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**[THE GOVERNMENT]**

**- and -**

**[THE CONCESSIONAIRE]**

—————  
**METRO**  
**CONCESSION CONTRACT**  
—————

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THIS CONTRACT is made and entered into in [LOCATION] on [DATE]

**BETWEEN:**

**1. ON THE ONE PART**

THE STATE (hereinafter referred to as the “State” or the “Owner of the Project (O.o.P)”) duly represented by [ ], having its registered office in [ADDRESS],

**2. AND ON THE OTHER PART**

The Company “[ ]” hereinafter referred to as the “Contractor of the Concession” or “Concessionaire” or “Contractor”, having its registered office in [ADDRESS], which has been incorporated with registered number [ ]. [It is clarified that the Concessionaire shall transfer its head office to [LOCATION] within two (2) months from the Effective Date hereof.]

**[AND ON THE THIRD PART**

The Joint Venture, hereinafter referred to as the “Joint Venture” (or by abbreviation J/V), established by virtue of the private Joint Venture establishment agreement dated [ ], a certified copy of which, which shall be duly certified by [ ], is attached hereto as Annex 9b, duly represented by [ ], **as well as the following companies members of the Joint Venture [ ]**. The above Joint Venture and its above mentioned member companies are jointly and severally liable for the obligations of article 41 herein, in accordance with the above private Joint Venture Agreement.

The [Ministry] called for an international public tender for the designation of a Concessionaire for the execution of the project “Design - Construction, - financing and Exploitation of the Metro Project”. In subject tender, one of the competitors, was the Joint Venture which participates in the present Contract as third party, consisting of the companies [ ] which also participate in the present Contract as members of the above mentioned Joint Venture. Joint Venture, was chosen as preferred bidder on [ ] by [ ]. Following the conclusion of the negotiations with the Joint Venture, the final conclusion of the tender and the issue of the Minister decision No [ ], approving the result of the tender, the Joint Venture was called to establish a special purpose company named [ ], which is the Concessionaire of the Project, in order to execute the

**Comment [ID1]:** Under Article 41 the Joint Venture assumes the responsibility for construction in accordance with the Construction Contract and O&M in accordance with the Operations and Maintenance Contract. What is slightly odd is that under that Article the obligations under the Construction Contract of the Construction Contractor ( Constructor- who is not a party to this Agreement) is limited to the obligations of the Concessionaire under this Concession Agreement. Thus it would appear that if in the Construction Contract there was a provision for liquidated damages to say compensate for loss of revenue to pay interest on the debt that would not be recoverable as there would not be a similar liability under the Concession Agreement).

project of the Metro of [LOCATION], in accordance with the Basic Solution of the offer of the Joint Venture.

**NOW THEREFORE**, the Contracting Parties agree the following, in respect of the mutual agreements set out herein, the acceptance and sufficiency of which is acknowledged by the Parties.

## 1. DEFINITIONS – INTERPRETATION

### 1.1 Definitions

In this Contract and in addition to the terms defined elsewhere herein, the following terms shall have the following meanings, whenever their first letter is capitalised.

**“Administrator”** means the company which shall be established in [COUNTRY] before the Effective Date of the present Contract. It shall have its head offices in [LOCATION] and shall consist of the companies shareholders of the Concessionaire as mentioned here-above. The articles of association of this shall be submitted to the approval of the State. The Administrator shall enter into the Operation and Maintenance Contract with the Concessionaire.

**“Archaeological Works”** means those works carried out or supervised by the archaeological service in the event of discovery and/or investigations related to archaeological findings.

**“Average Monthly Technical Availability D1”** means the figure deriving from the application of the mathematical formula

$$S (\text{delays} \geq 4 \text{ minutes} + \text{stops} \geq 4 \text{ minutes})$$

$$D1 = 1 - \frac{\text{month}}{\text{Theoretical total servicing duration of the reference period.}}$$

All figures are expressed in minutes.

**“Bank Agent”** means the lending institution, which will be appointed from time to time in a competent way as representative of the Lenders.

**“Business Day”** means the day upon which banks are open for business in [COUNTRY].

**“Certified General Final Design”** means the general design of the main works to be performed by the Concessionaire or on its behalf, in accordance

with Annex 1 and for which the Independent Engineer issues the certificate referred to in article 4.5.1 herein, as this design shall be formed following the possible modification of the same on the basis of the decision that will be issued in respect of the Service's possible objections.

