

CONTRACT No. NGNE 01

SPECIAL CONDITIONS OF CONTRACT (SCC)

Clause GCC clause

No. Ref.

1. **Definitions** The Contract/Work is - "Contract NGNE-01: Detailed Design Consultancy for Design of 25 kV Overhead Equipment (OHE) system and Power Supply & SCADA for Elevated Line of Aqua line extension Corridor of Noida Metro Rail Project."
2. Clause 3.2 In addition to the GCC clause, the date of completion of the Contract shall be as specified in the Appendix C, Volume-IV (Schedule of Payment).
3. Clause 7 In addition to the GCC Clause, NMRC shall provide a suitable office space for the DDC so as to have close coordination with GC/Engineer for various services.
4. Clause 12 Defect Liability Period shall be **52 weeks** from the date of all power supply, Scada and Traction Equipments are brought into use.
5. Clause 14 The date of Commencement shall be the date of issue of LOA. Date of Completion of the services shall be as given in 'Progress Schedule Column' of Payment Schedule (Financial Package) of Volume-4 of the contract. The whole of the scope of work has to be completed within weeks for Design and up to ROD or commissioning, as applicable, whichever is later, for "Services to be performed during Construction" as defined in Appendix C (Schedule of Payments) as given in Volume-IV of the Contract.
6. Clause 16.1 Liquidated damages – As mentioned in notes to Schedule of Payment (Appendix-C) of Volume-4 of the contract.

Completion of activities of the DDC during construction phase shall be the date of handover of all the equipment to NMRC by the installation, Testing & Commissioning Contractor.

Maximum limit of Liquidated Damages shall be 10% of the total Contract Price.
7. Clause 20 **Contract Price**

The Contract Price shall cover the sum total of all costs incurred by the DDC for performing the Services. This shall not only include salaries, overheads and non-salary expenses, all allowance for contingencies, fees and profits, but all other costs and expenses incurred in carrying out the requirements of the Services, and the taxes (except GST, which will be paid extra as applicable and shall be reimbursed on actual submission of documentary proof) duties, fees and other impositions under the Applicable Laws. This cost shall include all costs for sub-consultants, sub-contractors, and any other professional fees or services incurred by the DDC. The Contract Price shall also include all costs, office expenses, travel charges, expenses and

allowance paid to or on behalf of expatriate staff working in their own country or in India.

8. Clause 25 **Language of the Agreement shall be English.**

The Agreement shall be interpreted, construed and governed by the Laws of India, and the legal proceedings, if any, shall be under the jurisdiction of the Courts in Noida.

9. Clause 29 **Notices shall be delivered to:**

For NMRC:

The DGM/Technical, NMRC Block-III, 3rd Floor, Ganga Shopping Complex, Sector-29, Noida-201301 nmrchnoida@gmail.com

For the DDC:

Designated CPM or its authorised representative.

10. **Variation in Corridor length (Additional Clause)**

As mentioned in Statement of Prices (Appendix-B) of Volume-4 of the Contract.

11. **Price Variation (Additional Clause)**

No price variation is admissible in this contract. No escalation shall be admissible due to any unforeseen delay.

12. **Provision for penalty for non formation of Project Organization (Additional Clause)**

The DDC shall maintain the Project Organization as per Clause 1.1.3.4 of NIT throughout the currency of the contract. If the DDC does not maintain the Project Organisation as mentioned in clause 1.1.3.4 of NIT, penalty shall be imposed on per day basis at the rates quoted by DDC for Statement of Price No. 3 of BoQ. The overall maximum penalty shall be limited to 5% of contract value.

13. Clause 33.9 **Arbitration**

Clause 33.9 b) "The Arbitration proceedings shall be assumed to have commenced from the day, of written and valid demand for arbitration is received by GM/Technical on behalf of MD/NMRC" at following address:

The DGM/Technical, NMRC
Block-III, 3rd Floor,
Ganga Shopping Complex, Sector-29, Noida-201301

Clause 33.9.2 i) In case of Sole Arbitration: Within 60 days from the day when a written and valid demand for arbitration is received by GM/Technical on behalf of MD/NMRC, the Employer will forward a panel of 03 names to the Contractor.

Clause 33.9.2 (ii) (a) Within 60 days from the day when a written and valid demand for

arbitration is received by DGM/Technical on behalf of MD/NMRC, the Employer will forward a panel of 05 names to the Contractor.

