive Maintenance Service for 9 years shall be considered the Preferred Bidder for Award of the Contract for all the Buses.
19. There shall be no split in the Contract and the Tendered Quantity between two Bidders.
20. The Letter of Acceptance (LOA) shall be issued by the Director IRT to the Successful Bidder for the Buses to be supplied to MTC, Chennai.
21. The Successful Bidder shall be required to submit Performance Security in form of Bank Guarantee in favour of Managing Director of MTC, Chennai as provided in the of the RFP.
22. The Comprehensive Supply, works and O&M service Contract will be signed between the Successful bidder and Managing Director of MTC, Chennai. After signing of the above Contract, the Managing Director of MTC, Chennai shall issue the Purchase order to the Successful Bidder/ Contractor.
23. The Contractor shall be responsible in achieving minimum energy efficiency ("Assured Energy Efficiency") upto 1.3 KWh/ km which shall be determined during the Complete Bus Warranty Period and Comprehensive Maintenance Period and submit the results as part of the monthly report for Comprehensive Operation and Maintenance Period of buses.

In addition to above, the Contractor/Successful Bidder shall be required to submit the test result for the awarded Buses measuring energy consumption in Urban Cycle as per AIS 039 published by Ministry of Roads Transport and Highways (MoRTH), Govt of India. The above tests shall be conducted and certified by ARAI, CIRT or another equivalent institute specified in the CMVR to validate energy efficiency of the electric buses/vehicles being offered under this RFP by the Contractor. Such submission shall be made strictly at the time of the Prototype Inspection of buses awarded to the Contractor(s) /Successful Bidder.

The Authority shall consider the Assured Energy Efficiency value as per point (A) above or the energy consumption test value obtained as per AIS 039 as mentioned in the paragraph above, whichever is higher.

Upon non-submission of the test result as per AIS 039, the Authority shall not approve the Prototype Buses.

24. Sub-Contracting during Contract Period by a Single Bidder for the activities of 1) Bus Operation and Maintenance of Buses and 2) Charging Solution is not permitted.
25. The Single Bidder and Consortium shall be permitted for Subcontracting of Depot Improvement works to the entity acceptable to the Authority during the Contract Period.
26. The Operator shall develop bus charging infrastructure and other support infrastructure as part of Depot Improvement Works prior to deployment of the Buses.

The Authority shall make milestone-based payment to the Operator as specified in the RFP.

27. The Authority provide Adyar and Central Depots at Chennai (Collectively termed as E- Bus Support Infrastructure) for maintenance, parking and charging of e-buses.
28. The Contractor shall, at its own cost, operate and maintain the Electric Infrastructure at E- Bus Support Infrastructure.
29. The Contractor shall bear entire cost of battery replament in the Contracted Buses as per the provisions of the RFP.
30. The Contract Period shall include Completion period for 1) Bus Inspection and Supply and 2) Depot Improvement Works and O&M Service Period of period of 9 years after final deployment of buses.
31. **Warranty period:** The Warranty Period shall include Complete Bus Warranty Period and Extended/ Additional Warranty Period for key components as specified in the GC 28.3
32. The buses shall be delivered at the Designated Location for Delivery specified in the Schedule 1 - List of Electric Buses and Delivery Schedule of Section VII of the RFP
33. The Contractor/ Successful Bidder shall be required to submit invoice as per the payment terms provided in GC 16.1of the RFP towards supply of Buses and Comprehensive Maintenance Period to MTC, Chennai. The MTC Chennai, after verification the Invoice amount and calculation of deductible Liquidated Damages pursuant to the provisions of the RFP from the submitted invoices, shall release the Payment Advisory to the PIU/TDFC in Chennai. The payment shall be released to the Contractor/ Successful Bidder by the PIU/TDFC within the time period specified in the GC 16.1 of the RFP after due deduction of applicable Liquidated Damages and other applicable statutory deductions notified by competent Authority from time to time such as Tax Deduction at Source or Withholding Tax for a Foreign based Contractor etc.
34. The Authority shall be required to obtain “No Objection” approvals from KfW at following stages of bidding process:
 - a) Issuance of Tender Notice
 - b) Issuance of RFP
 - c) Opening Technical and Price Bids
 - d) Technical and Price Bid Evaluation Process
 - e) Bid Evaluation reports
 - f) Request for pre-award discussions with the next ranked Bidder and for cancellation of the Tender Process with appropriate justification and proposal for further action.
 - g) Prior to Award of Contract, the draft Contract and
 - h) If applicable, prior to its signature, any subsequent Contract amendments.

In order to obtain No Objection or comply with the “*Guidelines for Procurement Guidelines for the Procurement of Consulting Services, Works, Plant, Electric Buses and Non-Consulting Services in Financial Cooperation with Partners, 2021*” published by KfW, the Authority may take corrective actions including but not limited to rejection of Bid(s) fully or part thereof and/or annul the award of contract to Successful Bidder and/or annul the bidding process fully or part thereof.