**“Change in Legislation”** means any change of the “Current Legislation” taking place after the date of submission of the offer [DATE] upon enforcement of new international conventions, laws, decrees, administrative acts or regulations, or with any change in their interpretation or in the way of their application or any change in the relevant administrative practice, by means of circulars and directives.

**“Concession”** means the exclusive rights for the operation, development, administration, maintenance and exploitation of the Metro, which are granted by the State to the Concessionaire, in consideration of the undertaking by the Concessionaire of the obligation to design, construct, commission, operate, maintain and develop the Metro, with partial self-financing, in accordance with the terms set out herein.

**“Concession Period”** means the period defined in article 3.2 herein.

**“Concessionaire Parallel Works”** means all Parallel Works with the exception of Archaeological Works, Service Works and State Parallel Works.

**“Condition of Insolvency”** means in relation to the Concessionaire, any failure of the Concessionaire to meet its due and payable financial obligations deriving hereof towards the State or any third party, which is attributable to a non temporary financial failure of the Concessionaire, despite the written notice of the Service to comply within reasonable time, which in no case can be less than [sixty (60)] days, or the issue of a court decision declaring the Concessionaire in compulsory receivership, or insolvent, or under liquidation, or appointing a liquidator, or bankrupt, provided subject decision does not lose its power, in case this is legally possible, and is not revoked before the end of the above mentioned [60] days period.

**“Construction Contract”** means the contract for the design, construction and commissioning of the Metro entered between the Concessionaire and the Constructor, attached herein, as Annex 6.

**“Construction Period”** means the time period starting on the Effective Date and ending on the Operation Day.

**“Construction Specifications”** means the rules, regulations, standards, codes, performance specifications, other specifications, guidelines and safety rules which shall be applied in the design and construction of the Metro, as defined in Annex 1.

**“Construction Time - Schedule”** means the construction time schedule attached hereto as Annex 7 as redrawn by the Concessionaire in accordance with Annex 1, and as applicable from time to time.

**“Constructor”** means [ ] and the successors and permitted assignees of its members.

**“Contract”** means the present Contract, including its Annexes, as the same may be updated as provided herein.

**“Contractor of the Concession” or “Concessionaire” or “Contractor”**, means the company named “[ ]” organised and existing under the laws of [COUNTRY], and its successors and permitted assignees.

**“Contribution”** means the amount of [AMOUNT AND CURRENCY] in [DATE] prices, which will be paid by the State to the Concessionaire, in accordance with the provisions herein.

**“Copyright”** means any rights and expectations of rights in registered or non-registered trademarks, services’ trademarks, patents, registered designs (drawings), registration petitions of any of the above, royalties (including future royalties), non-registered designs (drawings), inventions, confidential information, know-how or other copyright (either in written form, or produced or maintained in a computer or similar system or in another way), consisting or being relevant to specifications, programs, drawings, graphical representations, sketches, models or other materials and Documents produced at any time specifically for the project .

**Comment [ID2]:** This might be better defined as IP or Intellectual Property.

**“Current Legislation”** includes any statute, rule, regulation, by-law, provision, code, municipal legislation, any ordinary or administrative practice, code, standard, specification, guideline, order or request of any competent authority (regardless of whether it has or has not the force of law) and any decision, decree or order of any arbitration or regular court, or of any other competent authority relating thereto, applicable as of [DATE].

**“Detailed Final Design”** means the detailed design of the main works which will be performed by the Concessionaire or on its behalf, in accordance with Annex 1 for which the Independent Engineer issues the certificate referred to in article 4.5.1 herein, and as this design shall be



formed following the possible modification of the same on the basis of the decision that will be issued in respect of the Service's possible objections.

**“Documents”** means designs, drawings, manuals, certificates, specifications, reports, written information and data as well as other documents (including records thereof in software form) produced specifically for the project. It is clarified that the manufacturing drawings of the rolling stock and the system, as well as the software source codes are not especially produced for the project and therefore are not provided to the State, unless they are required for the maintenance, repair, renewal, etc. of the equipment as well as for the signalisation systems.