APPENDIX 1

SCHEDULE OF KEY DATES

Key Dates	Activity	Progress Schedule (Weeks from date of LOA / NTP)
KD-1	Submission of Final Design as per section 6.9 of Volume-3 - Scope of Work	18
KD-2	Delivery of complete documents for construction tender as required for floating of tender.	26
KD-3	Submission of documents & Good for construction drawings for construction contractor as per section 6.11 of Volume-3 - Scope of Work.	48
KD-4	Review of As Built Drawings/documents submitted by the Construction Contractor and issue of No Objection by DDC	130

Note:

- a) All key dates shall be referred from the commencement date of contract.
- b) The site shall be made available progressively and if some part is not made available then the extension of time shall be allowed only to the work / KD of that particular part.
- c) Key dates of acceptance of reports/design submission are dependent upon submission of proper & complete document by DDC duly incorporating the comments/ observation of Employer in time by the DDC.
- d) Accomplishment of KD-4 shall be considered as completion of the contract subject to extension of time, if any, in accordance with the Agreement.

- (d) To provide full technical support including providing support with available patent rights, registered design, copyright, design, trademark, trade name, know how or other intellectual property right to our subsidiary during currency of the contract which may be deemed necessary to successfully comply with all obligations under this contract and for the Service Life of System / Equipment until such time as the Works shall have been completed, all the Consultant's obligations under the Contract shall have been performed and the Maintenance and Defects Liability Period (as defined in the Contract) for the whole and every part of the Works shall have elapsed and further that it will ensure [that the subsidiary forming part of the Consultant will take all steps necessary to ensure [see Note 6] compliance by the Consultant with the provisions of the Contract.
2. The obligations of the Parent Company under this Undertaking shall remain in full force and effect and shall not be affected or discharged in any way and the Parent Company hereby waives notice of:-
- (a) any suspension of the Works, variation or amendment to the Contract (including without limitation extension of time for performance) or any concession or waiver by the Employer in respect of the Consultant's obligations [and/or the obligations of [] [see Note 7];
- (b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;
- (b) the termination of the Contract or of the employment of the Consultant [and/or [] [see Note 7] under the Contract for any reason;
- (d) any forbearance or waiver of any right of action or remedy the Employer may have against the Consultant [and/or [] [see Note 7] or negligence by the Employer in enforcing any such right of action or remedy;
- (e) any bond, undertaking, security or other guarantee held or obtained by the Employer for any of the obligations of the Consultant [and/or [] [see Note 7] under the Contract or any release or waiver thereof.
3. This Undertaking shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Employer and the Consultant [and/or [] [see Note 7] and for the avoidance of doubt the Parent Company hereby authorises the Employer and the Consultant [and/or [] [see Note 7] to make any such amendment, variation or supplemental agreement.
4. All documents arising out of or in connection with this Undertaking shall be served:
- (a) upon the Employer, at [] marked for the attention of [];
- (b) upon the Parent Company, at [] India. [Note 8]
5. The Employer and the Parent Company may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.
6. This Undertaking shall be governed by and construed according to the laws for the time being

in force in India and the Parent Company agrees to submit to the jurisdiction of the courts of **Noida**

IN WITNESS where of this Undertaking has been executed as a deed on the date first before written.

THE COMMON SEAL of)

[])

was affixed hereto)

in the presence of:-)

Notes: (for preparation of but not for inclusion in the engrossment of this Undertaking)

1. If the Parent Company is not the immediate parent company, the chain of ownership must be recited, identifying each company in the chain and the shareholdings or other interests in each subsidiary.
2. If the Consultant comprises more than one company, that fact and the joint venture or other relevant agreement must be recited. In such case, insert the name of the subsidiary forming part of the joint venture, partnership or consortium, and in respect of which the parent company undertaking is being given.
3. If Note 2 applies, refer to the subsidiary of the Parent Company and not the Consultant.
4. If Note 1 applies, use this alternative.
5. If Note 1 applies, add this provision.
6. If Note 2 applies, add this provision.
7. If Note 2 applies, add this provision and insert the name of the subsidiary.
8. The address for service shall be India.

SCHEDULE 1B

PARENT COMPANY GUARANTEE

THIS GUARANTEE is made on the day of between

(1) [.....] whose registered office is at [.....] and [.....] whose registered office is at [.....] ("the Guarantor").

(2) The NOIDA METRO RAIL CORPORATION LIMITED (together with its successors and assigns, "the Employer") of:

IIIrd Floor, Ganga Shopping Complex,

Sector-29, Noida-201301,

Uttar Pradesh, India.

