

**Contract** NGNE-01:- Detailed Design Consultancy for Design of 25 kV Overhead Equipment (OHE) system and Power Supply & SCADA for both Elevated Line of Aqua line extension Corridor of Noida Metro Rail Project.

## **GENERAL CONDITIONS OF CONTRACT**

**AND**

## **SPECIAL CONDITIONS OF CONTRACT**

## CONTRACT No. NGNE-01

### GENERAL CONDITIONS OF CONTRACT (GCC)

#### 1. Definitions

**The following words and expressions shall have the meanings assigned to them except where the context otherwise requires:**

- (i) "Project" means the project/work named in Special Conditions of Contract.
- (ii) "Services" means the services to be performed by the Detailed Design Consultant pursuant to this contract.
- (iii) "Client" means the Noida Metro Rail Corporation Limited (also referred to as NMRC) which expression shall also include their legal successors and permitted assigns.
- (iv) "Detailed Design Consultant" (DDC) means the party or the group/construction named in the Agreement, who has to perform the services, and which expression shall include his/their legal successors and permitted assigns.
- (v) "Sub - Contractor" means the sub-consultant appointed by Consultant with the prior approval of the employer and in accordance with the procedure described in Special Conditions of Contract.
- (vi) "Member", in case the Consultant comprises more than one entity means any of the entities. "Members" means all the entities.  
  
"Member-in-Charge" means the Member authorised to act on the Members' behalf in exercising all the Consultant's rights and obligations towards the Client under their contract.
- (vii) "Party" means NMRC or DDC as the case maybe and "parties" means both of them.
- (viii) "Third party" means any other person or entity as the context requires.
- (ix) "Contract" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender and other documents which are listed in the Contract Agreement or in the Letter of Acceptance.
- (x) "Employer's Representative" means any of its officers nominated by NMRC and notified from time to time, to DDC.
- (xi) "Engineer" means the person(s)-in-charge appointed by NMRC to supervise the detailed design consultancy works or any of its officers nominated by NMRC and notified from time to time.
- (xii) "Day" means the period between any one midnight and the next.
- (xiii) "Month" means a period of one month according to the Gregorian calendar commencing with any day of the month.
- (xiv) "Rupees" means the currency of India (₹), and shall be the currency used for the

Project.

## **2. Interpretation**

- (i) The headings in the Agreement shall not be used in its interpretation.
- (ii) The singular includes the plural, the masculine includes the feminine, and vice-versa where the context requires.

If there is a conflict between provisions of the Agreement, the last to be written chronologically shall prevail, unless otherwise specified in the Service Agreement - SCC.

## **3. Obligations of DDC**

### **3.1 Scope of Services to be performed by the DDC**

- (i) DDC shall perform Services relating to the Project. The Scope of the Services is as stated in the tender documents.
- (ii) DDC shall exercise reasonable skill, care and diligence in the performance of his obligations under the Agreement.
- (iii) Where the Services include the co-ordination between the DDC and other consultants and contractors employed on the Project, the DDC shall provide such co-ordination. The DDC shall obtain, co-ordinate and submit to the Employer's Representative for his information and approval all details, drawings, quantities, specifications arising from such co-ordination with others. Such co-ordination will take place throughout the period of the Services.

### **3.2 Performance Guarantee**

As stated in the 'Instruction to Tenderers' the DDC shall provide NMRC with a Performance Guarantee in the form of a Bank Guarantee provided by a Scheduled Commercial Bank based in India that is acceptable to NMRC. The Performance Guarantee shall remain valid up to 6 months beyond the defect liability period after 'the date of completion as mentioned in the completion certificate' OR 'the date on which all the stations/structures /buildings on the section/corridor are put to use for fare paying public and E&M systems are tested and put to use' whichever is later. If the commissioning date is extended, for whatsoever reason, the Bank Guarantee shall be suitably extended.

NMRC reserves the right to forfeit the performance guarantee amount, in the event of termination of the Services in accordance with Clause 18(ii) or (iii).

In the event of any defect coming to the notice of NMRC within the period of 12 months from 'the date of completion as mentioned in the completion certificate' OR 'the date on which all the stations/structures /buildings on the section/corridor are put to use for fare paying public and E&M systems are tested and put to use', whichever is later and in the eventuality of the DDC failing to rectify the same, NMRC will forfeit the amount of the Performance Guarantee.