**“Effective Date”** means the day upon which this Contract comes into force upon the fulfilment of all conditions required pursuant to article 2.

**“Equity”** means the amounts that shall be invested as Share Capital of the Concessionaire by its shareholders and the amounts that shall be invested as Subordinated Loans in accordance with article 14.2, which shall not be less than the Minimum Equity.

**“Escalated Paid Contribution”** means the amount of the parts of the Contribution, which shall be paid by the State, as those parts shall be escalated, starting from [DATE], in accordance with the provisions herein.

**“Escalated Contribution”** means the Contribution, as revised from time to time, in accordance with the Escalation Coefficient, with starting date the [DATE], until the date of each revision.

**“Escalated Total Project Cost”** means the total project cost, as adjusted from time to time, in accordance with the Contract, until the date of the relevant adjustment.

**“Escalation Coefficient”** means the coefficient defined in article 6.5. herein.

**“Final Design”** means the General Final Design and the Detailed Final Design.

**“Financial Agreements”** means the agreements referred to in Annex 2, as this Annex will be amended upon the Financial Closing.

**“Financial Plan”** means the financial plan attached hereto as Annex 3, as updated from time to time.

**“Founding Shareholders”** mean collectively the companies [ ] and  
“Founding Shareholder” means individually any of the above companies.

**“General Final Design”** means the general design of the **main** works to be performed by the Concessionaire or on its behalf in accordance with Annex 1.

**“Good Performance of the Construction Letter of Guarantee”** means the letter of guarantee for the good performance of the Constructor’s obligations in relation to the construction of the Project, which shall be given to the Concessionaire in accordance with article 17.2.1.

**“Good Performance of the Operation and Maintenance Letter of Guarantee”** means the letter of guarantee for the good performance of the Administrator’s obligations, in relation to the operation and maintenance of the Metro, in accordance with article 17.2.2.

**“Independent Engineer”** means the Company or joint venture of companies to which the duties referred to in articles 4.3.1 to 4.8.2 herein shall be assigned.

**“Intermediate Certificate”** means any of the certificates referred to in article 6.

**“Investment Cost”** means the difference between on one part the sum of the escalated paid total project cost and capitalised interest during the construction period and on the other part, the escalated paid contribution of the State.

**“Lender”** means any bank or financing organisation, financing the construction of the works or / and the operation of the Metro, or guaranteeing the corresponding Loan Capitals or providing or guaranteeing stand-by loans which have been approved by the State. **Lenders which provide or guarantee the subordinated loans are not included.**

**“Loan Capitals”** means, the capitals that shall be drawn by the Concessionaire for the materialisation of the project, in accordance with the terms of the Financial Agreements which shall be approved by the Owner of the Works. Subordinated Loans are not included in the loan capitals.

**“Key Events Schedule”** means, the schedule included in Annex 5.

**“Main Works”** means the works required for the design, construction and operation of the Metro, so that it is fit for purpose, in accordance with the provisions herein and which are not Parallel Works.

“**Metro**” means the underground system of railway transportation, which will be constructed and operated in defined locations in the town of [LOCATION], as described in detail in Annex 1 in accordance with the terms herein.

“**Minimum Equity**” means, an amount which at any given moment in time, is not less than [twenty per cent (20%)] of the Investment Cost, unless the State is responsible for any increase of the Investment Cost.

“**Minimum Share Capital**” means the amount of the share capital of the Concessionaire, which shall be paid in accordance with the Financial Plan and which after its total payment, cannot be less than the amount of [AMOUNT AND CURRENCY], in prices of [DATE], escalated at the dates of payment, in accordance with the Escalation Coefficient defined herein.

“**Movable Property**” means all equipment which shall be used by the Concessionaire in relation to the Metro, and includes indicatively the rolling stock, spare parts and the relevant maintenance equipment, with the exception of the construction and site equipment which will be used by the Concessionaire in the Metro construction. It also includes rights of ownership of the Concessionaire, on the equipment paid but not yet delivered to be incorporated in the Metro.

“**Networks**” means any installation of cables, pipes, ducts, etc. of any kind or size, whether on, under, or above the ground, which is owned or operated by an entity public or not and which may interfere with the Works or the operation and maintenance of the Metro.

