

# **Tender Document for Works**

**(Two-Envelope Tendering Process Without Prequalification)**

## **Procurement of:**

C-4: Composite Contract package in connection with New BG Railway Line of HORC project for:

- (i) Design & Construction of Twin Tunnel using NATM and Cut & Cover method from km 24.880 to km 29.580;
- (ii) Design & Installation of Ballastless Track (excluding supply of rails) from km 24.856 to km 29.680;
- (iii) Detailed Design, Supply, Installation, Testing & Commissioning of General Electrical Services including Supply, Erection, Testing and Commissioning of 11kV HT/LT Power and Control Cable Network, GIS Substation (11/0.433) kVA, Tunnel lighting system etc. from km 24.880 to km 29.680;
- (iv) Design & Construction of Embankment, Bridges and other miscellaneous works from km 12.00 to km 18.00.

# Summary

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# **PART 3 – Conditions of Contract and Contract Forms**

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## Section VIII - General Conditions of Contract (GCC)

The General Conditions of Contract governing this Contract shall be the “Conditions of Contract for Plant & Design Build, (“Yellow book, Second Edition 2017”, published by the Federation Internationale Des Ingenieurs – Conseils (FIDIC).

An original copy of the above FIDIC publication i.e. “*Conditions of Contract for Plant & Design Build*”, (“Yellow book , Second Edition 2017”, ( must be obtained from the following address of FIDIC:

**International Federation of Consulting Engineers (FIDIC)**

FIDIC Bookshop – Box- 311 – CH – 1215 Geneva 15 Switzerland

Fax: +41 22 799 49 054

Telephone: +41 22 799 49 01

E-mail: [fidic@fidic.org](mailto:fidic@fidic.org)

[www.fidic.org](http://www.fidic.org)

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## **Section IX - Particular Conditions of Contract (PCC)**

The following Particular Conditions of Contract (PCC) shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

The PCC consists of three parts:

- Part A – Contract Data
- Part B – Specific Provisions
- Part C – Prohibited Practices

The references to Clauses and Sub-clauses provided in the PCC given below are applicable to the General Conditions of Contract i.e. “Conditions of Contract for Plant & Design Build, (“Yellow Book”), Second Edition 2017” published by the Federation Internationale Des Ingenieurs – Conseils (FIDIC).

## Particular Conditions of Contract (PCC)

### Part A - Contract Data

S. No.	Conditions	GCC Sub-Clause	Data
1.	Defects Notification Period	1.1.27	(i) 365 days calculated from the date of issue of Taking-Over Certificate for the Works or part of the Works other than BLT works (ii) 1095 days calculated from the date of issue of Taking-Over Certificate for BLT works
2.	Employer's name and address	1.1.30	Haryana Orbital Rail Corporation Limited (HORCL), Plot No 143, 5th Floor, Railtel Tower, Sector-44, Gurugram, Haryana-122003 E-mail: shivomd_irse@yahoo.com
3.	Engineer's name and address	1.1.35	RITES Limited in Consortium with SMEC International Pty Ltd, 4th Floor, Plot No.144, RITES Limited, Sector-44, Gurugram, Haryana-122003
4.	Sections	1.1.76	Nil
5.	Time for Completion	1.1.86	971 days
6.	Bank's name	1.1.91	Asian Infrastructure Investment Bank (AIIB)
7.	Borrower/Recipient's name	1.1.92	Haryana Orbital Rail Corporation Limited (HORCL) through Government of Haryana
8.	Electronic transmission system	1.3 (a) (ii)	By e-mail
9.	Address of Employer for communications:	1.3(d)	Plot No 143, 5th Floor, Railtel Tower, Sector-44, Gurugram, Haryana-122003 E-mail: gmphridc@gmail.com
10.	Address of Engineer for communications:	1.3(d)	4th Floor, Plot No.144, RITES Limited, Sector-44, Gurugram, Haryana-122003
11.	Address of Contractor for communications:	1.3(d)	To be filled in at the time of preparation of Contract Agreement
12.	Governing Law	1.4	The laws of Republic of India
13.	Ruling language	1.4	English

S. No.	Conditions	GCC Sub-Clause	Data
14.	Language for communications	1.4	English
15.	Time for the Parties to sign a Contract Agreement	1.6	35 days after issue of the Letter of Acceptance
16.	Number of additional paper copies of Contractor's Documents	1.8	NIL
17.	Total liability of the Contractor to the Employer under or in connection with the Contract	1.15	Equal to the Accepted Contract Amount (Amount to be filled in at the time of preparation of contract agreement)
18.	Time for access to the Site	2.1	90% length of the Tunnel portion and the length of the formation shall be handed over to the Contractor within 7 days after the Commencement Date. The balance length shall be handed over within 90 days after the commencement Date.
19.	Employer's Financial Arrangements	2.4	A loan from AIIB Bank and counterpart funds through equity partners.
20.	Engineer's Duties and Authority	3.2	Cumulative variations resulting in an increase of the Accepted Contract Amount in excess of 5% shall require written consent of the Employer.
21.	Performance Security	4.2	The Performance Security will be in the form of a "demand guarantee" in the amount(s) of 5% of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount.
22.	Maximum allowable accumulated value of work subcontracted (as a percentage of the Accepted Contract Amount)	4.4(a)	30%
23.	Parts of the Works for which subcontracting is not permitted	4.4(b)	Construction of NATM Tunnel and Cut & Cover Tunnel
24.	Period for notification of errors in the items of reference	4.7.2 (a)	28 Days
25.	Number of additional paper copies of progress reports	4.20	One (1)
26.	Normal working hours	6.5	From 8:00 AM to 5:00 PM
27.	Number of additional paper copies of program	8.3	One (1)



<b>S. No.</b>	<b>Conditions</b>	<b>GCC Sub-Clause</b>	<b>Data</b>
28.	Delay Damages payable for each week of delay or part thereof	8.8	<p>0.05% of the Accepted Contract Amount, less Provisional Sum in the currencies and proportions in which the Contract Price is payable for each week or part thereof which shall elapse between the Time for Completion and actual Date of Completion of the Works.</p> <p>Delay Damages for not achieving Key Dates shall be levied as given in Appendix 2, Section VII-12, Part 2- Employer's Requirements for each week or part thereof which shall elapse between the relevant Key Date and actual date of achieving Key Date.</p>
29.	Maximum amount of Delay Damages	8.8	5% of the Accepted Contract Amount, less Provisional Sum.
30.	Percentage rate to be applied to Provisional Sums for overhead charges and profit	13.4(b)(ii)	5%

S. No.	Conditions	GCC Sub-Clause	Data
31.	Total advance payment	14.2	<p>05% of the Accepted Contract Amount less Provisional Sum payable in the currencies and proportions in which the Accepted Contract Amount is payable.</p> <p>The advance payment shall be released against Advance Bank Guarantee in two equal instalments, each of two and half percent (2.5%), of the Accepted Contract Amount.</p> <p>i. The first instalment shall be paid against an Advance Payment Certificate, under Sub-Clause 14.2.2.</p> <p>ii. Upon satisfactory utilization of first instalment, the second instalment shall be paid after the Engineer's approval of the Programme (GCC Sub-Clause 8.3), mobilization of Contractor's Representative (GCC Sub-Clause 4.3) and Key Personnel (GCC Sub-Clause 6.12) as per the Employer's Requirements. The Contractor shall submit utilization statement mentioning detailed particulars of expenses made with supporting documents to demonstrate that such amounts are utilized in a purposeful manner in relation to the Works. This shall be supported or endorsed by certified Chartered Accountant under their seal and stamp. It shall be paid against an Advance Payment Certificate, under Sub-Clause 14.2.2.</p>
32.	Number of additional paper copies of Statements	14.3(b)	One (1)
33.	Percentage of retention	14.3 (iii)	10%
34.	Limit of Retention Money (as a percentage of Accepted Contract Amount less Provisional Sum)	14.3 (iii)	5%
35.	Plant and Materials	14.5(b)(i)	Plant and Materials for payment when shipped - NIL

S. No.	Conditions	GCC Sub-Clause	Data
		14.5(c) (i)	Plant and Materials for payment when delivered to the Site: Reinforcement Steel
36.	Minimum Amount of Interim Payment Certificates	14.6.2	NIL
37.	Period of payment of Advance Payment to the Contractor	14.7(a)	07 days
38.	Delayed Payment	14.8	The financing charges shall be calculated at an interest rate equal to “State Bank of India’s (SBI) Marginal Cost of fund-based Lending Rate (MCLR)” applicable for the tenure of 01 year prevailing on the due date plus three percent.
39.	Number of additional paper copies of draft Final Statement	14.11.1(b)	Two (2)
40.	Forces of nature, the risks of which are allocated to the Contractor	17.2(d)	Earthquake, Floods, rain, wind/storm
41.	Periods for submission of evidence(s) and relevant policy (ies) of insurance (s)	19.2	<p><b>Evidence(s):</b> Within twenty-eight (28) days from the date of receipt of Letter of Acceptance.</p> <p><b>Policy(ies):</b> Within forty-two (42) days from the date of receipt of the Letter of Acceptance.</p>
42.	List of Exceptional Risks which shall not be excluded from the insurance cover for the Works	19.2.1 (iv)	Earthquake, Floods, Rain, wind/storm

S. No.	Conditions	GCC Sub-Clause	Data
43.	Liability for breach of professional duty	19.2.3	<p>AOA (Any One Accident) limit equal to four percent (4%) of the total Contract value against Schedule 'A' of Price Schedule in respect of 'design and construct' with AOY (any one year) limit of 2 accidents in a year. In the Professional Indemnity Insurance Policy, the deductible amount shall not be more than five percent (5%) of the AOA limit.</p> <p>This PII policy shall be valid from the date of commencement of Works, until 5 years after the date of issue of Performance Certificate. Alternatively, the Contractor shall renew the insurance before the expiry of the Yearly Insurance in such a way that the entire validity period is covered.</p> <p>Wherever the Contractor submits policy for shorter period / annual renewable policy, the same shall be renewed before its expiry date. In such situation, the Performance Guarantee shall be retained till required validity period. The Contractor's submission of such shorter period / renewable policy shall be construed as their irrevocable consent for retention of the Performance Guarantee. The Engineer will not issue Final Payment Certificate until the Contractor has produced evidence that coverage of the professional indemnity insurance has been provided for the aforesaid period.</p>
44.	Amount of insurance required for injury to persons and damage to property	19.2.4	INR 0.50 million for any one incident, with number of incidents unlimited
45.	Insurance required for injury to employees	19.2.5	INR 20,000,000/- (Twenty million)
46.	Time for appointment of DAAB	21.1	180 days after signature by both parties of the Contract Agreement
47.	The DAAB shall be comprised of	21.1	Three Members

<b>S. No.</b>	<b>Conditions</b>	<b>GCC Sub-Clause</b>	<b>Data</b>
48.	List of proposed members of DAAB	21.1	NIL
49.	Appointment (if not agreed) to be made by	21.2	(i) In case of Indian firms- President of Indian Council of Arbitration, New Delhi, India (ii) In case of foreign firm- Singapore International Arbitration Centre (SIAC).
50.	Rules of arbitration	21.6	Sub-Clause 21.6 of PART B – Specific Provisions shall apply.

## Particular Conditions of Contract (PCC)

### Part B - Specific Provisions

<b>Sub-Clause 1.1.9 Contract</b>	“the Contractor’s Proposal” is deleted.
<b>Sub-Clause 1.1.27 "Defects Notification Period" or "DNP"</b>	Add the following at the end of <b>Sub-Clause 1.1.27 "Defects Notification Period" or "DNP" is synonymous with "Defects Liability Period" or "DLP"</b>
<b>Sub-Clause 1.1.28 "Delay Damages"</b>	Add the following at the end of <b>Sub-Clause 1.1.28 "Delay Damages" is synonymous with “Liquidated Damages”.</b>
<b>Sub-Clause 1.1.30 Employer</b>	The following is added at the end of this Sub-Clause: Haryana Rail Infrastructure Development Corporation Limited (HRIDC) has been nominated as the implementing agency for Haryana Orbital Rail Corridor (HORC) Project by the Employer i.e. Haryana Orbital Rail Corporation Limited.
<b>Sub-Clause 1.1.49 Laws</b>	The Sub-Clause is replaced with: “ <b>Laws</b> ” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.”
<b>Sub-Clause 1.1.77 Site</b>	The Sub-Clause is replaced with: “ <b>Site</b> ” means the places where the Permanent Works are to be executed, including storage and working area, and to which Plant and Materials are to be delivered, and any other places specified in the Contract as forming part of the Site.”
<b>Sub-Clause 1.1.79 Statement</b>	On the second line after “Payment Certificate under...”, add “Sub-Clause 14.2.1 [Advance Payment Guarantee] (if applicable).”.
<b>Sub-Clause 1.1.83 Tender</b>	“the Contractor’s Proposal” is deleted.
<b>Sub-Clause 1.1.86 Time for Completion</b>	Replace the entire Sub-Clause 1.1.84 with the following: “ <b>Time for Completion</b> ” means the time for completing the Works, a Section (as the case may be) or a Key Date (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 8.5 [Extension of Time for Completion]), calculated from the Commencement Date

<b>Sub-Clause 1.1.91 to 1.1.98 are added after Sub-Clause 1.1.90</b>	
<b>Sub-Clause 1.1.91 Bank</b>	“ <b>Bank</b> ” means the financing institution (if any) named in the Contract Data.
<b>Sub-Clause 1.1.92 Borrower</b>	“ <b>Borrower</b> ” or “ <b>Recipient</b> ” means the person (if any) named as the borrower/recipient in the Contract Data.
<b>Sub-Clause 1.1.93 ESHS</b>	“ <b>ESHS</b> ” means Environmental, Social, Health and Safety.
<b>Sub-Clause 1.1.94 Sexual Exploitation and Assault (SEA)</b>	<p>“Sexual Exploitation and Assault” “(SEA)” stands for the following:</p> <p>Sexual exploitation is defined as any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. In Bank financed operations/projects, sexual exploitation occurs when access to or benefit from a Bank financed Goods, Works, Non-consulting Services or Consulting Services is used to extract sexual gain.</p> <p>Sexual assault is defined as sexual activity with another person who does not consent. It is a violation of bodily integrity and sexual autonomy and is broader than narrower conceptions of “rape”, especially because (a) it may be committed by other means than force or violence, and (b) it does not necessarily entail penetration.</p>
<b>Sub-Clause 1.1.95 Milestone Certificate</b>	“Milestone Certificate” means the certificate issued by the Engineer under Sub-Clause 4.26 [Milestone].
<b>Sub-Clause 1.1.96 Milestone</b>	“Milestone” means stage of completion of works in a given Cost Centre based on which payment will be made to the Contractor.
<b>Sub-Clause 1.1.97 Key Date</b>	“Key Date” means the time for completion for a part of the Plant and/or a part of the Works as described in detail in the Appendix 2 of Part 2 of the Employer’s Requirements.
<b>Sub-Clause 1.1.98 Principal Employer</b>	Principal Employer means ‘Haryana Orbital Rail Corporation Limited’.
<b>Sub-Clause 1.2 Interpretation</b>	<p>Sub-paragraph (a) is replaced with the following:</p> <p>(a) “Words indicating one gender include all genders;</p>