## **4. Change in Constitution**

- (i) DDC shall promptly notify NMRC of any changes in the constitution of the DDC. It

shall be open for NMRC to terminate the Agreement upon death, retirement, insanity or insolvency of any person being the proprietor/partner in the DDC, or on the addition or introduction of a new partner managing the Project for the DDC without the previous approval in writing of NMRC. But in absence of and until its termination by NMRC as aforesaid, this Agreement shall be in full force and effect, notwithstanding any changes in the constitution of the firm by death, retirement, insanity or insolvency of any of its proprietors/partners or addition or introduction of any new partners. In case of death or retirement, the surviving or remaining partners of the firm shall be jointly and severally liable for the due and satisfactory performance of all terms and conditions of the Agreement, and likewise on the addition of a new partner, the latter will also become jointly and severally liable.

## **5. Information**

- (i) NMRC shall within a reasonable time give to DDC, free of cost, all information which he is able to obtain and which may pertain to the Services.

## **6. Decisions**

On all matters properly referred to it in writing by DDC. NMRC shall give a decision in writing within a reasonable time.

## **7. Assistance**

NMRC shall assist DDC in:

- (i) Providing unobstructed access wherever it is required for the Services.
- (ii) Providing access to other organisations for collection of information.

## **8. Supply/ Replacement of Personnel**

The qualifications and experience of the personnel who are sent by DDC to work on the project shall be acceptable to NMRC. In case NMRC is not satisfied with the performance of any personal, the same shall be replaced on NMRC's request with a person acceptable to NMRC.

## **9. Representatives**

For the administration of the Agreement the DDC shall designate the official or individual to be his representative.

## **10. Changes in Personnel**

If it is necessary to replace any person of DDC, the latter shall immediately arrange for replacement by a person of comparable competence.

## **11. Liability of DDC to NMRC**

DDC shall only be liable to pay compensation to NMRC arising out of or in connection with the Agreement if a breach of Contract is established against him.

Such compensation shall be limited to the amount specified for Professional indemnity

Insurance.

**12. Duration of Liability**

DDC shall not be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on him before the expiry of the relevant period stated in Special Conditions of Contract, or such earlier date as may be prescribed by law.

**13. Agreement Effective Date**

The Contract shall come into effect from the date of issue of the Letter of Acceptance or Employer's Notice to Proceed.

**14. Commencement and Completion**

The Services shall be commenced and completed at the times or within the periods stated in Special Conditions of Contract subject to extensions in accordance with the Agreement.

**15. Modifications**

The Contract can be modified in writing on application by either party only by written agreement of DDC and NMRC.

**16. Delays and Liquidated Damages**

16.1 Time is the essence of the Contract. It shall be the bounden duty of the DDC to strictly adhere to the time for performance of various services indicated in the Contract. In case of delays without valid reason the DDC shall be liable to pay liquidated damages as given in SCC. The maximum limit of Liquidated Damages shall be 10% of the Fixed Lump Sum Price of the Contract

16.2 Liquidated damages shall be imposed as described in Special Conditions of Contract.

**17. Exceptional Circumstances**

If circumstances arise for which the DDC is not responsible and which make it impossible for him to perform in whole or in part the Services in accordance with the Contract, he shall promptly despatch a notice to NMRC.

In these circumstances if certain Services have to be suspended, the time for their completion shall be extended until circumstances no longer apply plus a reasonable period not exceeding 07 days for resumption of them.

**18. Abandonment, Suspension or Termination by Notice of NMRC**

(i) NMRC may suspend all or part of the Services or terminate the Agreement by notice of at least 30 days to DDC who shall immediately make arrangements to stop the Services and minimise expenditure.

(ii) If NMRC considers that DDC is not discharging his obligations NMRC can inform the DDC by notice stating grounds for the notice. If a satisfactory reply is not received within 07 days of receipt of the notice by DDC NMRC can by further notice terminate the Agreement provided that such further notice is given within 30 days of the NMRC's

former notice.

- (iii) If DDC is adjudged a bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a breach of the Agreement, then NMRC may terminate the Services of the DDC as per the procedure given in Clause 18.1 (ii).

NMRC may complete the project by whatever method may be deemed expedient and the DDC shall not be entitled to receive any further payment.

## **19. Rights and Liabilities of the Parties**

- (i) Termination of the Agreement shall not prejudice or affect the accrued rights or claims and liabilities of either party.