“**Operation and Maintenance Assistance Period**” means the period starting upon the end of the Concession Period and ending [three (3)] years after.

“**Operation and Maintenance Manual**” means the manual which shall be drawn up by the Concessionaire, according to paragraph 16.4.1 herein as checked and certified from time to time by the Independent Engineer and as this manual shall be formed following the possible modification of the same on the basis of the decision that will be issued in respect of the possible objections of the Service.

“**Operation and Maintenance Period**” means the time period starting on the Operation Day and ending at the end of the Concession Period.

**“Operation Date”** means the date upon which the operation permit of the Metro will be granted or deemed to be granted by the State, in accordance with article 12 herein.

**“Panel of Experts” or “Panel”** means either the financial panel or the technical panel referred to in article 38 herein.

**“Parallel Works”** means the works defined as such in article 6.2.2. herein.

**“Parallel Works Price List”** means the Service’s Price List, in prices of [DATE], upon which is applied the discount provided under article 6.3.4 herein, offered by the Joint Venture, which shall be used for the calculation of the cost of the Concessionaire Parallel Works, as described in detail in Annex 4b and in accordance with the provisions herein.

**“Permit”** means any permit, consent, approval, or authorisation required pursuant to any law or regulation applicable in respect of the activities of the Concessionaire for the purposes of the Project, which shall be issued or granted by the State or any Public Service.

**“Pilot Project”** means the existing tunnel that was constructed by the Municipality.

**“Positive Damages”** in relation to an event, means, the amount required to compensate the Concessionaire for any cost and/or damage (including interest, fees, commissions and other costs arising from indebtedness) it sustained as a result of or due to such event exclusive of loss of profit. Positive Damages in relation to any delay shall include loss of amortisation for equipment, owned or not.

**“Precursory Works”** means the works included in Annex 12 and in article 6.15 herein.

**“Project”** means the development, design, construction, financing, operation, exploitation and maintenance of the Metro by the Concessionaire, pursuant to the terms set out herein.

**“Public Service”** means any Public Authority, agent or Person, whether national, local, municipal or other, having jurisdiction in respect of the Works, the Project, or the Sites of the Project, as well as any Public Utility Organisation.

**“Representative of the State”** means the physical person referred to in article 1.3 herein, which may be replaced as defined herein.

**“Representative of the Concessionaire”** means the physical person referred to in article 1.3. herein, which may be replaced as defined herein.

**“SA”** means the total cost of the Concessionaire Parallel Works, which will be priced on the basis of the prices included in the Parallel Works Price List, increased with the percentage for overhead expenses and contractor’s profit (G.E. and C.P.) in accordance with the provisions herein.

**“SB”** means the lump sum price of the Main Works, as this is defined in article 6.2.1 herein.

**“Sections of the Project”** means the following:

- a. Project Section Ai, is the geographically defined section of the Project which forms part of the lump sum scope, as described in Annex 4.
- b. Project Section Bk, is a section of the Project which forms part of the lump sum scope and includes categories of works (groups of works) which might be included in one or more sections Ai of the Project, as described in Annex 4
- c. Project Section AiBk, is the section of works Bk which is included in the geographical Project section Ai.

**“Service”** means the competent service of the [MINISTRY], which legally represents the State, in the framework of the execution of this Contract, or the Legal Entity, or the Organisation to which part or the totality of the rights and obligations of the State under this Contract, may be transferred, the State remaining in all circumstances jointly and severally liable with such legal entity or organisation towards the Concessionaire, for the due fulfilment of the obligations of the State under this Contract.

**Comment [ID3]:** This appears to be a literal translations and “Department “ or “ Agency “ might be better terms.

**“Service Works”** means the works related to the locating, removal and/or relocation of the networks, which the competent Public Utility Organisations shall not allow the Concessionaire to execute, and which such competent Public Utility Organisations shall execute themselves, having obtained the approval of the Service, in accordance with the provisions set out herein.

**“Share Capital Letter of Guarantee”** means the letter of guarantee, which shall be provided by the shareholders of the Concessionaire Company to the Concessionaire Company.