	<p>“he/she” is replaced with “it”;</p> <p>“him/her” is replaced with “it”;</p> <p>“his” and “his/her” are replaced with “its”;</p> <p>“himself/herself” are replaced with “itself”.</p> <p>Further, “and” is deleted from the end of sub-paragraph (i) and added at the end of sub-paragraph (j).</p> <p>sub-paragraph (k) is added:</p> <p>(k) “The word “tender” is synonymous with “bid” or “proposal”, the word tenderer with “bidder” or “proposer” and the words “tender documents” with “bidding documents” or “request for bids documents” or “request for proposal documents”, as applicable.”</p>
<p><b>Sub-Clause 1.5 Priority of Documents</b></p>	<p>Replace subparagraphs from (a) to (k) with the following:</p> <p>(a) the Contract Agreement (if any),</p> <p>(b) the Letter of Acceptance,</p> <p>(c) the Addenda &amp; Corrigenda issued before opening of the Tender,</p> <p>(d) the Letter of Tender-Financial Part,</p> <p>(e) the Letter of Tender-Technical Part,</p> <p>(f) the Particular Conditions -Part A (Contract Data),</p> <p>(g) the Particular Conditions -Part B (Specific Provisions),</p> <p>(h) the Particular Conditions Part C- Prohibited Practices</p> <p>(i) these General Conditions,</p> <p>(j) the Employers’ Requirements,</p> <p>(k) the Schedules,</p> <p>(l) the Reference Information/ Report, and</p> <p>(m) Contractor’s Proposal and any other documents forming part of the Contract.</p>



<p><b>Sub-Clause 1.12 Confidentiality</b></p>	<p>The following is added at the end of the second paragraph: “The Contractor shall be permitted to disclose information required to establish its qualifications to compete for other projects.”</p> <p>“or” at the end of (b) is deleted.</p> <p>“or” at the end of (c) is added.</p> <p>The following is then added as</p> <p>(d): “is being provided to the Bank .”</p>
<p><b>Sub-Clauses 1.17 and 1.18 are added after Sub-Clause 1.16</b></p>	
<p><b>Sub-Clause 1.17 Inspections &amp; Audit by the Bank</b></p>	<p>“The Contractor shall permit and shall cause its agents (whether declared or not), subcontractors, subconsultants, service providers, suppliers, and their personnel, to permit the Bank and/or persons appointed by the Bank to inspect the site and/or the accounts, records and other documents relating to the procurement process, tender submission, proposal submission, and contract execution, and to have such accounts, records and other documents audited by auditors appointed by the Bank.”</p>
<p><b>Sub-Clause 1.18 Change in Control</b></p>	<p>The Contractor or its constituents shall inform the Employer about any change in “Control” during the execution of the Contract.</p>
<p><b>Sub-Clause 2.4 Employer’s Financial Arrangements</b></p>	<p>The first paragraph is replaced with:</p> <p>“The Employer shall submit, before the Commencement Date, reasonable evidence that financial arrangements have been made for financing the Employer’s obligations under the Contract.”</p> <p>The following sub-paragraph is added at the end of Sub-Clause 2.4:</p> <p>“In addition, if the Bank has notified to the Recipient that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of the Recipient having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the</p>

	suspension, the Employer shall provide reasonable evidence in its notice of the extent to which such funds will be available.”
<b>Sub-Clause 3.1 The Engineer</b>	The following is added at the end of the first sub-paragraph: “The Engineer’s staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.”
<b>Sub-Clause 3.2 Engineer’s Duties and Authority</b>	<p>The third paragraph of Sub-Clause 3.2 is replaced with:</p> <p>The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. However, the Engineer shall obtain the consent in writing of the Employer before taking action under the following Sub-Clauses of these Conditions:</p> <p>(a) Sub-Clause 4.12 [Unforeseeable Physical Conditions]: agreeing or determining an extension of time and/or additional cost.</p> <p>(b) Sub-Clause 8.5 [Extension of Time for Completion]: agreeing or determining extension of time.</p> <p>(c) Sub-Clause 11.9 [Performance Certificate]: issue of Performance Certificate.</p> <p>(d) Clause 20.1: [Claims]: agreeing or determining extension of time and/or additional payment.</p> <p>Notwithstanding anything to the contrary contained in this Sub-Clause 3.2, as set out above, if in the opinion of the Engineer, an emergency occurs which adversely affects safety of, (a) life, (b) Works, or (c) any adjoining property, the Engineer may, without obtaining prior approval of the Employer and without relieving the Contractor of any of its duties and responsibilities 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 aforesaid risk(s). The Contractor shall forthwith comply with such directions of the Engineer despite the absence of Employer’s specific approval in this regard. The Engineer shall determine an addition to the Contract Price, in respect of such instruction(s), in accordance with Clause 13 [Variations and Adjustments],</p>

	<p>and shall notify the Contractor accordingly, with a copy to the Employer.</p> <p>However, in case the concerned emergency as specified in the above para occurs on account of any failure by the Contractor to comply with the terms and conditions of the Contract, including but not limited to, (a) not adhering to the approved scheme of work (b) not taking adequate safety precautions, or (c) by any other reason attributable to the Contractor, no additional amounts shall be paid to the Contractor for attending to such emergencies and the Contractor shall be liable for Employer’s claims in this regard”.</p>
<b>Sub-Clause 3.3 Engineer’s Representative</b>	<p>The following is added at the end of Sub-Clause 3.3: “The Engineer shall obtain the consent of the Employer before appointing or replacing an Engineer’s Representative.”</p>
<b>Sub-Clause 3.4 Delegation by the Engineer</b>	<p>The following is added at the end of the second paragraph: “If any assistants are not fluent in this language, the Engineer shall make competent interpreters available during all working hours, in a number sufficient for those assistants to properly perform their assigned duties and/or exercise their delegated authority.”</p>
<b>Sub-Clause 3.6 Replacement of the Engineer</b>	<p>In the first paragraph, “42 days” is replaced with “21 days”;</p> <p>In the third para, “shall” is replaced with “should”.</p>
<b>Sub-Clause 4.1 Contractor’s General Obligations</b>	<p>The following is inserted after the second paragraph “The Contractor shall provide the Plant (and spare parts, if any)...”:</p> <p>“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.”</p> <p>The following is inserted after the fifth paragraph “The Contractor shall, whenever required by the Engineer...”:</p> <p>The Contractor shall not carry out mobilization to Site (e.g. limited clearance for haul roads, site accesses and work site establishment, geotechnical investigations or investigations to select ancillary features such as quarries and borrow pits)</p>

	<p>unless the Engineer gives consent, a consent that shall not be unreasonably delayed, that appropriate measures are in place to address environmental and social risks and impacts, which at a minimum shall include applying the Management Strategies and Implementation Plans (MSIPs) and Code of Conduct for Contractor’s Personnel as part of the Contract.</p> <p>The Contractor shall submit, to the Engineer for Review any additional MSIPs as are necessary to manage the ESHS risks and impacts of ongoing Works (e.g. Tunnelling, excavation, earth works, bridge, Ballastless Track construction and structure works, stream and road diversions, quarrying or extraction of materials, concrete batching and asphalt manufacture). These MSIPs shall be included in the Contractor’s Environmental and Social Management Plan (C-ESMP). The Contractor shall review the C-ESMP, periodically (but not less than every six (6) months), and update it as required to ensure that it contains measures appropriate to the Works. The updated C-ESMP shall be submitted to the Engineer for Review.</p> <p>The C-ESMP shall be part of the Contractor’s Documents. The procedures for Review of the C-ESMP and its updates shall be as described in Sub-Clause 5.2.1 [<i>Preparation by Contractor</i>] and Sub-Clause 5.2.2 [<i>Review by Engineer</i>].</p> <p>If so stated in the Employer’s Requirements, the Contractor shall:</p> <ul style="list-style-type: none"> <li>(i) design structural elements of the Works taking into account climate change considerations; and</li> <li>(ii) apply the concept of universal access (the concept of universal access means unimpeded access for people of all ages and abilities in different situations and under various circumstances.</li> </ul> <p>“The Contractor shall provide relevant contract- related information, as the Employer and/or Engineer may reasonably request to conduct Stakeholder engagements. “Stakeholder” refers to individuals or groups who:</p> <ul style="list-style-type: none"> <li>(i) are affected or likely to be affected by the Contract; and</li> <li>(ii) may have an interest in the Contract.</li> </ul>
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	<p>The Contractor may also directly participate in Stakeholder engagements, as the Employer and/or Engineer may reasonably request.”</p> <p>“The Contractor shall require that it’s subcontractors execute the Works in accordance with the Contract, including complying with the relevant ESHS requirements.”</p>
<p><b>Sub-Clause 4.2</b> <b>Performance Security</b></p>	<p><b>Replace Sub-Clause 4.2.1 with the following:</b></p> <p>The Contractor shall, within 28 days of the date of receiving the Letter of Acceptance, provide to the Employer, the Performance Security in a sum equal to the amount specified in the Contract Data, for the due observance and performance by the Contractor of the Contract. In the event the Contractor fails to provide the Performance Security within 28 days from the date of issue of the LOA, it may seek an extension of time for providing the performance security for a period not exceeding a further 14 days on payment of damages for such extended period in a sum calculated at the rate of 0.005% of the Accepted Contract Amount for each day until the Performance Security is provided. The Contractor shall maintain the said Performance Security at its own expense, so that it shall remain in full force and effect until the date/period set out in the Contract. In the event of a revision of the Contract Price, the value of the Performance Security shall be increased proportionately by the Contractor, if required by the Employer. The cost of obtaining the Performance Security shall be at the expense of the Contractor. The Contractor shall submit the Performance Security in any of the following forms:</p> <p>(a) Unconditional and irrevocable Bank Guarantee from the specified banks in the form appearing in Section X [Contract Forms] as under:</p> <p style="padding-left: 40px;">(i) a scheduled bank (excluding co-operative banks) in India, or</p> <p style="padding-left: 40px;">(ii) a Foreign Bank having arrangement with a nationalized bank or scheduled banks (excluding co-operative banks) in India;</p>

	<p>(b) Banker's Cheque or Demand Draft drawn on a scheduled bank (excluding co-operative banks) or nationalized bank in India.</p> <p>The scheduled bank issuing the bank guarantee shall be on “Structure Financial Messaging System (SFMS)” platform. A separate advice of the bank guarantee shall invariably be sent by the issuing bank to Employer’s Bank through SFMS and only after receipt of the same by the Employer’s Bank, the bank guarantee shall become operative and acceptable to the Employer. Further, the bank guarantees in original form along with a copy of “MT760COV (in case of bank guarantee message)/ MT767COV (in case of bank guarantee amendment message) Report” sent by the concerned issuing bank sealed in an envelope shall be submitted to the Employer.</p> <p>The Issuing Bank shall send the SFMS to:</p> <p>Beneficiary: Haryana Rail Infrastructure Development Corporation Limited</p> <p>Bank Name:</p> <p>Account No.</p> <p>IFSC Code:</p> <p>Note: All the instruments mentioned in (a) &amp; (b) above should be in favour of Haryana Rail Infrastructure Development Corporation Limited, Plot No 143, 5th Floor, Railtel Tower, Sector-44, Gurugram.</p> <p>The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied defects, if any. If, (a) the Contractor does not complete the Works for any reasons whatsoever, and (b) the Contractor has not become entitled to receive the Performance Certificate by 28 days prior to the expiry date of the Performance Security, the Contractor shall be bound to extend the validity of the Performance Security until the Works have been completed and the defects have been remedied. If the Performance Security is or becomes invalid or unenforceable for any reason whatsoever, or if</p>
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	<p>such security is withdrawn or expires, the Contractor must immediately notify the Employer and obtain within 3 days a replacement guarantee in the form appearing in Section X [Contract Forms] and which is acceptable to the Employer in its absolute discretion.</p> <p>The provision, maintenance and renewal by the Contractor of the Performance Security in accordance with this Sub-Clause 4.2 [Performance Security] shall be a condition precedent to any payment by the Employer to the Contractor under the Contract.</p> <p>If the Contractor fails to provide, maintain and renew the Performance Security in accordance with the Contract, the Employer shall, without prejudice to any other rights and remedies to which it may be entitled, shall have the right to invoke the Performance Security for the value equal to the damages to the Employer as a result of the Contractor’s failure and/or by written notice terminate the Contract in accordance with Clause 15.</p>
<p><b>Sub-Clause 4.3 Contractor’s Representative</b></p>	<p>The following is added at the end of the last paragraph: “If any of these persons is not fluent in this language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.”</p>
<p><b>Sub-Clause 4.8 Health and Safety Obligations</b></p>	<p>The following are included after deleting “and” at the end of (f) and replacing “.” with “;” at the end of (g):</p> <p>“</p> <ul style="list-style-type: none"> <li>(i) provide health and safety training of Contractor’s Personnel as appropriate and maintain training records;</li> <li>(ii) actively engage the Contractor’s Personnel in promoting understanding, and methods for, implementation of health and safety requirements, as well as in providing information to Contractor’s Personnel, training on occupational safety and health, and provision of personal protective equipment without expense to the Contractor’s Personnel;</li> <li>(iii) put in place workplace processes for Contractor’s Personnel to report work situations that they believe are not safe or healthy, and to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health.</li> </ul>