## **20. Payment to the DDC**

NMRC shall pay the Contract Price (which shall cover the sum total of all costs incurred by the DDC as set out in Special Conditions of Contract) to the DDC in stage payments for the performance of services as described in **Financial Proposal (Bill of Quantities)** of the tender documents. GST shall be reimbursed to the DDC as applicable.

## **21. Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, NMRC shall issue necessary clarification or instruction to the DDC, and the priority of the documents shall be as follows:

**The Contract Agreement;**

**The Letter of Acceptance;**

**Notice Inviting Tender;**

**Instruction to Tenderers;**

**Scope of Work;**

**The Special Conditions of Contract;**

**The General Conditions of Contract;**

**The Payment Schedules;**

**The DDC's Proposal; and**

**Any other document forming part of the Contract.**

## **22. Time for Payment**

Amounts due to the DDC will be paid promptly.

**23. Currency of Payment**

All payments shall be made in Indian Rupees.

**24. Disputed Invoices**

If any item or part of an item in an invoice submitted by the DDC is contested by NMRC, then NMRC shall give prompt notice with reasons and shall not delay payment on the balance of the invoice.

**25. Languages and Law**

In SCC, there is stated the language or languages of the Agreement, the ruling language and the law to which the Agreement is subject.

**26. Assignment and Sub-Contracts**

- (i) The DDC shall not, without the written consent of NMRC, assign the benefits from the Agreement other than money.
- (ii) (The DDC shall not assign obligations under the Agreement (to Sub-Consultant / Sub-Contractors) without the written consent of NMRC.
- (iii) The DDC shall not without the written consent of NMRC initiate or terminate any sub-contractor for performance of all or part of the Services.

**27. Copyright**

The copyright of all documents and drawings prepared by the DDC in performance of the Services under the Agreement shall be vested in NMRC. Provided that the DDC may retain copies of the documentation prepared by them and may use and adapt the contents of such documentation for his own use.

**28. Conflict of Interest**

Unless otherwise agreed in writing by NMRC, the DDC and his personnel shall have no interest in nor receive remuneration in connection with the Project except as provided for in the Agreement.

The DDC shall not engage in any activity that might conflict with the interests of NMRC under the Agreement.

**29. Notices**

Notices under the Agreement shall be in writing and will take effect from receipt at the address stated in the Agreement. Delivery can be by hand or facsimile message against a written confirmation of receipt or by registered letter or by telex subsequently confirmed by letter.

**30. Publication**

Unless otherwise specified in the Service Agreement, DDC, either alone, or jointly with others, can publish material relating to the Services. Publication shall be subject to approval

by NMRC, if it is within two years of completion or termination of the Services.

### **31. Claims for Loss or Damage**

Subject to Clause 11, any claim for loss or damage arising out of breach or termination of the Agreement shall be agreed between NMRC and the DDC, failing which the same shall be referred to arbitration in accordance with Clause 33.

### **32. Taxes and Duties**

The DDC and their personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Laws, the amount of which shall be deemed to have been included in the Contract Price except GST which shall be reimbursed as applicable.

### **33. Claims, Disputes, Conciliation and Arbitration**

#### **33.1 Procedure for Claims**

If the DDC intends to claim any additional payment under any clause of these Conditions or otherwise, the DDC shall give notice to NMRC as soon as possible and in any event within 28 days of the start of the event giving rise to the claim. The DDC 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 DDC shall keep such contemporary records as may be necessary to substantiate any claim. Without admitting NMRC's liability, NMRC shall on receipt of such notice, inspect such records, monitor the record-keeping and/or may instruct the DDC to keep further contemporary records. The DDC shall permit NMRC to inspect all such records, and shall (if instructed) submit copies to NMRC.

Within 28 days of such notice, or such other time as may be agreed by NMRC, the DDC shall send to NMRC a fully detailed claim which includes full supporting particulars of the basis of the claim and 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) DDC shall send further interim claims at monthly intervals, giving the accumulated amount claimed, and such further particulars as NMRC may reasonably require; and
- c) the DDC 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 DDC and approved by NMRC.

If DDC fails to comply with this Sub-Clause, he shall not be entitled to claim any additional payment.

#### **33.2 Payment for Claims**

NMRC shall pay the Contract Price (which shall cover the sum total of all costs incurred by the DDC as set out in Special Conditions of Contract) to the DDC in partial payments on monthly basis for the performance of services as described in Volume 4 (Financial



Packages) of tender documents. The GST shall be reimbursed to the DDC on actual on submission of documentary proof of evidence of payment to the government agencies.