WHEREAS

(A) By a contract [NO.] dated [.....] ("The Contract") made between (1) the Noida Metro Rail Corporation Limited ("the Employer") and (2) [.....] ("the Consultant"), the Consultant has agreed to design, execute, complete and remedy any defects in the Works upon the terms and conditions contained in the Contract.

(B) Pursuant to the terms of the Contract, the Consultant has agreed to procure the provision of a guarantee in the terms hereof. [see Note 1].

(C) At the request of the Consultant, the Guarantor has agreed to guarantee performance of the Contract by the [Consultant] [see Note 2] as set out herein.

IT IS HEREBY AGREED AS FOLLOWS:

1. In consideration of the Employer entering into the Contract with the Consultant, the Guarantor irrevocably and unconditionally guarantees to the Employer as a primary obligation and not as a surety due performance by the [Consultant] [see Note 2] of all of its obligations and liabilities under and in accordance with the Contract save that nothing herein shall be construed as imposing greater obligations or liabilities on the Guarantor than are imposed on the [Consultant] [see Note 2] in the Contract.

2. The obligations of the Guarantor under this Guarantee shall remain in full force and effect and shall not be affected or discharged in any way by and the Guarantor hereby waives notice of:-

(a) any suspension of the Works, variation to or amendment of the Contract (including without limitation extension of time for performance) or any concession or waiver by the Employer in respect of the Consultant's obligations [and/or the obligations of [] [see Note 3] under the Contract;

(b) any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable;

- (c) the termination of the Contract or of the engagement of the Consultant [and / or [.....]] [see Note 3] under the Contract for any reason;
 - (d) any forbearance or waiver of any right of action or remedy the Employer may have against the Consultant [and / or [.....]] [see Note 3] or negligence by the Employer in enforcing any such right of action or remedy;
 - (e) any bond, undertaking, security or other guarantee held or obtained by the Employer for any of the obligations of the Consultant [and/or [.....]] [see Note 3] under the Contract or any release or waiver thereof.
3. This Guarantee shall extend to any variation of or amendment to the Contract and to any agreement supplemental thereto agreed between the Employer and the Consultant [and/or []] [see Note 3] and for the avoidance of doubt the Guarantor hereby authorises the Employer and the Consultant [and/or []] [see Note 3] to make any such amendment, variation or supplemental agreement.
4. This Guarantee is a continuing guarantee and accordingly shall cover all of the obligations and liabilities of the [Consultant] [see Note 2] under the Contract and remain in full force and effect until all the said obligations and liabilities of the Consultant shall have been carried out, completed and discharged in accordance with the Contract. This Guarantee is in addition to any other security which the Employer may at any time hold and may be enforced without first having recourse to any such security or taking any steps or proceedings against the Consultant.
5. Until expiry of the Maintenance and Defects Liability Period (as defined in the Contract) for the whole and every part of the Works, the Guarantor shall not on any ground whatsoever make any claim or threaten to make any claim whether by proceedings or otherwise against the Consultant [and/or []] [see Note 3] for the recovery of any sum paid by the Guarantor pursuant to this Guarantee. Any such claim shall be subordinate to any claims (contingent or otherwise) which the Employer may have against the Consultant [and/or []] [see Note 3] arising out of or in connection with the Contract until such time as such claims shall be satisfied by the Consultant [and/or []] [see Note 3] or the Guarantor as the case may be. To that intent the Guarantor shall not claim or have the benefit of any security which the Employer holds or may hold for any monies or liabilities due or incurred by the Consultant [and/or []] [see Note 3] to the Employer and, in case the Guarantor receives any sum from the Consultant [and/or []] [see Note 3] in respect of any payment by the Guarantor hereunder, the Guarantor shall hold such sum in trust for the Employer for so long as any sum is payable (contingently or otherwise) under this Guarantee.
6. The Employer shall be entitled to assign the benefit of this Guarantee at any time without the consent of the Guarantor or the [Consultant] [see Note 2] being required.
7. All documents arising out of or in connection with this Guarantee shall be served:
- (a) upon the Employer, at [.....] marked for the attention of [.....];
 - (b) upon the Guarantor, at [.....] India. [Note 4]
8. The Employer and the Guarantor may change their respective nominated addresses for service of documents to another address in India but only by prior written notice to each other. All demands and notices must be in writing.