	<p>(iv) Contractor’s Personnel who remove themselves from such work situations shall not be required to return to work until necessary remedial action to correct the situation has been taken. Contractor’s Personnel shall not be retaliated against or otherwise subject to reprisal or negative action for such reporting or removal;</p> <p>(v) subject to Sub-Clause 4.6, where the Employer’s Personnel, any other contractors employed by the Employer, and/or personnel of any legally constituted public authorities and private utility companies are employed in carrying out, on or near the site, of any work not included in the Contract, collaborate in applying the health and safety requirements, without prejudice to the responsibility of the relevant entities for the health and safety of their own personnel; and</p> <p>(vi) establish and implement a system for regular (not less than six-monthly) review of health and safety performance and the working environment.”</p> <p>The second and third paragraphs are replaced with the following:</p> <p>“Within 21 days of the Commencement Date and before commencing any construction on the Site, the Contractor shall submit to the Engineer for Review a health and safety manual which has been specifically prepared for the Works, the Site and other places (if any) where the Contractor intends to execute the Works. The procedures for Review of the health and safety manual and its updates shall be as described in Sub-Clause 5.2.1 [<i>Preparation by Contractor</i>] and Sub-Clause 5.2.2 [<i>Review by Engineer</i>].</p> <p>The health and safety manual shall be in addition to any other similar document required under applicable health and safety regulations and Laws.</p> <p>The health and safety manual shall set out all the health and safety requirements under the Contract,</p> <p>a) which shall include at a minimum:</p> <p>(i) the procedures to establish and maintain a safe working environment without risk to health at all workplaces, machinery, equipment and processes under the control of the Contractor, including control measures for chemical, physical and biological substances and agents;</p>
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	<ul style="list-style-type: none"> <li>(ii) details of the training to be provided, records to be kept;</li> <li>(iii) the procedures for prevention, preparedness and response activities to be implemented in the case of an emergency event (i.e. an unanticipated incident, arising from both natural and man-made hazards, typically in the form of fire, explosions, leaks or spills, which may occur for a variety of different reasons including failure to implement operating procedures that are designed to prevent their occurrence, extreme weather or lack of early warning);</li> <li>(iv) remedies for adverse impacts such as occupational injuries, deaths, disability and disease;</li> <li>(v) the measures to be taken to avoid or minimize the potential for community exposure to water-borne, water-based, water-related, and vector-borne diseases,</li> <li>(vi) the measures to be implemented to avoid or minimize the spread of communicable diseases (including transfer of Sexually Transmitted Diseases or Infections (STDs), such as HIV virus) and non-communicable diseases associated with the execution of the Works, taking into consideration differentiated exposure to and higher sensitivity of vulnerable groups. This includes taking measures to avoid or minimize the transmission of communicable diseases that may be associated with the influx of temporary or permanent Contract-related labour;</li> <li>(vii) the policies and procedures on the management and quality of accommodation and welfare facilities if such accommodation and welfare facilities are provided by the Contractor in accordance with Sub-Clause 6.6; and</li> </ul> <p>b) any other requirements stated in the Specification.</p> <p>The paragraph starting with: “In addition to the reporting requirement of...” is replaced with the following:</p>
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	<p>“In addition to the reporting requirement of sub-paragraph (g) of Sub-Clause 4.20 [<i>Progress Reports</i>] the Contractor shall inform the Engineer immediately of any allegation, incident or accident in the Site, which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer’s Personnel or Contractor’s Personnel. This includes, but is not limited to, any incident or accident causing fatality or serious injury; significant adverse effects or damage to private property; or any allegation of SEA. In case of SEA, while maintaining confidentiality as appropriate, the type of allegation (sexual exploitation, or sexual assault), gender and age of the person who experienced the alleged incident should be included in the information.</p> <p>The Contractor, upon becoming aware of the allegation, incident or accident, shall also immediately inform the Engineer of any such incident or accident on the Subcontractors’ or suppliers’ premises relating to the Works which has or is likely to have a significant adverse effect on the environment, the affected communities, the public, Employer’s Personnel or Contractor’s, its Subcontractors’ and suppliers’ personnel. The notification shall provide sufficient detail regarding such incidents or accidents. The Contractor shall provide full details of such incidents or accidents to the Engineer within the timeframe agreed with the Engineer.</p> <p>The Contractor shall require its Subcontractors and suppliers (other than Subcontractors) to immediately notify the Contractor of any incidents or accidents referred to in this Sub-clause.”</p>
<p><b>Sub-Clause 4.10</b> <b>Use of Site Data</b></p>	<p><b>Add at the end of paragraph 1 of Sub-Clause 4.10.</b></p> <p>“Accordingly, the Contractor shall have no claim in this regard.”</p> <p><b>In paragraph 2 of Sub-Clause 4.10.</b></p> <p>Delete the words “To the extent which was practicable (taking account of cost and time)”. <b>Start</b> the word “the” with a capital letter.</p> <p>Delete “To the same extent” from the fourth line and <b>Start</b> the word “the” with a capital letter.</p> <p><b>Add following (f) after existing Sub-Clause 4.10 (e) as under:</b></p>

	<p>“(f) damage to property adjacent to the Site and the risk of injury to the occupiers of such property due to execution of the Works.”</p> <p>The following is added at the end of the Sub-Clause:</p> <p>The Geotechnical and other related data provided by the Employer are based on the investigation conducted by the Employer/Engineer and are for reference purposes only. The Contractor shall conduct further investigations if considered necessary by him at his own cost and should satisfy himself with the data furnished and make his own investigations if required for submitting his offer. Financial cost incurred due to any change in design or construction methodology later during execution on account of change in Geotechnical and other related data provided by the Employer shall be borne by the Contractor.</p>
<p><b>Sub-Clause 4.15 Access Route</b></p>	<p>The following is added at the end of Sub-Clause 4.15:</p> <p>“The Contractor shall take all necessary safety measures to avoid the occurrence of incidents and injuries to any third party associated with the use of Contractor’s Equipment on public roads or other public infrastructure.</p> <p>The Contractor shall monitor road safety incidents and accidents to identify negative safety issues and establish and implement necessary measures to resolve them.</p>
<p><b>Sub-Clause 4.18 Protection of the Environment</b></p>	<p>Sub-Clause 4.18 Protection of the Environment is replaced with:</p> <p>“The Contractor shall take all necessary measures to:</p> <ul style="list-style-type: none"> <li>(a) protect the environment (both on and off the Site); and</li> <li>(b) limit damage and nuisance to people and property resulting from pollution, noise and other results of the Contractor’s operations and/ or activities.</li> </ul> <p>The Contractor shall ensure that emissions, surface discharges, effluent and any other pollutants from the Contractor’s activities shall exceed neither the values indicated in the Employer’s Requirements, nor those prescribed by applicable Laws.</p> <p>In the event of damage to the environment, property and/or nuisance to people, on or off Site as a result of the Contractor’s operations, the Contractor shall agree with the Engineer the appropriate actions and time scale to remedy, as practicable, the damaged environment to its former condition. The Contractor shall implement such remedies at its cost to the satisfaction of the Engineer.</p>

	<p>The Contractor shall comply with the Environmental and Social Management Plan, the Code of Conduct, and the Guidelines on Gender Based Violence as given in Appendix 13 (ESHS Manual), Section VII-9: Appendices, Part 2, Employer’s Requirements.”</p>
<p><b>Sub-Clause 4.20 Progress Reports</b></p>	<p>Replace “4.20 (g) with: “the Environmental, Social, Health and Safety (ESHS) metrics set out in Appendix 13 (ESHS Manual), Section VII-9: Appendices, Part 2, Employer’s Requirements.</p>
<p><b>Sub-Clause 4.21 Security of the Site</b></p>	<p>Sub-Clause 4.21 Security of the Site is replaced with:</p> <p>“The Contractor shall be responsible for the security of the Site, and:</p> <ul style="list-style-type: none"> <li>(a) for keeping unauthorized persons off the Site;</li> <li>(b) authorized persons shall be limited to the Contractor’s Personnel, the Employer’s Personnel, and to any other personnel identified as authorized personnel (including the Employer’s other contractors on the Site), by a Notice from the Employer or the Engineer to the Contractor.</li> </ul> <p>The Contractor shall, within 21 days of the Commencement Date, submit for the Engineer’s No-objection a security management plan that sets out the security arrangements for the Site.</p> <p>The Contractor shall (i) conduct appropriate background checks on any personnel retained to provide security; (ii) train the security personnel adequately (or determine that they are properly trained) in the use of force (and where applicable, firearms), and appropriate conduct towards Contractor’s Personnel, Employer’s Personnel and affected communities; and (iii) require the security personnel to act within the applicable Laws and any requirements set out in the Employer’s Requirements.</p> <p>The Contractor shall not permit any use of force by security personnel in providing security except when used for preventive and defensive purposes in proportion to the nature and extent of the threat.</p> <p>In making security arrangements, the Contractor shall also comply with any additional requirements stated in the Employer’s Requirements.”</p>

<p><b>Sub-Clause 4.22</b> <b>Contractor’s Operations on Site</b></p>	<p>On the third line of the second paragraph before “4.17”, “Sub-Clause” is added.</p>
<p><b>Sub-Clause 4.23</b> <b>Archaeological and Geological Findings</b></p>	<p>The first paragraph is replaced with the following:</p> <p>“All fossils, coins, articles of value or antiquity, structures, groups of structures, and other remains or items of geological, archaeological, paleontological, historical, architectural or religious interest found on the Site shall be placed under the care and custody of the Employer. The Contractor shall:</p> <ul style="list-style-type: none"> <li>(a) take all reasonable precautions, including fencing-off the area or site of the finding, to avoid further disturbance and prevent Contractor’s Personnel or other persons from removing or damaging any of these findings;</li> <li>(b) train relevant Contractor’s Personnel on appropriate actions to be taken in the event of such findings; and</li> <li>(c) implement any other action consistent with the requirements of the Employer’s Requirements and relevant Laws.”</li> </ul>
<p><b>Sub-Clause 4.24 to 4.26 are added after Sub-Clause 4.23</b></p>	
<p><b>Sub-Clause 4.24</b> <b>Suppliers (other than Subcontractors)</b></p>	<p><b>4.24.1 Forced Labour</b></p> <p>The Contractor shall take measures to require its suppliers (other than Subcontractors) not to employ or engage forced labour including trafficked persons as described in Sub-Clause 6.21. If forced labour/trafficking cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.</p> <p><b>4.24.2 Child labour</b></p> <p>The Contractor shall take measures to require its suppliers (other than Subcontractors) not to employ or engage child labour as described in Sub-Clause 6.22. If child labour cases are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.</p>

	<p><b>4.24.3 Serious Safety Issues</b></p> <p>The Contractor, including its Subcontractors (if any), shall comply with all applicable safety obligations, including as stated in Sub-Clauses 4.8, 5.1 and 6.7. The Contractor shall also take measures to require its suppliers (other than Subcontractors) to introduce procedures and mitigation measures to address safety issues related to their personnel. If serious safety issues are identified, the Contractor shall take measures to require the suppliers to take appropriate steps to remedy them. Where the supplier does not remedy the situation, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to manage such risks.</p> <p><b>4.24.4 Obtaining natural resource materials in relation to supplier</b></p> <p>The Contractor shall obtain natural resource materials from suppliers that can demonstrate, through compliance with the applicable verification and/ or certification requirements, that obtaining such materials is not contributing to the risk of significant conversion or significant degradation of natural or critical habitats such as unsustainably harvested wood products, gravel or sand extraction from river beds or beaches.</p> <p><b>If a supplier cannot continue to demonstrate that obtaining such materials is not contributing to the risk of significant conversion or significant degradation of natural or critical habitats, the Contractor shall within a reasonable period substitute the supplier with a supplier that is able to demonstrate that they are not significantly adversely impacting the habitats.</b></p>
<p><b>Sub-Clause 4.25</b> <b>Code of Conduct</b></p>	<p>The Contractor shall have a Code of Conduct for the Contractor’s Personnel.</p> <p>The Contractor shall ensure that each Contractor’s Personnel is provided a copy of this Code of Conduct, written in a language comprehensible to that person, and shall seek to obtain that person’s signature acknowledging receipt of the same.</p> <p>The Contractor shall also ensure that the Code of Conduct is visibly displayed in multiple locations on the Site and any other place where the Works will be carried out, as well as in areas outside the Site accessible to the local community and project affected people. The posted Code of Conduct shall be provided in languages comprehensible to Contractor’s Personnel, Employer’s Personnel and the local community.</p>

<p><b>Sub-Clause 4.26</b></p> <p><b>Milestone</b></p>	<p><b>Sub-Clause 4.26 Milestone</b></p> <p>If no Milestones are specified in the Contract, this Sub-Clause shall not apply.</p> <p>The Contractor shall complete the works of each Milestone (including all work which is stated in the Employer’s Requirements as being required for the Milestone to be considered complete).</p> <p>The Contractor shall apply, by notice to the Engineer, for a Milestone Certificate not earlier than 14 days before the works of a Milestone will, in the Contractor’s opinion, be complete. The Engineer shall within 28 days after receiving the Contractor’s notice:</p> <ul style="list-style-type: none"> <li>(a) issue the Milestone Certificate to the Contractor, stating the date on which the works of the Milestone were completed in accordance with the Contract, except for any minor outstanding work and defects (as shall be listed in the Milestone Certificate); or</li> <li>(b) reject the application, giving reasons and specifying the work required to be done and defects required to be remedied by the Contractor to enable the Milestone Certificate to be issued.</li> </ul> <p>The Contractor shall then complete the work referred to in subparagraph (b) of this Sub-Clause before issuing a further notice of application under this Sub-Clause.</p>
<p><b>Sub-Clause 5.1</b></p> <p><b>General Design Obligations</b></p>	<p><b>Add the following at the end of Sub-Clause 5.1</b></p> <p>The Contractor shall furnish Contractor’s Warranty in the in the form included in Section X [Contract Forms].  “All subcontracts relating to the Works shall include provisions which entitle the Employer to require the subcontract to be assigned to the Employer under subparagraph (a) of Sub-Clause 15.2.3 [After Termination]</p>
<p><b>Sub-Clause 6.1</b></p> <p><b>Engagement of Staff and Labour</b></p>	<p><b>The following paragraphs are added at the end of the Sub-Clause:</b></p> <p>The Contractor shall provide the Contractor’s Personnel information and documentation that are clear and understandable regarding their terms and conditions of employment. The information and documentation shall set out their rights under relevant labour Laws applicable to the</p>

	<p>Contractor’s Personnel (which will include any applicable collective agreements), including their rights related to hours of work, wages, overtime, compensation and benefits, as well as those arising from any requirements in the Employer’s Requirements; and shall also include the Code of Conduct for Contractor’s Personnel as set forth in Sub-Clause 4.25. The Contractor’s Personnel shall be informed when any material changes to their terms or conditions of employment occur.</p> <p>“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.”</p>
<p><b>Sub-Clause 6.2 Rates of Wages and Conditions of Labour</b></p>	<p>The following paragraphs are added at the end of the Sub-Clause:</p> <p>“The Contractor shall inform the Contractor’s Personnel about:</p> <ul style="list-style-type: none"> <li>(a) any deduction to their payment and the conditions of such deductions in accordance with the applicable Laws or as stated in the Employer’s Requirements; and</li> <li>(b) 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.</li> </ul> <p>The Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws. Where required by applicable Laws or as stated in the Employer’s Requirements, the Contractor shall provide the Contractor’s Personnel written notice of termination of employment and details of severance payments in a timely manner. The Contractor shall have paid the Contractor’s Personnel (either directly or where appropriate for their benefit) all due wages and entitlements including, as applicable, social security benefits and pension contributions, on or before the end of their engagement/ employment.</p> <p>If any amenity required to be provided under any Section of Contract Labour (Regulation and Abolition) Act of 1970 for the benefit of the contract labour employed in an establishment, is not provided by the Contractor within the time prescribed therein, such amenity shall be provided by the Principal Employer within such time as may be prescribed. All expenses incurred by the Principal Employer in providing the</p>