### **33.3 No legal action till Dispute Settlement Procedure is exhausted.**

Any and all Disputes shall be settled in accordance with the provisions of Clause 33. No action at law concerning or arising out of any Dispute shall be commenced unless and until all applicable Dispute resolution procedures set out in Clause 33 shall have been finally exhausted in relation to that Dispute or any Dispute out of which that Dispute shall have arisen with which it may be or may have been connected.

### **33.4 Notice of Dispute**

For the purpose of Sub-Clause 33.5, a Dispute shall be deemed to arise when one party serves on the other party a notice in writing (hereinafter called a "Notice of Dispute") stating the nature of the Dispute provided that no such notice shall be served later than 28 days after the date of issue of Performance Certificate by NMRC.

### **33.5 Two Stages for Dispute Resolution**

Disputes shall be settled through two stages:

- a) Conciliation procedures as established by "The Arbitration and Conciliation Act-1996" & amended by the Arbitration & Conciliation ( Amendment ) Act, 2015 and any statutory modification or re-enactment thereof and in accordance with this Clause. In the event this procedure fails to resolve the Dispute then;
- b) Arbitration procedures undertaken as provided by "The Arbitration and Conciliation Act -1996" & amended by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof and in accordance with this Clause.

### **33.6 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.

### **33.7 Conciliation Procedure**

- a) NMRC 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 DDC who shall choose one of

them to act as Conciliator and conduct conciliation proceedings in accordance with “The Arbitration and Conciliation Act, 1996” of India & amended by the Arbitration & Conciliation ( Amendment ) Act, 2015 and any statutory modification or re-enactment thereof.

There will be no objection if conciliator so nominated is a serving employee of NMRC who would be Deputy HOD level officer and above.

NMRC and the DDC shall in good faith co-operate with the Conciliator and, in particular, shall endeavour to comply with requests by the Conciliator to submit written materials, provide evidence and attend meetings.

Each party may, on his own initiative or at the invitation of the Conciliator, submit to the Conciliator suggestions for the settlement of the dispute.

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

If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the Conciliator may draw up, or assist the parties in drawing up, the settlement agreement. When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties. As far as possible, the conciliation proceedings should be completed within 60 days of the receipt of notice by the Conciliator.

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

### **33.8 Termination of Conciliation Proceedings**

The conciliation proceedings shall be terminated:

- a) by the signing of the settlement agreement by the parties on the date of agreement; or
- b) by written declaration of the conciliator, after consultation with the parties, to the effect further efforts at conciliation are no longer justified, on the date of declaration; or
- c) by a written declaration of the parties to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration; or
- d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration.

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.

### **33.9 Arbitration**

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

- a) Only such dispute(s) or difference(s) in respect of which notice has been made under Clause 33.1 but could not be settled through Conciliation, together with counter claims or set off, given by NMRC, shall be referred to arbitration. Other matters shall not be included in the reference.
- b) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by Managing Director, Noida Metro Rail Corp. Rail Limited, Noida (MD/NMRC).
- c) The disputes so referred to arbitration shall be settled in accordance with the Indian Arbitration & Conciliation Act, 1996 & amended by the Arbitration & Conciliation ( Amendment ) Act, 2015 and any statutory modification or re-enactment thereof.

Further, it is agreed between the parties as under:

33.9.1 Number of Arbitrators: The arbitral tribunal shall consist of:

- i) Sole Arbitrator in cases where the total value of all claims in question added together does not exceed Rs. 2.00 crores;
- ii) 3 (Three) arbitrators in all other cases.

33.9.2 Procedure for Appointment of Arbitrators: The arbitrators shall be appointed as per following procedure:

- i) In case of Sole Arbitrator: Within 60 days from the day when a written and valid demand for arbitration is received by MD/NMRC, NMRC will forward a panel of 03 names to the DDC. The DDC shall have to choose one Arbitrator from the panel of three, to be appointed as Sole Arbitrator within 30 days of dispatch of the request by NMRC. In case the DDC fails to choose one Arbitrator within 30 days of dispatch of the request of NMRC then MD/NMRC shall appoint anyone Arbitrator from the panel of 03 Arbitrator as sole Arbitrator.
- ii) In case of 3 Arbitrators:
  - a) Within 60 days from the day when a written and valid demand for Arbitration is received by MD/NMRC, NMRC will forward a panel of 5 names to the DDC. The DDC will then give his consent for any one name out of the panel to be appointed as one of the Arbitrators within 30 days of dispatch of the request by NMRC.