9. This Guarantee shall be governed by and construed according to the laws for the time being in force in India and the Consultant agrees to submit to the jurisdiction of the courts of India.

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

THE COMMON SEAL

of[.....]

was affixed hereto in the presence of:-

Notes (for preparation of but not inclusion in the engrossment of this Guarantee)

1. If the Consultant comprises more than one company, that fact, the joint venture or other relevant agreement and the relationship of the Guarantor to its subsidiary forming part of the Consultant must be recited.
2. If Note 1 applies, replace the word "Consultant" with name of the subsidiary being guaranteed.
3. If Note 1 applies, add additional wording and insert the name of the subsidiary being guaranteed.
4. The address for service shall be in India.

SCHEDULE-2

FORM OF CONTRACT AGREEMENT

(Refer Clause F4 of ITT)

This Agreement is made at Noida on day of by and between:

(1) Noida Metro Rail Corporation Limited, with office located at IIIrd Floor, Ganga Shopping Complex, Sector-29, Noida-201301, hereinafter referred to as the “NMRC” or the “Employer”, as the case may be, of the one part, and;

(2)[Note1]comprising:

a) a company registered and existing under the laws of India, with head office located at....., represented by Mr.& Mr....., authorised to sign and bind the company, under the Power of Attorney dated and the Board Resolution dated [Note 5] comprising

b) a company registered and existing under the laws of India, with head office located at , represented by Mr.& Mr....., authorised to sign and bind the company, under the Power of Attorney dated and the Board Resolution dated [Note 5] comprising

c) a company registered and existing under the laws of India, with head office located at , represented by Mr. & Mr....., authorised to sign and bind the company, under the Power of Attorney dated and the Board Resolution dated [Note 5] comprising

[Note 2] who shall be jointly and severally liable for the undertaking of this contract; hereinafter [Note 3] collectively referred to as the “Consultant” of the other part.

WHEREAS the Consultant has established a in accordance with Indian law and offered a tender for the Detail Design Consultant (DDC) works and agrees to undertake performance of the Works under the terms and conditions set forth in this Contract.

Both parties hereby agree as follows:

Clause 1

NMRC agrees to hire and the Consultant agrees to be hired to implement the

.....

..... under the terms and conditions specified in this Contract Agreement and the other Contract Documents attached hereto as follows:

- Letter of Acceptance
- The tender(Submission date).
- This office letter no. for seeking post-bid clarifications.
- Your reply to post-bid clarifications vide letter no.
- This office letter no. for opening of Financial bids.
- Volume1
 - Notice Inviting Tender
 - Instructions to Tenderers (including Annexures) Form of Tender (including Appendices)
- Volume 2
 - General Conditions of Contracts
 - Special Conditions of Contract (including Schedules)
- Volume 3
 - Scope of work.
 - Design Criteria
- Volume-4
 - Bill of Quantities
- Consultant's Proposal
- Any other documents forming part of the Contract (such as Addendum No. 1, 2 &3).
- The modifications to the tender documents communicated through the Addenda (_____number) issued to the tenderers at the time of tender have been incorporated in the consolidated contract documents. Copies of the Addenda are available with the Employer, Consultant and Employer's Representative. As and when required, they could be referred to and in case of any discrepancy between the corrections/modifications incorporated in the consolidated contract documents and the Addenda, the provision of the Addenda shall prevail.

All of the foregoing documents, together with this Contract Agreement, are referred to herein as the Contract Documents. Also incorporated into these Contract Documents,

Complex, Sector-29, Noida-201301, Uttar Pradesh

, India.

Consultant

.....,

Clause 6 – Integration

The Employer and the Consultant agree that this Contract Agreement, together with the other Contract Documents, expresses all of the agreements, understandings, promises, and covenants of the parties, and that it integrates, combines, and supersedes all prior and contemporaneous negotiations, understandings, and agreements, whether written or oral and that no modification or alteration of the Contract Documents shall be valid or binding on either party, unless expressed in writing and executed with the same formality as this Contract Agreement, except as may otherwise be specifically provided in the Contract Documents.

Clause 7 – Governing Law

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

Clause 8 – Language

This Contract Agreement and the other Contract Documents are made in the English language.

Clause 9 – Jurisdiction of Court

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

This contract is made in three copies with identical wording. Both parties having thoroughly read and understood the contents hereof sign their names and affix the seal (if any) in the presence of witness and each shall retain one copy.

The Consultant

The Employer

Witness

Witness

Name :

Name :

Address :

Address :