	<p>amenities will be recovered from the amount payable under the Contract.</p> <p>In case the Contractor fails to make payment of wages within the prescribed period or makes short payment, then the Principal Employer will make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the Contractor and recover the amount so paid from the amount payable under the Contract.</p> <p>The Contractor shall keep the Employer indemnified in case any action is taken against the Employer by the competent authority on account of contravention of any of the provisions of applicable Laws. If the Employer is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provisions stipulated in the notifications/bye laws/Acts/Rules/Regulations including amendments, if any, on the part of the Contractor, the Employer shall have the right to deduct any money due to the Contractor including his amount of Performance Security. The Employer shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer.</p> <p>For the avoidance of any doubt, the Contractor shall be responsible for payment of applicable cess and making timely filings under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.”</p>
<p><b>Sub-Clause 6.5 Working Hours</b></p>	<p>The following paras are inserted at the end of the Sub-Clause:</p> <p>The Contractor shall provide the Contractor’s Personnel annual holiday and sick, maternity and family leave, as required by applicable Laws or as stated in the Employer’s Requirements.”</p> <p>The Contractor, if required, shall take approval of Engineer for carrying out work during night hours or in shifts subject to compliance with applicable Laws and shall be responsible for all necessary safety arrangements with respect to the work being undertaken. However, the Contractor shall not be entitled to any claim for increase in rates or any additional cost and the same shall be deemed to be included in the Contract Price.</p>
<p><b>Sub-Clause 6.7 Health and Safety of Personnel</b></p>	<p>In the second paragraph, “The Contractor” is replaced with:</p> <p>“Except as otherwise stated in the Employer’s Requirements, the Contractor...”</p>

<p><b>Sub-Clause 6.9 Contractor’s Personnel</b></p>	<p>The Sub-Clause is replaced with:</p> <p>“The Contractor’s Personnel (including Key Personnel, if any) shall be appropriately qualified, skilled, experienced and competent in their respective trades or occupations.</p> <p>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 and Key Personnel (if any), who:</p> <ul style="list-style-type: none"> <li>(a) persists in any misconduct or lack of care;</li> <li>(b) carries out duties incompetently or negligently;</li> <li>(c) fails to comply with any provision of the Contract;</li> <li>(d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment;</li> <li>(e) based on reasonable evidence, is determined to have engaged in Prohibited Practice during the execution of the Works;</li> <li>(f) has been recruited from the Employer’s Personnel in breach of Sub-Clause 6.3 [Recruitment of Persons];</li> <li>(g) undertakes behaviour which breaches the Code of Conduct for Contractor’s Personnel (ESHS).</li> </ul> <p>If appropriate, the Contractor shall then promptly appoint (or cause to be appointed) a suitable replacement with equivalent skills and experience. In the case of replacement of the Contractor’s Representative, Sub-Clause 4.3 [<i>Contractor’s Representative</i>] shall apply. In the case of replacement of Key Personnel (if any), Sub-Clause 6.12 [<i>Key Personnel</i>] shall apply</p> <p>Subject to the requirements in Sub-Clause 4.3 [<i>Contractor’s Representative</i>] and 6.12 [<i>Key Personnel</i>], and notwithstanding any requirement from the Engineer to remove or cause to remove any person, the Contractor shall take immediate action as appropriate in response to any violation of (a) through (g) above. Such immediate action shall include removing (or causing to be removed) from the Site or other places where the Works are being carried out, any Contractor’s Personnel who engages in (a), (b), (c), (d), (e) or (g) above or has been recruited as stated in (f) above.”</p>
<p><b>Sub-Clause 6.12 Key Personnel</b></p>	<p>The following is inserted at the end of the last paragraph:</p> <p>“If any of the Key Personnel are not fluent in this language, the Contractor shall make competent interpreters available during</p>

	all working hours in a number deemed sufficient by the Engineer.”
<b>The following Sub-Clauses 6.13 to 6.27 are added after sub-clause 6.12</b>	
<b>Sub-Clause 6.13 Foreign Personnel</b>	<p>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 its best endeavors 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.</p> <p>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.</p>
<b>Sub-Clause 6.14 Supply of Foodstuffs</b>	The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Employer’s Requirements at reasonable prices for the Contractor’s Personnel for the purposes of or in connection with the Contract.
<b>Sub-Clause 6.15 Supply of Water</b>	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.
<b>Sub-Clause 6.16 Measures against Insect and Pest Nuisance</b>	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.
<b>Sub-Clause 6.17 Alcoholic Liquor or Drugs</b>	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 thereto by Contractor’s Personnel.
<b>Sub-Clause 6.18 Arms and Ammunition</b>	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.

<p><b>Sub-Clause 6.19 Festivals and Religious Customs</b></p>	<p>The Contractor shall respect the Country’s recognized festivals, days of rest and religious or other customs.</p>
<p><b>Sub-Clause 6.20 Funeral Arrangements</b></p>	<p>The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of its local employees who may die while engaged upon the Works.</p>
<p><b>Sub-Clause 6.21 Forced Labour</b></p>	<p>The Contractor, including its Subcontractors, shall not employ or engage forced labour. Forced labour 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.</p> <p>No persons shall be employed or engaged who have been subject to trafficking. Trafficking in persons is defined as the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation.</p>
<p><b>Sub-Clause 6.22 Child Labour</b></p>	<p>The Contractor, including its Subcontractors, shall not employ or engage a child (as defined in Child Labour (Prohibition &amp; Regulation) Act, 1986).</p> <p>The Contractor, including its Subcontractors, shall not employ or engage a child between the minimum age and the age of 18 in a manner that 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.</p> <p>The Contractor including its Subcontractors, shall only employ or engage children between the minimum age and the age of 18 after an appropriate risk assessment has been conducted by the Contractor with the Engineer’s consent. The Contractor shall be subject to regular monitoring by the Engineer that includes monitoring of health, working conditions and hours of work.</p> <p>Work considered hazardous for children is work that, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, or morals of children. Such work activities prohibited for children include work:</p>

	<ul style="list-style-type: none"> <li>(a) with exposure to physical, psychological or sexual abuse;</li> <li>(b) underground, underwater, working at heights or in confined spaces;</li> <li>(c) with dangerous machinery, equipment or tools, or involving handling or transport of heavy loads;</li> <li>(d) in unhealthy environments exposing children to hazardous substances, agents, or processes, or to temperatures, noise or vibration damaging to health; or under difficult conditions such as work for long hours, during the night or in confinement on the premises of the employer.</li> </ul>
<p><b>Sub-Clause 6.23 Employment Records of Workers</b></p>	<p>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 summarised 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].</p>
<p><b>Sub-Clause 6.24 Workers’ Organisations</b></p>	<p>In countries where the relevant labour laws recognise workers’ rights to form and to join workers’ organisations of their choosing and to bargain collectively without interference, the Contractor shall comply with such laws. In such circumstances, the role of legally established workers’ organizations and legitimate workers’ representatives will be respected, and they will be provided with information needed for meaningful negotiation in a timely manner. 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. The Contractor shall not seek to influence or control these alternative means. The Contractor shall not discriminate or retaliate against the Contractor’s Personnel who participate, or seek to participate, in such organisations and collective bargaining or alternative mechanisms. Workers’ organisations are expected to fairly represent the workers in the workforce.</p>
<p><b>Sub-Clause 6.25 Non-Discrimination and Equal Opportunity</b></p>	<p>The Contractor shall not make decisions relating to the employment or treatment of Contractor’s Personnel on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment of Contractor’s Personnel on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to</p>

	<p>any aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, job assignment, promotion, termination of employment or retirement, and disciplinary practices.</p> <p>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. The Contractor shall provide protection and assistance as necessary to ensure non-discrimination and equal opportunity, including for specific groups such as women, people with disabilities, migrant workers and children (of working age in accordance with Sub-Clause 6.22).</p> <p>The Contractor shall give preference to local people including Project Affected Persons (PAPs) for employment opportunity during construction and enhance female work force participation.</p>
<p><b>Sub-Clause 6.26 Contractor’s Personnel Grievance Mechanism</b></p>	<p>The Contractor shall have a grievance mechanism for Contractor’s Personnel, and where relevant the workers’ organizations stated in Sub-Clause 6.24, to raise workplace concerns. The grievance mechanism shall be proportionate to the nature, scale, risks and impacts of the Contract. The mechanism shall address concerns promptly, using an understandable and transparent process that provides timely feedback to those concerned in a language they understand, without any retribution, and shall operate in an independent and objective manner.</p> <p>The Contractor’s Personnel shall be informed of the grievance mechanism at the time of engagement for the Contract, and the measures put in place to protect them against any reprisal for its use. Measures will be put in place to make the grievance mechanism easily accessible to all Contractor’s Personnel.</p> <p>The grievance mechanism shall not impede access to other judicial or administrative remedies that might be available, or substitute for grievance mechanisms provided through collective agreements.</p> <p>The grievance mechanism may utilize existing grievance mechanisms, providing that they are properly designed and implemented, address concerns promptly, and are readily accessible to such project workers. Existing grievance mechanisms may be supplemented as needed with Contract-specific arrangements.</p>
<p><b>Sub-Clause 6.27</b></p>	<p>The Contractor shall provide appropriate training to relevant Contractor’s Personnel on ESHS aspects of the Contract,</p>

<p><b>Training of Contractor’s Personnel</b></p>	<p>including appropriate sensitization on prohibition of SEA, Gender Based Violence (GBV) and health &amp; safety training referred to in Sub-Clause 4.8.</p> <p>As stated in the Employer’s Requirements or as instructed by the Engineer, the Contractor shall also allow appropriate opportunities for the relevant Contractor’s Personnel to be trained on ESHS aspects of the Contract by the Employer’s Personnel.</p> <p>The Contractor shall provide training on SEA, GBV including its prevention, to any of its personnel who has a role to supervise other Contractor’s Personnel.</p>
<p><b>Sub-Clause 7.3 Inspection</b></p>	<p>The following is added in the first paragraph after “Employer’s Personnel” “(including the Bank staff or consultants acting on the Bank’s behalf, stakeholders and third parties, such as independent experts, local communities, or non-governmental organizations)”</p> <p>The following is added as (b) (iv):</p> <p>“(iv) carryout environmental and social audit, and”</p>
<p><b>Sub-Clause 7.7 Ownership of Plant and Materials</b></p>	<p>The following is added before the first paragraph:</p> <p>“Except as otherwise provided in the Contract,”</p>

<p><b>Sub-Clause 8.1 Commencement of Work</b></p>	<p>The Sub- Clause is replaced in its entirety with the following:</p> <p>“The Engineer shall give a Notice to the Contractor stating the Commencement Date, not less than 07 days before the Commencement Date.</p> <p>The Notice shall be issued promptly after the Engineer determines the fulfilment of the following conditions:</p> <ul style="list-style-type: none"> <li>(a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;</li> <li>(b) delivery to the Contractor of reasonable evidence of the Employer’s financial arrangements (under Sub-Clause 2.4 [Employer’s Financial Arrangements]);</li> <li>(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;</li> </ul> <p>Subject to Sub-Clause 4.1 on the Management Strategies and Implementation Plans and the C-ESMP and Sub-Clause 4.8 on the health and safety manual, 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.”</p>
<p><b>Sub-Clause 8.2 Time for Completion</b></p>	<p>The following paragraph shall be added at the end of Sub-Clause 8.2:</p> <p>The Contractor shall complete each Key Date (if any) within the Time for Completion for the Key Date (as the case may be), including completing all work which is stated in the Contract as being required for the Key Date to be considered to be completed for the issuance of key date completion certificate. .</p>
<p><b>Sub-Clause 8.5 Extension of Time for Completion</b></p>	<p>Replace the entire first paragraph of Sub-Clause 8.5 with the following:</p> <p>The Contractor shall be entitled subject to Sub-Clause 20.1 [Claims] to an extension of the Time for Completion if and to the extent that completion for the purpose of Sub-Clause 10.1 [Taking Over of the Works and Sections] or for the completion</p>



	of Key Date specified in Appendix 2, Section VII-9: Appendices of Part 2 Employer’s requirements is or will be delayed by any of the following causes:”
<p><b>Sub-Clause 8.8 Delay Damages</b></p>	<p>Replace the entire Sub-Clause 8.8 with the following:</p> <p>Time is the essence of the contract and if the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject to notice under Sub-Clause 20.1 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 charged for every week of delay or part thereof which shall elapse between the Time for Completion and actual Date of Completion of the Works. Delay damages for not achieving Key Dates stated in Appendix 2 Section VII-9, Part 2 of the Employer’s Requirements, shall be the sum stated in the Contract Data.</p> <p>However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages stated in the Contract Data.</p> <p>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 for Contractor’s Default] 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.</p> <p>Delay Damages may be recovered by the Employer from any amount of money due from the Contractor under the Contract. The Delay Damages may also be recovered from the amount of Performance Security Bank Guarantee and in that case the Contractor would be liable to replenish the amount of Performance Security Bank Guarantee.</p> <p>The Delay Damages recovered corresponding to any key date will be provisional and would be refunded by the Employer on achievement of subsequent key date on time.</p>
<p><b>Sub-Clause 11.7 Right of Access after Taking Over</b></p>	<p>In the second paragraph, “Whenever the Contractor intends to access any part of the Works during the relevant DNP:” is replaced with:</p> <p>“Whenever, until the date 28 days after issue of the Performance Certificate, the Contractor intends to access any part of the Works:”</p>