- b) NMRC will decide the second Arbitrator. MD/NMRC shall appoint the two Arbitrators, including the name of one Arbitrator for whom consent was given by the DDC, within 30 days from the receipt of the consent for one name of the Arbitrator from the DDC. In case the DDC fails to give his consent within 30 days of dispatch of the request of NMRC then MD/NMRC shall nominate both the Arbitrators from the panel.
- c) The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties out of the panel of 05 Arbitrators provided to the DDC or from the larger panel of Arbitrators to be provided to them by NMRC at the request of two appointed Arbitrators ( if so desired by them ) and who shall act as Presiding Arbitrator. In case of failure of the two appointed Arbitrators to reach upon consensus within a period of 30 days from their appointment, then, upon the request of either or both parties, the Presiding Arbitrator shall be appointed by the Managing Director / NMRC, Noida.
- d) If one or more of the Arbitrators appointed as above refuses to act as Arbitrator, withdraws from his office as Arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as Arbitrator for any reason whatsoever or dies or in the opinion of the MD/NMRC fails to act without undue delay, the MD/NMRC shall appoint new Arbitrator /Arbitrators to act in his/their place except in case of new Presiding Arbitrator who shall be chosen following the same procedure as mentioned in para (ii)(c) above. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous Arbitrator(s).
- e) NMRC at the time of offering the panel of Arbitrator(s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrators nominated in the panel along with their professional experience, phone nos. and addresses to the DDC.

33.9.3 Qualification and Experience of Arbitrators (to be appointed as per sub-clause 33.9.2 above): The Arbitrators to be appointed shall have minimum qualification and experience as under:

**Arbitrator shall be;**

a Working / Retired Officer (not below E-8 grade in a PSU with which NMRC has no business relationship) of any discipline of Engineering or Accounts / Finance department, having experience in Contract Management of Construction Contracts; or

a Retired Officer (retired not below the SAG level in Railways ) of any Engineering Services of Indian Railways or Indian Railway Accounts Service, having experience in Contract Management of Construction Contracts; or a Retired Officer who should have retired more than 3 years previously from the date of appointment as Arbitrator (retired not below E-8 grade in NMRC or a PSU with which NMRC has a business relationship) of any Engineering discipline or Accounts / Finance department, having experience in Contract Management of Construction/ Consultancy Contracts or retired judge of any High Court or Supreme Court of India or reputed Chartered Accountant & should be member of ICAI, New Delhi. No person other than the persons appointed as per above procedure and having above qualification and experience shall act as Arbitrator.

- 33.9.4 No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defense thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.
- 33.9.5 Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the Engineer for the purpose of obtaining his decision. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. Neither party shall be limited in the proceedings before such arbitrators to the evidence nor did arguments previously put before during settlement through Conciliation proceedings.
- 33.9.6 It is agreed by both the Parties that in the cases where Arbitral Tribunal is consist of sole Arbitrator, their disputes shall be resolved by fast track procedure specified in sub-section (3) of 29B of the Arbitration and Conciliation ( Amendment ) Act , 2015 or as amended up to date.
- 33.9.7 If the contractor(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Employer/Engineer that the final bill is ready for signature of the contractor(s), he/they will be deemed to have waived his/their claim(s) and NMRC shall be discharged and released of all liabilities under the contract in respect of these claims.
- 33.9.8 Arbitration proceedings shall be held at Noida, India and the language of the arbitration proceedings and that of all documents and communications between the parties shall be in English.
- 33.9.9 The Arbitral Tribunal should record day to day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements. All arbitration awards shall be in writing and shall state item wise, the sum and detailed reasons upon which it is based. A model Time Schedule for conduct of Arbitration proceedings in a period of 180 days / 365 days will be made available to Arbitral tribunal for their guidance. Both the Parties should endeavor to adhere to time schedule for early finalization of Award.
- 33.9.10 The award of the sole Arbitrator or the award by majority of three Arbitrators as the case may be shall be binding on all parties. Any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
- 33.9.11 A party may apply for correction of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a tribunal and interpretation of specific point of award to tribunal within 60 days of the receipt of award.
- 33.9.12 A party may apply to tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

### **33.10 Interest on Arbitration Award**

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

### **33.11 Cost of Conciliation / Arbitration**

The fees and other charges of the Conciliator / Arbitrators shall be as per the scales fixed by NMRC from time to time irrespective of the fact whether the Arbitrator(s) is / are appointed by NMRC or by the Court of law unless specifically directed by Hon'ble Court otherwise on the matter, and shall be shared equally by NMRC and the DDC. However, the expenses incurred by each party in connection with the preparation, presentation will be borne by itself.