<b>Sub-Clause 13.2 Value Engineering</b>	Not applicable
<b>Sub-Clause 13.3.1 Variation by Instruction</b>	Subparagraph 13.3.1 (a) is replaced with: “a description of the varied work performed or to be performed, including details of the resources and methods adopted or to be adopted by the Contractor, and sufficient ESHS information to enable an evaluation of ESHS risks and impacts;”
<b>Sub-Clause 13.3.1 Variation by Instruction</b>	<p><b>Following is added to GC Clause 13.3.1 Variation in the accepted Contract Amount &amp; deriving rates of new items</b></p> <p><b>A.</b> The quantities of items shown in Price Schedule ‘B’ and estimated cost shown in Price Schedule ‘C’ are approximate, and are liable to vary during the actual execution of the work. Some items may have to be added or deleted. The Contractor shall be bound to carry out and complete the stipulated Work as instructed by the Engineer, irrespective of the magnitude of variations including additions or deletion in the Price Schedule. Variations in Price Schedule ‘A’, Price Schedule ‘B’ and Price Schedule ‘C’ shall be paid as follows:</p> <p><b>(I) Price Schedule ‘A’</b></p> <p><b>a)</b> For Bridges involving pile foundations, the quoted price of Schedule ‘A’ shall include providing piles, upto a pile depth of 20 m (below bottom of pile cap). Any increase or decrease in pile depth above/below the value of 20 m shall be payable/recoverable at the accepted rate of relevant item in Schedule ‘C’.</p> <p><b>b)</b> For any variation in the Scope of the Works in Schedule ‘A’, cost of additional quantities/items shall be worked out based on the accepted rates of items provided in Schedule ‘B’ or Schedule ‘C’.</p> <p>In case, items involving variation are not covered in Schedule ‘B’ or Schedule ‘C’, rates of such items shall be taken from North Western Railway Unified Standard Schedule of Rates (NWR USSOR) -2019 (for Formation and Bridge works) duly adjusted for escalation @5% per annum from Nov’ 2019 and Delhi Schedule of Rates (DSR) -2021 Vol I &amp; II (for items other than Formation and Bridge works) duly adjusted for escalation @5% per annum from Apr’ 2021. In cases where items involving variation are not covered in DSR or NWR USSOR, the rates of such items shall be worked out based on the rates available for similar items in DSR/NWR USSOR.</p> <p><b>c) Deriving Rates for New Items / Negotiation</b></p>

	<p>In case Engineer introduces an item for which the Contract does not contain any rates or prices applicable to the varied Works, the rate of such items shall be derived, wherever possible, from rate for similar items available in the Price Schedules of the Accepted Contract Amount. In case this is not possible, the rate shall be decided on the following basis:</p> <ul style="list-style-type: none"> <li>i) Cost of Materials at current market price, as actually utilized in the final finished Permanent Works, including a reasonable percentage for wastage and transportation.</li> <li>ii) Cost of enabling works if any (unless provided for separately) worked out on the above basis but with less stringent quality. Specifications minus salvage value of serviceable material released after completion of Work and cost of material released as scrap.</li> <li>iii) Cost of labour actually used at the site of Work at rates under Payment of Minimum Wages Act for the area of Work for each category of worker, further enhanced by a percentage of 10% of the aforesaid rates to account for labour not directly utilized at Site and other ancillary and incidental expenses on labour.</li> <li>iv) Hire charges for Plant &amp; Machinery, scaffolding, shuttering, forms, etc., required to be used at the site of the work. The tools used by the various trades shall not be counted as Plant &amp; Machinery for this purpose.</li> <li>v) An amount of 15% of items c) (i), (ii), (iii) and (iv) above to allow for Contractor's overheads including water/electricity charges and labour cess etc., profits and corporate taxes etc. No such percentage shall be applicable to the estimated cost of Materials supplied free of cost to the Contractor.</li> <li>vi) In all cases where extra items of Work are involved, for which there are no rates in the Accepted Contract Amount, the Contractor shall give a notice to the Engineer, of at least 7 days before the need for its execution arises.</li> </ul> <p><b>(II) Price Schedule 'B' having items rates with quantities:</b></p> <ul style="list-style-type: none"> <li>a) At the accepted rates of the Contract for Positive variation in quantities of items to the extent of 50%. In case of variation in quantities on minus side, Contract rates will be payable at the accepted rates of the</li> </ul>
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	<p>Contract for the executed quantities. For the purpose of variation for quantity of items of all types of cement given in Schedule 'B' shall be considered as on item.</p> <p>b) In case the Variation in individual items (except for items under Para c), below) as stipulated above: is more than 50% on plus side, the rate for the varied quantity beyond 50% shall be negotiated between the Engineer and the Contractor and mutually agreed rates arrived at before execution of the extra quantity.</p> <p>c) Variation in the quantity of items individually costing upto 1% of Accepted Contract Amount (i.e. total of Schedule 'A' and Schedule 'B' and Schedule 'C') or Rs. 1 crore, whichever is less, shall be payable at the accepted rates of the Contract, till the value of such individual item on account of Variation reaches upto 2% of the Accepted Contract Amount or Rs. 2 crore, whichever is less. Negotiation of rates for such items shall be conducted only for the exceeded quantity beyond 2% of the Accepted Contract Amount or Rs. 2 crore, whichever is less.</p> <p><b>d) Deriving Rates for New Items / Negotiation</b> In case Engineer introduces an item for which the Contract does not contain any rates or prices applicable to the varied Works, the rate of such items shall be derived, wherever possible, from rate for similar items available in the Price Schedules of the Accepted Contract Amount. In case this is not possible, the rate shall be decided on the following basis:</p> <p>i) Cost of Materials at current market price, as actually utilized in the final finished Permanent Works, including a reasonable percentage for wastage and transportation.</p> <p>ii) Cost of enabling works if any (unless provided for separately) worked out on the above basis but with less stringent quality. Specifications minus salvage value of serviceable material released after completion of Work and cost of material released as scrap.</p> <p>iii) Cost of labour actually used at the site of Work at rates under Payment of Minimum Wages Act for the area of Work for each category of worker, further enhanced by a percentage of 10% of the aforesaid rates to account for labour not directly utilized at Site and other ancillary and incidental expenses on labour.</p>
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	<p>iv) Hire charges for Plant &amp; Machinery, scaffolding, shuttering, forms, etc., required to be used at the site of the work. The tools used by the various trades shall not be counted as Plant &amp; Machinery for this purpose.</p> <p>v) An amount of 15% of items d) (i), (ii), (iii) and (iv) above to allow for Contractor's overheads including water/electricity charges and labour cess etc., profits and corporate taxes etc. No such percentage shall be applicable to the estimated cost of Materials supplied free of cost to the Contractor.</p> <p>vi) In all cases where extra items of Work are involved, for which there are no rates in the Accepted Contract Amount, the Contractor shall give a notice to the Engineer, of at least 7 days before the need for its execution arises.</p> <p><b>(III) Price Schedule 'C' (containing only rates of items but without quantities) /:</b></p> <p>a) At the accepted rates of the Contract for varied cost of Schedule 'C' upto INR 4 Cr. In case of Variation on minus side, Contract rates will be payable at the accepted rates of the Contract for the executed quantities.</p> <p>b) In case the varied cost of Schedule 'C' is more than INR 4 Cr., the rates of individual items shall be negotiated between the Engineer and the Contractor and mutually agreed rates arrived at, before its execution.</p> <p><b>B. Disagreement in Rates for New Items /</b></p> <p>In the event of disagreement of rates of new items/negotiations in respect of items A (I) c) and A (II) d) above, the Engineer shall fix such rates of price as are, in his opinion appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices are agreed or fixed, the Engineer shall determine provisional rates or prices to enable on-account payments to the Contractor. Alternatively, in the event of disagreement, the Contractor shall have no claim to execute extra quantities/new items and the Engineer shall be free to get such additional quantities beyond 50% / new items executed through any other Agency. However, if the Engineer or the Employer so directs the Contractor shall be bound to carry out any such additional quantities beyond the limits stated</p>
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	above original quantities and/or new items and the disagreement or the difference regarding rates to be paid for the same shall be settled in the manner laid down under the conditions for the settlement of dispute.
<b>Sub-Clause 13.4 Provisional Sums</b>	The following is inserted as the penultimate paragraph:  “The Provisional Sum shall be used to cover the Employer's share of the DAAB members’ fees and expenses, in accordance with Clause 21. No prior instruction of the Engineer shall be required with respect to the work of the DAAB. The Contractor shall submit the DAAB members’ invoices and satisfactory evidence of having paid 100% of such invoices as part of the substantiation of those Statements submitted under Sub-Clause 14.3.
<b>Sub-Clause 13.6 Adjustments for Changes in Laws</b>	The following paragraph is added at the end of the Sub-Clause:  “Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the Table of Adjustment Data in accordance with the provisions of Sub-Clause 13.7 [Adjustments for Changes in Cost].”
<b>Sub-Clause 13.7 Adjustments for Changes in Cost</b>	The following paragraph is added at the end of Sub-Clause 13.7  Price adjustment will also be applicable during the extended period of Time for Completion where such extension has been granted under Sub-Clause 8.5 [Extension of Time for Completion] or it is specifically mentioned that extension is with Price Adjustment.
<b>Sub-Clause 14.2.1 Advance Payment Guarantee</b>	<b>Replace the first para of Sub-Clause 14.2.1 with the following:</b>  The Contractor shall obtain (at the Contractor’s cost) an Advance Payment Guarantee or Security in amounts and currencies equal to the advance payment and shall submit it to the Employer with a copy to the Engineer. The Guarantee in accordance to the form attached to the Contract can be split up in four (4) Guarantees to be released on repayment. The Contractor shall submit the Advance Payment Guarantee in any of the following forms:

	<p>(a) Unconditional and irrevocable Bank Guarantee from the specified banks in the form appearing in Section X [Contract Forms] as under:</p> <ul style="list-style-type: none"><li>(i) a scheduled bank (excluding co-operative banks) in India, or</li><li>(ii) a Foreign Bank having arrangement with a nationalized bank or scheduled banks (excluding co-operative banks) in India;</li></ul> <p>(b) Banker's Cheque or Demand Draft drawn on a scheduled bank (excluding co-operative banks) or nationalized bank in India.</p> <p>The scheduled bank issuing the bank guarantee shall be on “Structure Financial Messaging System (SFMS)” platform. A separate advice of the bank guarantee shall invariably be sent by the issuing bank to Employer’s Bank through SFMS at the address given below and only after receipt of the same by the Employer’s Bank, the bank guarantee shall become operative and acceptable to the Employer. Further, the bank guarantees in original form along with a copy of “MT760COV (in case of bank guarantee message)/ MT767COV (in case of bank guarantee amendment message) Report” sent by the concerned issuing bank sealed in an envelope shall be submitted to the Employer.</p> <p>The Issuing Bank shall send the SFMS to:</p> <p>Beneficiary: Haryana Orbital Rail Corporation Limited</p> <p>Bank Name:</p> <p>Account No.</p> <p>IFSC Code:</p> <p>Note: All the instruments mentioned in (a) &amp; (b) above should be in favour of Chief Project Manager, Haryana Rail Infrastructure Development Corporation Limited, Plot No 143, 5th Floor, Railtel Tower, Sector-44, Gurugram.</p>
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	<p>Such Advance Payment guarantee shall remain effective until the Advance Payment has been repaid pursuant to provision of this Sub-Clause 14.2, but the amount thereof shall be progressively reduced by the amount repaid by the Contractor as indicated in the Interim Payment Certificate issued in accordance with this Clause 14.</p>
<p><b>Sub-Clause 14.2.3 Repayment of Advance Payment</b></p>	<p><b>Replace the Sub-Clause 14.2.3 with the following:</b></p> <p><b>a.</b> The recovery of Advances shall commence when 30% of the Accepted Contract Amount of the Work has been paid and it will be completed by the time, 90% of the Accepted Contract Amount has been paid or the original completion date whichever is earlier. However, minimum recovery of advances shall be at the rate of 10% (ten percent) of on-account bill.</p> <p><b>b.</b> The Contractor shall always have the option to have the recoveries commenced and/or completed earlier, and/or to have recoveries affected in installments of higher amount and also to repay part or whole of the Advance by direct payment rather than through on-account Bills. However, the recovery of Advances shall be limited to 30% of on-account bill.</p> <p><b>c.</b> In case the Contract is terminated due to default of the Contractor or rescinded / foreclosed, due to any other reason, the Contractor shall return the unrecovered amount of all Advances within 15 days of issue of notice of termination / rescission / foreclosure of the Contract and if the Contractor fails to do so due to any reason whatsoever, then interest at rate equal to State Bank of India's Marginal Cost of fund based Lending Rate (MCLR) applicable for the tenure of 01 year prevailing on the date of issue of notice of termination / rescission / foreclosure plus 3% Penal Interest per annum shall be charged on the unrecovered amount of such Advances from 16th day onwards compounded quarterly till the same is returned by the Contractor.</p> <p><b>Interest in case of Delay in repayment of Advances</b> Should there be delay in the progress and completion of Work, as a result of which it is not possible to recover the Advances 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 Advances beyond the original completion date specified in the Contract, shall be equal to State Bank of India's Marginal Cost of fund based Lending Rate (MCLR) applicable for the tenure of 01 year prevailing on</p>



	<p>the original completion date specified in the Contract plus 3% Penal Interest per annum.</p> <p><b>Advances to be used only for this work</b> The advances shall be used by the Contractor strictly for the purpose of the Contract, and for the purpose for which they are paid. Under no circumstances, shall the advances be diverted for other purposes. Any such diversion shall be construed as a breach of the Contract and the Contractor shall be asked to return the advance at once and pay interest at 15% per annum till the advance is recovered back from him. The Contractor shall return the advance and pay the interest in one go without demur. Employer retains the right for any other remedy prescribed for breach of Contract in this regard.</p>
<b>Sub-Clause 14.3 Application for Interim Payment</b>	The following is inserted at the end of (vi) after: <i>[Agreement or Determination]</i> : “any reimbursement due to the Contractor under the Dispute Avoidance/ Adjudication Agreement. (Appendix General Conditions of Dispute Avoidance/ Adjudication Agreement).”
<b>Sub-Clause 14.3 Application for Interim Payment</b>	<p><b>Add the following at the end, below Sub paragraph ‘(x)’</b></p> <p>(xi) an amount to be deducted for the payments demanded by relevant competent authorities of the Central Government and/or State Government and/or local bodies from the Employer as due payments/ liability of the Contractor as mandated by relevant laws.</p> <p>(xii) Stage Completion/Milestone Certificate issued by the Engineer.</p>
<b>Sub-Clause 14.6.1 The IPC</b>	<p><b>Replace the Sub-Clause 14.6.1 with the following:</b> The Engineer shall, within 07 days after receiving a Statement and supporting documents, issue an IPC to the Employer, with a copy to the Contractor:</p> <p>(a) stating the amount which the Engineer fairly considers to be due; and</p> <p>(b) including any additions and/or deductions which have become due under Sub-Clause 3.7 [Agreement or Determination] or under the Contract or otherwise,</p> <p>with detailed supporting particulars (which shall identify any difference between a certified amount and the corresponding amount in the Statement and give the reasons for such difference).</p>
<b>Sub-Clause 14.6.2</b>	“and/or” from subparagraph (b) is deleted.

<p><b>Withholding (amounts in an IPC)</b></p>	<p>The following is then added as subparagraph (c) and subparagraph (c) of the Sub-Clause is renumbered as (d):</p> <p>“(c) if the Contractor was, or is, failing to perform any ESHS obligations or work under the Contract, the value of this work or obligation, as determined by the Engineer, may be withheld until the work or obligation has been performed, and/or the cost of rectification or replacement, as determined by the Engineer, may be withheld until rectification or replacement has been completed. Failure to perform includes, but is not limited to the following:</p> <ul style="list-style-type: none"> <li>(i) failure to comply with any ESHS obligations or work described in the Works’ Requirements which may include: working outside site boundaries, excessive dust, damage to offsite vegetation, pollution of water courses from oils or sedimentation, contamination of land e.g. from oils, human waste, damage to archaeology or cultural heritage features, air pollution as a result of unauthorized and/or inefficient combustion;</li> <li>(ii) failure to regularly review C-ESMP and/or update it in a timely manner to address emerging ESHS issues, or anticipated risks or impacts;</li> <li>(iii) failure to implement the C-ESMP e.g. failure to provide required training or sensitization;</li> <li>(iv) failing to have appropriate consents/permits prior to undertaking Works or related activities;</li> <li>(v) failure to submit ESHS report/s (as described in general specifications, or failure to submit such reports in a timely manner;</li> <li>(vi) failure to implement remediation as instructed by the Engineer within the specified timeframe (e.g. remediation addressing non-compliance/s).”</li> </ul>
<p><b>Sub-Clause 14.7 Payment</b></p>	<p>At the end of sub-paragraph (b): “and” is replaced with “or” and the following inserted as (iii):</p> <p>“(iii) at a time when the Bank’s loan (from which part of the payments to the Contractor is being made) is suspended,</p>

	<p>the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and”</p> <p>At the end of sub-paragraph (c): “.” is replaced with “;” and the following inserted:</p> <p>“or, at a time when the Bank’s loan (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].”</p>
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<b>Sub-Clause 14.7 Payment</b>	<p>After the sub-paragraphs (c), add (d) with the following:</p> <p>(d) Provisional amount against the Statement specified in Sub-Clause 14.3:</p> <ul style="list-style-type: none"><li>i) The Employer shall pay 80% of such amount as provisional payment within 7 days from the receipt of evaluated statement from the Engineer. The balance 20% shall be paid within 28 days from the receipt of evaluated statement from the Engineer. Next 80% amount of provisional payment shall be made only after 100% payment of preceding interim payment certified has been completed.</li><li>ii) It shall be the responsibility of the Contractor to claim an amount for the performed services as admissible as per the Contract. If at any time it is observed by the Engineer that the amount claimed in the Statement are higher than the actual admissible performance, the facility of provisional payment will be withheld until such time the excess payment paid is adjusted in the subsequent Interim Payment Certificate. In such a case, warning letter will be issued to the Contractor.</li><li>iii) If at any time, the Engineer/Employer observes for the second time that the amount claimed in the Statement are higher than the actual admissible performance, the facility of provisional payment will be liable to be withdrawn.</li></ul> <p>(e) Payment of GST:</p> <p>The Contractor is responsible for paying all the taxes [including Goods and Service Tax (GST)], duties, cess, etc. as per the Statutory requirements. However, GST levied on the invoices raised by the Contractor will be temporarily withheld at the time of making payment for the invoice.</p> <p>GST withheld will be released by HRIDC/ HORCL on submission of proof, i.e. copy of Form GSTR-1 (reflecting the particular invoice) after due verification from the GST portal by the Employer.</p>
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<p><b>Sub-Clause 14.9</b> <b>Release of Retention Money</b></p>	<p>The following is added at the end of Sub-Clause 14.9:</p> <p>“Unless otherwise stated in the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions of Contract or in another form approved by the Employer for the second half of the Retention Money. The Contractor shall submit unconditional and irrevocable Bank Guarantee from the specified banks in the form appearing in Section X [Contract Forms] as under:</p> <p style="padding-left: 40px;">(i) a scheduled bank (excluding co-operative banks) in India, or</p> <p style="padding-left: 40px;">(ii) a Foreign Bank having arrangement with a nationalized bank or scheduled banks (excluding co-operative banks) in India;</p> <p>The scheduled bank issuing the bank guarantee shall be on “Structure Financial Messaging System (SFMS)” platform. A separate advice of the bank guarantee shall invariably be sent by the issuing bank to Employer’s Bank through SFMS at the address given below and only after receipt of the same by the Employer’s Bank, the bank guarantee shall become operative and acceptable to the Employer. Further, the bank guarantees in original form along with a copy of “MT760COV (in case of bank guarantee message)/ MT767COV (in case of bank guarantee amendment message) Report” sent by the concerned issuing bank sealed in an envelope shall be submitted to the Employer.</p> <p>The Issuing Bank shall send the SFMS to:</p> <p>Beneficiary: Haryana Orbital Rail Corporation Limited</p> <p>Bank Name:</p> <p>Account No.</p> <p>IFSC Code:</p> <p>Note: Bank Guarantee should be in favour of Chief Project Manager, Haryana Rail Infrastructure Development</p>
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	<p>Corporation Limited, Plot No 143, 5th Floor, Railtel Tower, Sector-44, Gurugram.</p> <p>The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify, and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release after the latest of the expiry dates of the Defects Notification Periods. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.</p> <p>If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.”</p>
<p><b>Sub-Clause 14.12 Discharge</b></p>	<p>On the seventh line of the first paragraph, “Sub-Clause 21.6 [Arbitration]” is replaced with: “Clause 21 [Disputes and Arbitration]’.</p>
<p><b>Sub-Clause 14.15 Currencies of Payment</b></p>	<p>Throughout Sub-Clause 14.15, “Contract Data” is replaced with: “Schedule of Payment Currencies”.</p>
<p><b>Sub-Clause 15.1 Notice to Correct</b></p>	<p>“and” is deleted from (b) and</p> <p>“.” is replaced by: “; and” in (c).</p> <p>The following is then added as (d)</p> <p>“(d) specify the time within which the Contractor shall respond to the Notice to Correct.”</p> <p>In the third para., “shall immediately respond” is replaced with: “shall respond within the time specified in (d)”. Further, in the</p>

	third para., “to comply with the time specified in the Notice to Correct.” is replaced with: “to comply with the time specified in (c).”
<b>Sub-Clause 15.2.1 Notice</b>	Sub-paragraph (h) is replaced with:  “based on reasonable evidence, has engaged in Prohibited Practice as defined in paragraph 2 of the Particular Conditions - Part C –Prohibited Practices, in competing for or in executing the Contract.”
<b>Sub-Clause 15.8 Part(s) termination of the Contract</b>	Add New Sub-Clause 15.8 “ <b>Part(s) termination of the Contract</b> ” after Sub-Clause 15.7;  <b>For Part(s) termination of the Contract</b>  If the Contractor fails to demonstrate to the satisfaction of Engineer that they will be able to achieve a specified Key Date(s)/Date of Completion/ remedying any notified defect under the contract, the Engineer may give the Contractor a notice to correct under Sub-Clause 15.1 in writing to expedite such identified work(s) immediately, so as to achieve the Key Date(s)/Date of Completion/ remedying any notified defect under the contract. If the Contractor fails to comply with such notice, the Employer, in his sole discretion, shall be entitled to carry out such identified part of works (Maximum upto 10% original Accepted Contract Amount) under Sub Clause 13.1 (Right to vary) as is necessary to achieve the key Date(s)/Date of completion by his own workmen or by other contractors without prejudice to any other right or remedy(ies).  Engineer shall proceed in accordance with Sub clause 3.7.2 (Engineer’s Determination) the value of the part work(s) decided to be part terminated. The Engineer shall as soon as practicable after taking such decision, notify the Contractor thereof in writing of the value of the identified Works for the encashment of Performance Security as specified in Sub clause 15.4
<b>Sub-Clause 15.9 Prohibited Practices</b>	Add New Sub-Clause 15.9 “Prohibited Practices” after Sub-Clause 15.8; “ 15.9.1 The Bank requires compliance with the Bank’s Policy on Prohibited Practices as set forth in Particular Conditions - Part C- Prohibited Practices.

	<p>15.9.2 The Employer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.”</p>
<p><b>Sub-Clause 16.1 Suspension by Contractor</b></p>	<p>The following paragraph is inserted after the first paragraph:</p> <p>“Notwithstanding the above, if the Bank has suspended disbursements under the loan 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 Recipient having received the suspension notification from the Bank.”</p>
<p><b>Sub-Clause 16.2.1 Notice</b></p>	<p>Sub-paragraph (j) is deleted in its entirety.</p> <p>At the end of sub-paragraph (i): “; or” is replaced with: “.”</p> <p>sub-paragraph (f) is replaced with:</p> <p>“(f) the Contractor does not receive a Notice of the Commencement Date under Sub-Clause 8.1 [<i>Commencement of Works</i>] within 180 days after receiving the Letter of Acceptance, for reasons not attributable to the Contractor.”</p>
<p><b>Sub-Clause 16.2.2 Termination</b></p>	<p>The following is added at the end of Sub-Clause 16.2.2:</p> <p>“In the event the Bank suspends the loan 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.”</p>



<b>Sub-Clause 17.1 Responsibility for Care of the Works</b>	On the fourth and fifth lines of the first paragraph, replace “Date of Completion of the Works” with “issue of the Taking-Over Certificate for the Works”.
<b>Sub-Clause 17.3 Intellectual and Industrial Property Rights</b>	On the first line of the second paragraph, replace “notice” is replaced with “a Notice”.
<b>Sub-Clause 17.4 Indemnities by the Contractor</b>	<p>Replace the sub-paragraph 17.4(b) (i) of Sub-Clause 17.4 with the following:</p> <p>(i) arises out of or in the course of or by reason of the design, execution, completion and the remedying of any defects of the Works, and</p>
<b>Sub-Clause 17.7 Use of Employer’s Accommodation/Facilities</b>	<p>The following Sub-Clause is added as 17.7:</p> <p>“The Contractor shall take full responsibility for the care of the Employer-provided accommodation and facilities, if any, as detailed in the Employer’s Requirements, 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)</p> <p>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 its own cost, rectify the loss or damage to the satisfaction of the Engineer.”</p>
<b>Sub-Clause 18.1 Exceptional Events</b>	<p>Sub-paragraph (c) is substituted with:</p> <p>“(c) riot, commotion, disorder or sabotage by persons other than the Contractor’s Personnel and other employees of the Contractor and Subcontractors;”</p>
<b>Sub-Clause 18.4 Consequences of an Exceptional Event</b>	<p>The following is added at the end of sub-paragraph (b) after deleting the “.”:</p> <p>“, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Exceptional Events, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 19.2 [ Insurance to be provided by the Contractor].”</p>
<b>Sub-Clause 18.5 Optional Termination</b>	In sub-paragraph (c), “and necessarily” is inserted after ““was reasonably”.

<p><b>Sub-Clause 19.1 General Requirements</b></p>	<p>The following paragraphs are added after the first:</p> <p>“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 terms (if any) agreed by both Parties before the date of the Letter of Acceptance.</p> <p>This agreement of terms shall take precedence over the provisions of this Clause.”</p>
<p><b>Sub-Clause 19.2 Insurance to be provided by the Contractor</b></p>	<p>The following is inserted as the first sentence in Sub-Clause 19.2:</p> <p>“The Contractor shall be entitled to place all insurances relating to the Contract (including, but not limited to the insurance referred to Clause 19) with insurers from any eligible source country through an insurance provider that is authorized to provide such insurance coverage in India.</p> <p>The Contractor shall submit all evidence(s) of insurances and policies within the period stated in the Contract Data.”</p>
<p><b>Sub-Clause 19.2.1 The Works</b></p>	<p>On the last line of the second paragraph, “Clause 12 [<i>Tests after completion</i>]” is deleted.</p>
<p><b>Sub-Clause 19.2.5 Injury to employees</b></p>	<p>The second paragraph is replaced with:</p> <p>“The Employer and the Engineer shall also be indemnified under the policy of insurance, against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor’s Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer’s Personnel.”</p>
<p><b>Sub-Clause 20.1 Claims</b></p>	<p>In a): “any additional payment” is replaced with “payment”.</p>
<p><b>Sub-Clause 20.2 Claims for Payment and/or EOT</b></p>	<p>The first paragraph is replaced with:</p> <p>“If either Party considers that it is entitled to claim under 20.1 (a) or (b), the following claim procedure shall apply:”</p>

<p><b>Sub-Clause 21.1</b></p> <p><b>Constitution of the DAAB</b></p>	<p>Replace the entire first paragraph of Sub-Clause 21.1 with the following:</p> <p>Dispute shall be referred to a DAAB for decision in accordance with Sub-Clause 21.4 [Obtaining DAAB’s Decision]. The Parties shall appoint a DAAB by the date stated in the Contract Data. The date may be changed if both the Parties agree, in writing, to change the date, up to one hundred eighty (180) days after the Commencement Date.</p> <p>In the second paragraph, at the end of the first sentence after deleting: “.”, the following is added: “, each of whom shall meet the criteria set forth in Sub-Clause 3.3 of Appendix- General Conditions of Dispute Avoidance/ Adjudication Agreement.”</p> <p>After the second paragraph insert the following paragraph: “If the Contract is with a foreign Contractor, the DAAB members shall not have the same nationality as the Employer or the Contractor.”</p>
<p><b>Sub-Clause 21.2</b></p> <p><b>Failure to Appoint DAAB Member(s)</b></p>	<p>For both (a) and (b): “by the date stated in the first paragraph of Sub-Clause 21.1 [<i>Constitution of the DAAB</i>]” is replaced with: “within 42 days from the date the Contract is signed by both Parties”</p>