### **33.12 Jurisdiction of Courts**

Where recourse to a Court is to be made in respect of any matter, the court at Noida shall have the exclusive jurisdiction to try all disputes between the parties.

### **33.13 Suspension of Work on Account of Arbitration**

The reference to Conciliation / Arbitration shall proceed notwithstanding that the Works shall not then be or be alleged to be complete, provided always that the obligations of NMRC, NMRC and the DDC shall not be altered by reasons of arbitration being conducted during the progress of the Works. Neither party shall be entitled to suspend the work or part of the work to which the dispute relates on account of arbitration and payments to the DDC shall continue to be made in terms of the Contract.

## **34. Force Majeure**

If, at any time during the currency of the Contract, the performance in whole or in part by either party of any obligation under this Contract shall be prevented or delayed by reason of any war, hostilities, invasion, acts of public or foreign enemies, rebellion, revolution, insurrection, civil commotion, sabotage, large scale arson, floods, earthquake, large scale epidemics, nuclear accidents, any other catastrophic unforeseeable circumstances, quarantine restrictions, any statutory rules, regulations, orders or requisitions issued by a Government department or competent authority or acts of God (hereinafter referred to as "event") then, provided notice of the happening of such an event is given by either party to the other within 21 days of the occurrence thereof.

Neither party shall by reason of such event be entitled to terminate the Contract or have claim for damages against the other in respect of such non-performance or delay in performance.

The obligations under the Contract shall be resumed as soon as practicable after the event has come to an end or ceased to exist.

If the performance in whole or part of any obligation under the Contract is prevented or delayed by reason of the event beyond a period mutually agreed to if any, or 90 days, whichever is more, either party may at its option terminate the Contract.

In case of doubt, or dispute, whether a particular occurrence should be considered an "event" as defined under this clause, the decision of the Engineer shall be final and binding.

Works that have already been measured shall be paid for by the Employer even if the same is subsequently destroyed or damaged as a result of the event. The cost of rebuilding or replacing any work that has been measured shall be borne by the Employer.

If the Contract is terminated under this Clause, the Consultant shall be paid fully for the work done which has been destroyed or damaged before its measurement. The Employer shall

have the option to take over any plant and material lying at site, at rates provided for in the Contract, failing that, as per rates, which are determined to be fair and reasonable by the Engineer.

If neither party issues notice regarding the event within 21 days of its occurrence, the said event shall be deemed not to have occurred and the Contract will continue to have effect as such.

**35. Detailed Design Consultant's Warranty of Design**

- (i) The DDC shall be fully responsible, for the suitability, adequacy, integrity, durability and practicality of the DDC's proposal.
- (ii) The DDC warrants that the DDC's Proposals meet NMRC's Requirements and is fit for the purpose thereof. Where there is any inadequacy, insufficiency, impracticality or unsuitability in or of NMRC's Requirements or any part thereof, the DDC's Proposal shall take into account, address or rectify such inadequacy, insufficiency, impracticality or unsuitability at DDC's own cost.
- (iii) The DDC warrants that the Works have been or will be designed to the highest standards available using proven up-to-date good practice.
- (iv) The DDC shall indemnify NMRC against any damage, expense, liability, loss or claim, which NMRC might incur, sustain or be subject to arising from any breach of the DDC's design responsibility and/or warranty set out in this Clause.
- (v) The DDC further specifies and is deemed to have checked and accepted full responsibility for the DDC's Proposal and warrants absolutely that the same meets NMRC's Requirements.
- (vi) Notwithstanding that such design may be or have been prepared, developed or issued by NMRC, any of DDC's consultants, his sub Consultants and/or his qualified personnel/persons or cause to be prepared, developed or issued by others.
- (vii) Notwithstanding any warranties, guaranties and/or indemnities that may be or may have been submitted by any other person.
- (viii) Notwithstanding that the same have been accepted by NMRC.