<p><b>Sub-Clause 21.6 Arbitration</b></p>	<p><b>This clause stands amended and restated in its entirety as follows:</b></p> <p><b>21.6.1 Disputes shall be settled by arbitration in accordance with the following provisions:</b></p> <p><b>(A) In case of the Contractor or the Lead member of the Contractor (in the case of a Joint Venture or Consortium) being of foreign origin</b></p> <p>If the efforts to resolve all or any of the disputes through amicable settlement fails, then such disputes or differences, whatsoever arising between the parties, arising out of the Contract or relating to effect of the Contract or the breach thereof shall be referred to Arbitration in accordance with the following provisions:</p> <p><b>1. Selection of Arbitrators</b> -Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel comprising three (3) arbitrators, in accordance with the following provisions:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to Singapore International Arbitration Centre (SIAC) for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of receipt of the list by the Parties, SIAC shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p> <p>(b) Where the Parties do not agree that the dispute concerns a technical matter, the Client and the Contractor shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been</p>
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	<p>appointed, the third arbitrator shall, at the request of either Party, be appointed by SIAC.</p> <p>(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the SIAC to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p> <p><b>2. Rules of Procedure</b> - Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p><b>3. Substitute Arbitrators</b> -If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p><b>4. Nationality and Qualifications of Arbitrators</b> - The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Contractor’s home country or of the home country of any of their members or Parties or of the Government’s country. For the purposes of this Clause, “home country” means any of:</p> <p>(a) the country of incorporation of the Contractor or of any of their members or Parties; or</p> <p>(b) the country in which the Contractor’s or any of their members’ or Parties’ principal place of business is located; or</p> <p>(c) the country of nationality of a majority of the Contractor’s or of any members’ or Parties’ shareholders; or</p> <p>(d) the country of nationality of the Sub-Contractor concerned, where the dispute involves a subcontract.</p> <p><b>5. Miscellaneous</b> - In any arbitration proceeding hereunder:</p>
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	<p>(a) proceedings shall, unless otherwise agreed by the Parties, be held at Gurugram, India or such place as mutually agreed by both parties. The cost of Arbitration including the fees of the Arbitrator shall be borne equally by both the parties.</p> <p>(b) the English language shall be the official language for all purposes; and</p> <p>(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</p> <p><b>(B) In case of the Contractor or the Lead member of the Contractor (in the case of a Joint Venture or Consortium) being of Indian origin</b></p> <p>If the efforts to resolve all or any of the disputes through amicable settlement fail, then such disputes or differences, whatsoever arising between the parties, arising out of the Contract or relating to effect of the Contract or the breach thereof shall be referred to Arbitration in accordance with the following provisions:</p> <p>(a) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by Managing Director of the Employer (MD/HRIDC).</p> <p>(b) The disputes so referred to arbitration shall be settled in accordance with the Indian Arbitration &amp; Conciliation Act, 1996 and amended by the Arbitration and Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof. Further, it is agreed between the parties as under:</p> <p>Number of Arbitrators - The Arbitral tribunal shall consist of:</p> <p style="padding-left: 40px;">(i) Sole Arbitrator (or)</p> <p style="padding-left: 40px;">(ii) 3 (three) arbitrators</p> <p><b>1. Procedure for Appointment of Arbitrators</b></p>
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	<p>The arbitrators shall be appointed as per following procedure:</p> <p><b>(i) In case of Sole Arbitrator:</b> Within 30 days from the day when a written and valid demand for Arbitration is received by MD/HRIDC, the Employer will forward a panel of 03(three) names to the Contractor. The Contractor 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 the Employer. In case the Contractor fails to choose one Arbitrator within 30 days of dispatch of the request by the Employer, then MD/HRIDC shall appoint any one Arbitrator from the panel of Arbitrators as sole Arbitrator.</p> <p><b>(ii) In case of 03 Arbitrators:</b></p> <p>a) Within 30 days from the day when a written and valid demand for Arbitration is received by MD/HRIDC, the Employer will forward a panel of not fewer than five (05) nominees to the Contractor. The Contractor 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 the Employer.</p> <p>b) The Employer will decide the second Arbitrator. MD/HRIDC shall appoint the two Arbitrators, including the name of one Arbitrator for whom consent was given by the Contractor, within 30 days from the receipt of the consent for one name of the Arbitrator from the Contractor. In case <del>the</del> Contractor fails to give his consent within 30 days of the request of the Employer, MD/HRIDC shall nominate both the Arbitrators from the panel. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties out of the panel of Arbitrators provided to Contractor or from the larger panel of Arbitrators to be provided to them by the Employer 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 MD/HRIDC within 14 days of receipt of request from either party or both parties.</p> <p>c) 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</p>
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	<p>or dies or in the opinion of the MD/HRIDC fails to act without undue delay, the MD/HRIDC 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 (b) above. Such reconstituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous Arbitrator(s).</p> <p>d) The Employer at the time of offering the panel of Arbitrator(s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrators nominated in the panel along with their professional experience, phone nos. and addresses to the Contractor. The minimum qualification and experience of the arbitrators which may be appointed by the Parties in accordance with the contract is set out below:</p> <ul style="list-style-type: none"><li>(i) A working/retired officer (not below E-8 grade in a central public sector undertaking in India, with which the Employer has no direct business relationship), of engineering or accounts/finance discipline, having experience in management of construction contracts; or</li><li>(ii) A retired officer (not below the SAG level in Indian Railways) of any Engineering Services of Indian Railways or Indian Railway Accounts Service, having experience in management of construction contracts;</li></ul> <p><b>2. Miscellaneous:</b> In any arbitration proceeding hereunder:</p> <p>(a) The language of arbitration shall be English. This arbitration shall be governed in accordance with the laws of India.</p> <p>(b) The venue of the arbitration shall be Gurugram, India. The cost of Arbitration including the fees of the Arbitrator shall be borne equally by both the parties.</p> <p>(c) The decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in High court at Chandigarh, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</p> <p>21.6.2 In the event that the Contractor wishes to refer a dispute to arbitration in accordance with this Sub-Clause, it shall be required to serve a notice in this regard to the Managing Director, of the Employer for commencement of arbitration.</p>
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	<p>21.6.3 Pending the submission of and/or decision on a dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under the contract without prejudice to a final adjustment in accordance with such award.</p> <p>21.6.4 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. However, Conciliator cannot be present as a witness by either party in the arbitral proceedings.</p> <p>21.6.5 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.</p> <p>21.6.6 Neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the Engineer to obtain his decision. No decision given by the Engineer in accordance with the contract shall disqualify him from being called as a witness and giving evidence before the arbitrators on any matter, whatsoever, relevant to dispute referred to arbitration.</p> <p>21.6.7 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.</p>
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## **Appendix- General Conditions of Dispute Avoidance/Adjudication Agreement**

**Title** “General Conditions of Dispute Avoidance/Adjudication Agreement” is replaced with “General Conditions of DAAB Agreement”.

### **1. Definitions**

Sub-Clause 1.2: In both the first and third lines, “DAA Agreement” is replaced with “DAAB Agreement”.

Sub-Clause 1.3:

-In the first line, “Dispute Avoidance/Adjudication Agreement” or “DAA Agreement” means” is replaced with: “DAAB Agreement” is as defined under the Contract and is”.

- In the first line of sub-paragraph (c), “DAA Agreement” is replaced with “DAAB Agreement”.

- In sub-paragraph (c)(ii), “chairman” is replaced with “chairperson”.

Sub-Clause 1.3 “DAAB Activities” is replaced with Sub-Clause 1.4 “DAAB Activities” and the subsequent Sub-Clauses under Clause 1 “Definitions” renumbered:

Sub-Clause 1.7 to 12: Replace all instances of “DAA Agreement” with “DAAB Agreement”.

In Sub-Clause 1.8 a(i):” authorised representative of the contractor or of the Employer” is replaced with: “Contractor’s Representative or authorised representative of the Employer”.

### **3. Warranties**

Sub-Clause 3.3 is deleted and replaced with the following:

“When appointing the DAAB Member, each Party relies on the DAAB Member’s representations, that he/she;

- a) has at least a bachelor’s degree in relevant disciplines such as law, engineering, construction management or contract management;
- b) has at least ten years of experience in contract administration/management and dispute resolution, out of which at least five years of experience as an

arbitrator or adjudicator in construction-related disputes;

- c) has received formal training as an adjudicator from an internationally recognized organization;
- d) has experience and/or is knowledgeable in the type of work which the Contractor is to carry out under the Contract;
- e) has experience in the interpretation of construction and/or engineering contract documents;
- f) has familiarity with the forms of contract published by FIDIC since 1999, and an understanding of the dispute resolution procedures contained therein; and
- g) is fluent in the language for communications stated in the Contract Data (or the language as agreed between the Parties and the DAAB).”

### **7. Confidentiality**

In Sub-Clause 7.3: “or” is deleted after sub-paragraph (b), and the following added:

“or (d) is being provided to the Bank.”

### **9. Fees and Expenses**

In Sub-Clause 9.1 (c): “business class or equivalent” is replaced with: “in less than first class”.

In Sub-Clause 9.4: “and air fares” and “other” are deleted from the first and second sentences respectively.

### **10. Resignation and Termination**

In Sub-Clause 10.3: “the DAA Agreement” is replaced with: “a DAAB member’s DAAB Agreement”.

### **Annex- DAAB Procedural Rules**

Rule 4.2 On the fourth line, “chairman” is replaced with “chairperson”.

Rule 8.3 On the sixth line, “chairman” is replaced with “chairperson”.

### **Form of Dispute Avoidance/Adjudication Agreement**

All instances of “DAA Agreement” are replaced with: “DAAB Agreement”.

In C (b): “chairman” is replaced with “chairperson”.

## Particular Conditions of Contract (PCC)

### Part C – Prohibited Practices

1. The Bank requires that the Recipient (and all other beneficiaries of the Bank financing), as well as tenderers, suppliers, contractors, concessionaires and consultants under Bank-financed contracts for the Project, observe the highest standard of transparency and integrity during the procurement, execution and implementation of such contracts.
2. Definitions. In pursuance of this policy, the Bank defines the terms set forth below as Prohibited Practices:
  - (a) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party;
  - (b) “**collusive practice**” means an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - (c) “**corrupt practice**” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - (d) “**fraudulent practice**” means 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.
  - (e) “**misuse of resources**” means improper use of the Bank’s resources, carried out either intentionally or through reckless disregard;
  - (f) “**obstructive practice**” means any of the following practices: (i) deliberately destroying, falsifying, altering or concealing of evidence material to a Bank investigation; (ii) making false statements to investigators in order to materially impede a Bank investigation into allegations of a Prohibited Practice; (iii) failing to comply with requests to provide information, documents or records in connection with a Bank investigation; (iv) threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to a Bank investigation or from pursuing the investigation; or (v) materially impeding the exercise of the Bank’s contractual rights of audit or inspection or access to information; and
  - (g) “**theft**” means the misappropriation of property belonging to another party.
3. Any occurrence, or suspected occurrence, of a Prohibited Practice in the procurement, award, or implementation of a Bank-financed contract is dealt with in accordance with the provisions of the Bank’s Policy on Prohibited Practices. Suppliers, contractors, service providers and consultants selected pursuant to the provisions of Section II and concessionaires selected pursuant to paragraph 14.3 of the Bank’s Procurement Instructions for Recipients, as well as the Recipient shall fully cooperate with the Bank (or a cofinancier undertaking an investigation

pursuant to paragraph 6.1 of the Bank’s Procurement Instructions for Recipients) in any investigation into an alleged Prohibited Practice to be carried out pursuant to the Policy on Prohibited Practices, and permit the Bank or its representative (including such co-financier) to inspect such of their accounts and records as may be relevant for such investigation and to have such records and accounts audited by the auditors appointed by the Bank.

4. Provisions to this effect are included in the Legal Agreements and the procurement contracts with such entities.
5. If the Project is financed by a sovereign-backed loan, the Bank (or, where relevant, a co-financier having undertaken an investigation pursuant to paragraph 6.1 of the Bank’s Procurement Instructions for Recipients):
  - (a) may take any of the following additional actions in connection with a Prohibited Practice under the Project:
    - (i) reject a proposal for award if it determines that the tenderer recommended for award, or any of its personnel, or its agents, or its sub-consultants, subcontractors, service providers, suppliers or their employees, has, directly or indirectly, engaged in a prohibited practice in competing for the contract in question; and
    - (ii) cancel the undisbursed portion of the loan allocated to a contract (and require reimbursement of the disbursed portion of the loan allocated to the contract) if it determines at any time that representatives of the Recipient or of a recipient of any part of the proceeds of the loan engaged in a prohibited practice during the procurement, administration or implementation of the contract in question; and
  - (b) requires that a clause be included in tender documents and in contracts financed by the Bank loan, requiring tenderers, suppliers and contractors, and their subcontractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank (and a co-financier undertaking an investigation pursuant to paragraph 6.1 of the Bank’s Procurement Instructions for Recipients) to inspect all accounts, records, and other documents relating to the submission of tenders and contract performance, and to have them audited by auditors appointed by the Bank.

# Section X - Contract Forms

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## Notification of Intention to Award

**[This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.]**

**[Send this Notification to the Tenderer’s Authorized Representative named in the Tenderer Information Form]**

For the attention of Tenderer’s Authorized Representative

Name: *[insert Authorized Representative’s name]*

Address: *[insert Authorized Representative’s Address]*

Telephone/Fax numbers: *[insert Authorized Representative’s telephone/fax numbers]*

Email Address: *[insert Authorized Representative’s email address]*

**[IMPORTANT: insert below the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]**

**DATE OF TRANSMISSION:** This Notification is sent by: *[email/fax]* on *[date]* (local time)

## Notification of Intention to Award

**Employer:** *[insert the name of the Employer]*

**Project:** *[insert name of project]*

**Country:** *[insert country where Tender is issued]*

**Loan No.:** *[insert reference number for loan]*

**Tender No.:** *[insert Tender reference number from Procurement Plan]*

**Contract Title:** *[insert the name of the contract]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) request a debriefing in relation to the evaluation of your Tender, and/or
- b) submit a Procurement-related Complaint in relation to the decision to award the contract.

### 1. The successful Tenderer

<b>Name:</b>	<i>[insert name of successful Tenderer]</i>
<b>Address:</b>	<i>[insert address of the successful Tenderer]</i>
<b>Contract Price:</b>	<i>[insert contract price of the successful Tender]</i>

### 2. List of all Tenderers **[INSTRUCTIONS: insert names of all Tenderers that submitted a Tender including the successful Tenderer, together with the corresponding Tender price**

*as read out at tender opening and the evaluated Tender price (when rated criteria are not used).]*

<b>Name of Tenderer</b>	<b>Tender Price</b>	<b>Evaluated Tender Price (if applicable)</b>
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]

**Or**

**List of all Tenderers** *[INSTRUCTIONS: insert names of all Tenderers that submitted a Tender including the successful Tenderer, together with the corresponding Tender price as read out at tender opening and the evaluated Tender price, respective technical and financial scores, combined technical and financial score (when rated criteria are used).]*

<b>Name of Tenderer</b>	<b>Tender Price</b>	<b>Evaluated Tender Price</b>	<b>Technical Score</b>	<b>Financial Score</b>	<b>Combined Score</b>
[insert name]	[insert Tender price]	[insert evaluated price]			
[insert name]	[insert Tender price]	[insert evaluated price]			
[insert name]	[insert Tender price]	[insert evaluated price]			
[insert name]	[insert Tender price]	[insert evaluated price]			
[insert name]	[insert Tender price]	[insert evaluated price]			

### **3. Reason/s why your Tender was unsuccessful**



***[INSTRUCTIONS: State the reason/s why this Tenderer’s Tender was unsuccessful. Do NOT include: (a) a point by point comparison with another Tenderer’s Tender, or (b) information that is marked confidential by the Tenderer in its Tender.]***

#### 4. How to request a debriefing

**DEADLINE:** The deadline to request a debriefing expires at midnight on *[insert date]* (local time).

You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

**Attention:** *[insert full name of person, if applicable]*

**Title/position:** *[insert title/position]*

**Agency:** *[insert name of Employer]*

**Email address:** *[insert email address]*

**Fax number:** *[insert fax number] delete if not used*

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

#### 5. How to make a complaint

**Period:** Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

**Attention:** *[insert full name of person, if applicable]*

**Title/position:** *[insert title/position]*

**Agency:** *[insert name of Employer]*

**Email address:** *[insert email address]*

**Fax number:** *[insert fax number] delete if not used*

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

For more information see the [Procurement Instructions for Recipients](#) (Annex IV, Complaint Monitoring).