The DDC shall be fully responsible for the drawings, designs etc. & preparing, developing and coordinating all design Works to enable that part of the Works to be constructed and/or to be fully operational in accordance with the NMRC's requirements.

No claim for additional payment or extension of time shall be entertained and/or the DDC shall not be relieved from any obligation/liability under the Contract, for any delay, suspension, impediment to or adverse effect upon the progress of the Works due to any mistake, inaccuracy, discrepancy or omission in or between the DDC's Definitive Design and the final design, or any failure by the DDC to prepare any Design Data or submit the same to NMRC in due time and the DDC shall promptly make good any such defect at his own cost.

### **36. Professional Indemnity Insurance (PII)**

The DDC shall effect and maintain professional Indemnity Insurance(PII) with AOA (any one accident) limit in INR equal to contract value in respect to all works covered under scope of work to be carried out by, or on behalf of them with AOY (any one year) limit of **two incidents in a year**. PII Policy shall be obtained within four weeks from 'date of commencement' and before any payment is released to DDC. The insurance which shall ensure the DDC's liability by reason of professional negligence and errors in respect of all works covered under scope of work, shall be valid from the date of commencement of works, until two years after commissioning of work. It is a deemed accepted condition of contract that the DDC indemnifies and save harmless NMRC from and against all claims and proceedings on account of infringements of patents rights, design, trademark name etc.

NMRC will not issue final payment certificate until the DDC has produced evidence that coverage of Professional Indemnity Insurance has been provided for the aforesaid period.

In the professional indemnity insurance policy the deductible amount shall not be more than 5% of AOA limit.

### **37. Corrupt and fraudulent practices**

#### **37.33.1 Definition**

The employer requires that the bidders/ contractors, their designated contractors and/or their agents observe the highest standards of ethics during tendering and execution of this contract. In pursuance with this policy, the employer:

- a) defines, for the purpose of these provisions, the terms set forth below as follows:
  - i. "corrupt practice" means the offering, giving, receiving or soliciting of anything of value of employer, engineer or any of their employees, influence in the procurement process or in contract execution; and
  - ii. "fraudulent practice" means a concealment or misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the employer, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the employer of the benefits of free and open competition.
  - iii. Breach of any of the contract condition during execution.
- b) Will reject the tender for the work or rescind the contract if the employer determines that the bidder/ contractor has engaged in corrupt or fraudulent practices.
- c) Will declare a contractor ineligible, either indefinitely or for a stated period of time, to be awarded a contract/s if he at any time determines that the contractor has engaged in corrupt or fraudulent practices in completing for, or in executing the contract.
- d) The successful bidders/ contractors shall apprise the employer through chief vigilance officer, NMRC of any fraud/ suspected fraud as soon as it comes to their notice.



### **38. Termination of the Contract**

#### **38.1 Notice Contractor**

If the contractor fails to carry out any of his obligations, or if the contractor is not executing the works in accordance with the contract, the engineer may give notice to the contractor requiring him to make good such failure and remedy the same within such time as the employer/ engineer may deem to be reasonable.

#### **38.2 Termination of Contract due to Contractor's Default**

#### **38.3 Conditions leading to termination of contract**

The employer shall be entitled to terminate the contract if the contractor or any one of its constituents.

- a) fails to comply with a notice under sub clause 38.1
- b) abandons or repudiated the contract
- c) without reasonable excuse acceptable to the engineer, fails to commence the works in accordance with the contract
- d) sub contracts the whole of the works or assigns the contract without approval of the employer
- e) become bankrupt or insolvent or goes into liquidation except voluntary liquidation for the purpose of amalgamation or reconstruction
- f) persistently disregards instructions of the engineer or contravenes any provisions of the contract, or
- g) fails to adhere to the agreed programme of work by margin of 10% of the stipulated period or 21 days, whichever is earlier or fails to complete the works or parts of the works within the stipulated or extended period of completion, or is unlikely to complete the whole work or part thereof within time because of poor record of progress, or
- h) fails to remove materials from the site, or pull down and replace work, after receiving notice from the engineer to the effect that the said materials or works have been condemned or rejected, or
- i) fails to take steps to employ competent and/or additional staff and labour, or
- j) fails to afford the engineer or his representative proper facilities for inspecting the works or any part thereof, or indulges in corrupt or fraudulent practices as explained in clause 37.33.