**6. Standstill Period**

**DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).**

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above.

If you have any questions regarding this Notification, please do not hesitate to contact us.

For and on behalf of the Employer:

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/Position:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

## Beneficial Ownership Disclosure Form

***INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM***

*This Beneficial Ownership Disclosure Form (“Form”) is to be completed by the successful Tenderer. In case of joint venture, the Tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:*

- *directly or indirectly holding 25% or more of the shares*
- *directly or indirectly holding 25% or more of the voting rights*
- *directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer*

**Tender No.:** *[insert number of Tender process]*

**To:** **Haryana Rail Infrastructure Development Corporation Limited**

In response to your request in the Letter of Acceptance dated *[insert date of letter of Acceptance]* to furnish additional information on beneficial ownership: *[select one option as applicable and delete the options that are not applicable]*

(i) we hereby provide the following beneficial ownership information.

### Details of beneficial ownership

Identity of Beneficial Owner	Directly or indirectly holding 25% or more of the shares (Yes / No)	Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)	Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

**OR**

(ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions:*

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer

**OR**

(iii) *We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]*

- directly or indirectly holding 25% or more of the shares
- directly or indirectly holding 25% or more of the voting rights
- directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer”

**Name of the Tenderer:** \**[insert complete name of the Tenderer]* \_\_\_\_\_

**Name of the person duly authorized to sign the Tender on behalf of the Tenderer:** \*\**[insert complete name of person duly authorized to sign the Tender]* \_\_\_\_\_

**Title of the person signing the Tender:** *[insert complete title of the person signing the Tender]*  
\_\_\_\_\_

**Signature of the person named above:** *[insert signature of person whose name and capacity are shown above]* \_\_\_\_\_

**Date signed** *[insert date of signing]* day of *[insert month]*, *[insert year]* \_\_\_\_\_

\* In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as Tenderer. In the event that the Tenderer is a joint venture, each reference to “Tenderer” in the Beneficial Ownership Disclosure Form (including this Introduction thereto) shall be read to refer to the joint venture member.

\*\* Person signing the Tender shall have the power of attorney given by the Tenderer. The power of attorney shall be attached with the Tender Schedules.

## Letter of Acceptance

*[letterhead paper of the Employer]*

*[date]*

To: *[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the “**C-4: Composite Contract** package in connection with New BG Railway Line of HORC project for:

- (i) Design & Construction of Twin Tunnel using NATM and Cut & Cover method from km 24.880 to km 29.580;
- (ii) Design & Installation of Ballastless Track (excluding supply of rails) from km 24.856 to km 29.680;
- (iii) Detailed Design, Supply, Installation, Testing & Commissioning of General Electrical Services including Supply, Erection, Testing and Commissioning of 11kV HT/LT Power and Control Cable Network, GIS Substation (11/0.433) kVA, Tunnel lighting system etc. from km 24.880 to km 29.680;
- (iv) Design & Construction of Embankment, Bridges and other miscellaneous works from km 12.00 to km 18.00 ”

for the Accepted Contract Amount *[amount in numbers and words]* *[name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by our Agency.

You are requested to furnish (i) the Performance Security within 28 days in accordance with the Conditions of Contract, using, for that purpose, the Performance Security Form; and (ii) the additional information on beneficial ownership in accordance with TDS ITT 48.1, within eight (8) Business days using the Beneficial Ownership Disclosure Form, included in Section X, Contract Forms, of the Tender Document.

Authorized Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

### **Attachment: Contract Agreement**

## Contract Agreement

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ of \_\_\_\_\_ [insert complete name of Employer and full business address] (hereinafter “the Employer”), of the one part, and \_\_\_\_\_ of \_\_\_\_\_ [insert complete name and nationality of Contractor as well as full business address] (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer invited tenders for the execution of the Works, described as “C-4: Composite Contract package in connection with New BG Railway Line of HORC project for:

- (i) Design & Construction of Twin Tunnel using NATM and Cut & Cover method from km 24.880 to km 29.580;
- (ii) Design & Installation of Ballastless Track (excluding supply of rails) from km 24.856 to km 29.680;
- (iii) Detailed Design, Supply, Installation, Testing & Commissioning of General Electrical Services including Supply, Erection, Testing and Commissioning of 11kV HT/LT Power and Control Cable Network, GIS Substation (11/0.433) kVA, Tunnel lighting system etc. from km 24.880 to km 29.680;
- (iv) Design & Construction of Embankment, Bridges and other miscellaneous works from km 12.00 to km 18.00”

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (a) the Letter of Acceptance;
  - (b) the Letter of Tender;-Financial Part;
  - (c) the Letter of Tender-Technical Part;
  - (d) the Record of Meeting on Contract Negotiation (if any);
  - (e) the addenda Nos \_\_\_\_\_ (if any);
  - (f) the Particular Conditions of Contract;
  - (g) the General Conditions of Contract;

- (h) the Employer’s Requirements;
  - (i) the Drawings;
  - (j) the Contractor’s Technical Proposal;
  - (k) the Reference Information/Reports, and
  - (l) the completed Schedules and any other documents forming part of the contract, including, but not limited to:
    - i. the ESHS Management Strategies and Implementation Plans; and
    - ii. Code of Conduct (ESHS).
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of \_\_\_\_\_ *[insert the name of the Contract governing law country]* on the day, month and year specified above.

For and on behalf of the Employer

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]*

# Performance Security

## Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:**

Haryana Orbital Rail Corporation Limited,  
Plot No 143, 5th Floor, Railtel Tower,  
Sector-44, Gurugram,  
Haryana-122003

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

**PERFORMANCE GUARANTEE No.:** \_\_\_\_\_

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

We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of "C-4: Composite Contract package in connection with New BG Railway Line of HORC project for:

- (i) Design & Construction of Twin Tunnel using NATM and Cut & Cover method from km 24.880 to km 29.580;
- (ii) Design & Installation of Ballastless Track (excluding supply of rails) from km 24.856 to km 29.680;
- (iii) Detailed Design, Supply, Installation, Testing & Commissioning of General Electrical Services including Supply, Erection, Testing and Commissioning of 11kV HT/LT Power and Control Cable Network, GIS Substation (11/0.433) kVA, Tunnel lighting system etc. from km 24.880 to km 29.680;
- (v) Design & Construction of Embankment, Bridges and other miscellaneous works from km 12.00 to km 18.00."

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.



At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying 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 to show grounds for your demand or the sum specified therein.

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

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

---

[signature(s)]

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

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<sup>1</sup> The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup> Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

## Advance Payment Security

### Demand Guarantee

*[Guarantor letterhead or SWIFT identifier code]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:**

Haryana Orbital Rail Corporation Limited,  
Plot No 143, 5th Floor, Railtel Tower,  
Sector-44, Gurugram,  
Haryana-122003

**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 \_\_\_\_\_ (hereinafter called “the Applicant”) has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of “C-4: Composite Contract package in connection with New BG Railway Line of HORC project for:

- (i) Design & Construction of Twin Tunnel using NATM and Cut & Cover method from km 24.880 to km 29.580;
- (ii) Design & Installation of Ballastless Track (excluding supply of rails) from km 24.856 to km 29.680;
- (iii) Detailed Design, Supply, Installation, Testing & Commissioning of General Electrical Services including Supply, Erection, Testing and Commissioning of 11kV HT/LT Power and Control Cable Network, GIS Substation (11/0.433) kVA, Tunnel lighting system etc. from km 24.880 to km 29.680;
- (iv) Design & Construction of Embankment, Bridges and other miscellaneous works from km 12.00 to km 18.00”.

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ ( ) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ ( )' upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number \_\_\_\_\_ at \_\_\_\_\_..

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) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the \_\_\_ day of \_\_\_\_, 2\_\_\_,<sup>2</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

\_\_\_\_\_  
[signature(s)]

<sup>1</sup> *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.*

<sup>2</sup> *Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

*Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.*

## Retention Money Security

### Demand Guarantee

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

**Beneficiary:**

Haryana Orbital Rail Corporation Limited,  
Plot No 143, 5th Floor, Railtel Tower,  
Sector-44, Gurugram,  
Haryana-122003

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

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

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

We have been informed that \_\_\_\_\_ [insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture] (hereinafter called "the Applicant") has entered into Contract No. \_\_\_\_\_ [insert reference number of the contract] dated \_\_\_\_\_ with the Beneficiary, for the execution of “**C-4: Composite Contract package in connection with New BG Railway Line of HORC project for:**

- (i) Design & Construction of Twin Tunnel using NATM and Cut & Cover method from km 24.880 to km 29.580;
- (ii) Design & Installation of Ballastless Track (excluding supply of rails) from km 24.856 to km 29.680;
- (iii) Detailed Design, Supply, Installation, Testing & Commissioning of General Electrical Services including Supply, Erection, Testing and Commissioning of 11kV HT/LT Power and Control Cable Network, GIS Substation (11/0.433) kVA, Tunnel lighting system etc. from km 24.880 to km 29.680;
- (iv) Design & Construction of Embankment, Bridges and other miscellaneous works from km 12.00 to km 18.00.”

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract (“the Retention Money”), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of [insert the second half of the Retention Money

*or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security is to be made against a Retention Money guarantee.*

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ *[insert amount in figures]()[amount in words]*<sup>1</sup> upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified therein.

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

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

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

\_\_\_\_\_  
*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

<sup>1</sup> *The 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 either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.*

<sup>2</sup> *Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in GCC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”*

## Contractor’s Warranty

This Agreement is made on the ..... day of ... .. between

- (1) [ ] of [ ] [and [see Note 1]] ([jointly] “the Contractor”).
- (2) the Haryana Orbital Rail Corporation Limited [of/[whose registered office is at] [XXX] Limited, together with its successors and assigns, “the Employer”) \_\_\_\_\_,

### WHEREAS

- (A) By a contract [ \_\_\_\_\_ ] dated [ \_\_\_\_\_ ] (“the Contract”) made between
- (1) the Haryana Orbital Rail Corporation Limited (“the Employer”) and
- (2) [(“the Contractor”) has agreed to design, execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defects in the works (“the Works”) upon the terms and conditions contained in the Contract.
- (B) [See Note 3]
- (C) At the request of the Employer and pursuant to the terms of the Contract the Contractor has agreed to enter into this Warranty.

### NOW IT IS AGREED as follows:

1. The Contractor hereby warrants and undertakes that:
  - (a) he will design, execute, complete, test and commission (including Integrated Testing and Commissioning) and remedy any defect in the Works in accordance with the terms of the Contract; and;
  - (b) he owes a duty of care to the Employer in relation to the performance of its duties under the Contract; and
  - (c) he will replace free of cost to the Employer any defect or failure of equipment /material/services provided in the Works for the duration of Defect Notification Period as per the Contract; and
  - (d) he agrees that should any design modification be required to any equipment or component as a consequence of failure analysis, for the duration of Defect Notification Period as per the Contract, shall recommence from the date when the modified part is commissioned into service, and such modification shall be carried out free of cost to the Employer in all sub-systems and systems for all sections; and
  - (e) he shall maintain the manufacture or spare of replacement parts for at least 10 years.
  
2. The liability of [the companies comprising [see Note 3]] the Contractor under this Warranty [shall be joint and several and [see Note 3]] shall not be released, diminished or in any way

affected by any independent inquiry or investigation into the Works or any matter related to the Contract whether carried out by or on behalf of the Employer or any liability or right of action which may arise out of such inquiry or investigation.

3. Insofar as the copyright or other intellectual property rights in any plans, calculations, drawings, documents, materials, plant, know-how and other information relating to the Works shall be vested in the Contractor, the Contractor grants to the Employer his successors and assigns a royalty free, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to use and reproduce any of the works designs or inventions incorporated and referred to in such documents or materials and any such know-how and information for all purposes relating to the Works or the Project including without limitation the design, manufacture, supply, installation, testing and commissioning (including Integrated Testing and Commissioning) reinstatement, extension and the remedy of any defect in the Works. To the extent that beneficial ownership of any such copyright or other intellectual property rights is vested in anyone other than the Contractor, the Contractor shall use best endeavours to procure that the beneficial owner thereof shall grant a like licence to the Employer. For the avoidance of doubt, any such licence granted shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.
4. The provisions of this Warranty shall be without prejudice to and shall not be deemed or construed so as to limit or exclude any rights or remedies which the Employer may have against the Contractor, whether in tort or otherwise.
5. Nothing contained in this Warranty shall vary or affect the Contractor's rights and obligations under the Contract.
6. The address for service of all documents arising out of or in connection with this Warranty shall be:
  - (a) upon the Employer, at [ \_\_\_\_\_ ] India [ Note 4];
  - (b) upon the Contractor, at [ \_\_\_\_\_ ] India [Note 4].
7. The Employer and the Contractor 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 notices must be in writing.
8. This Warranty shall be governed by and construed according to the laws for the time being in force in India.
9.
  - (1) Any dispute or difference of any kind whatsoever between the Employer and the Contractor arising under out of or in connection with this Warranty shall be referred to arbitration in accordance with the Conciliation and Arbitration rules set out in the General Conditions of Contract. "Dispute" as defined in the Contract shall be deemed to include any such dispute or difference between the Employer and Contractor.
  - (2) In the event that the Employer is of the opinion that the issues in such a dispute or difference will or may touch upon or concern a dispute or difference arising under out of or in connection with the Contract ("the Contract Dispute") then provided that an arbitrator has not already been appointed pursuant to Clause 9(1), the Employer may by notice in writing to the Contractor require and the Contractor shall be deemed to



have consented to the referral of such dispute or difference to the arbitrator to whom the Contract Dispute has been or will be referred.

- (3) Save as expressly otherwise provided, the arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, notice, order, direction, withholding of approval or consent, determination, certificate, statement of objections relating to the dispute.
- (4) Subject to the foregoing provisions of this clause 9, the Employer and the Contractor agree to submit to the jurisdiction of the Courts of India at Gurugram, Haryana.

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

THE COMMON SEAL of )

[ \_\_\_\_\_ ] )

was affixed hereto )

in the presence of: )

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

- (1) If the Contractor comprises more than one company, each such company shall be a party and liability under this warranty will be joint and several, with consequential grammatical changes.
- (2) If Note 1 applies, that fact and the joint venture or other relevant agreement must be recited.
- (3) Delete if Note 1 does not apply.
- (4) The address for service shall be in India.