**“Site”** means the land, spaces (including air and subsoil), roads and any surface or volume required and for as long as these are required, for the

construction of the Works, the operation, maintenance and modification, if needed, of the Metro by the Concessionaire, in accordance with the provisions of this Contract.

**“Stage”** means each one of the sections of the Main Works as defined in Annex 4.

**“State Parallel Works”** means the Parallel Works put to tender by the State, which shall be awarded and executed with other contracts.

**“Supervising Engineer”** means the company or joint venture of companies performing the duties of Supervisor during the execution of the Precursory Works.

**“Subordinated Loans”** means the loans which will be possibly raised by the shareholders of the Concessionaire in order to complete the Equity. The guarantee or the service of these loans constitutes the responsibility of the Concessionaire.

**“Subordinated Loans Letter of Guarantee”** means the letter of guarantee of the Subordinated Loans, which shall be given to the Concessionaire, in accordance with article 17.1.2 herein.

**“Substitute Entity”** means the entity defined in article 32.

**“Variation”** means any modification either of the general specifications of the Project, as referred to in Annex 1, or of the Detailed Final Design that shall be drawn up on the basis of the above specifications or of the Operation and Maintenance Manual.

**“Works”** means the works, whether permanent or temporary, the machinery, equipment and the like, including, but not limited to the rolling stock, spare parts and maintenance and operation equipment, necessary for the design, construction and operation of the Metro, which the Concessionaire shall perform or supply, in accordance with the provisions herein, including the Concessionaire Parallel Works.

**“Works Completion Certificate”** means the certificate issued by the Independent Engineer in accordance with article 12 herein.

## 1.2 Interpretation

The following rules of interpretation shall apply to this Contract:

- 1.2.1** Wherever the context requires so, words importing the singular shall also include the plural and vice versa.
- 1.2.2** The words “persons” will include physical and legal persons, wherever the context requires so.
- 1.2.3** In this Contract, reference to any article, sub-article, paragraph or annex, represents reference to the specific sub-article, specific paragraph or specific annex herein, unless otherwise expressly stated herein.
- 1.2.4** The headings have been inserted for convenience of reference only and shall not be taken into consideration in the interpretation of this Contract.
- 1.2.5** Any reference to the provisions of this Contract is meant to be made to its corresponding provisions, as applicable from time to time.
- 1.2.6** Any reference to this Contract is meant to be made to this Contract together with its Annexes.
- 1.2.7** Reference to any law, or article of a law, is meant to be made to the corresponding provisions, as applicable from time to time, except if otherwise stated herein.
- 1.2.8** Reference to a person will include reference to its successors as well as its permitted special successors and assignees.
- 1.2.9** A month/year means the time period starting on a certain day of a calendar month/year and ending on the numerically corresponding day of the successive calendar month/year, unless there is no numerically corresponding day within the month/year within which subject period ends, in which case, the time period will end on the last day of subject calendar month of subject year or of the following year.
- 1.2.10** Whenever in this Contract reference is made to a number of days, such reference shall be meant to be made to calendar days, unless Business Days are specified.
- 1.2.11** Whenever in this Contract or its Annexes, provision is made for a notification or issue of an instruction, request, endorsement, consent, approval, certificate or determination by any person, unless otherwise specified herein, such notification, instruction, request, endorsement, consent, approval, certificate or determination, shall be given in writing and the words “request”, “instruct”, “notify”, “endorse”, “consent”, “approve”, “certify” or “determine”, shall be construed accordingly.

1.2.12 “Approval” (and related terms such as “approve” or “approved”) shall mean compliance with the terms of such approval as expressed in this Contract.

1.3. **Representatives of the Parties**

1.3.1 The Legal Representative of the State shall be appointed within one month from the signature of the present Contract and shall be empowered to act in the name and on behalf of the State for all the needs of this Contract.

1.3.2 The Legal Representative of the Concessionaire shall be appointed within a month from the signature of present Contract and shall be empowered by the Concessionaire’s Board of Directors Session, to act in the name and on behalf of the Concessionaire, for all the needs of this Contract.

1.3.3 Either Contracting Party may notify the other Party of its intention to change its legal Representative and the date upon which such change shall take place.

1.3.4 Communication between the Service and the Concessionaire shall be done in accordance with the provisions of article 37 herein.

1.3.5 Each Contracting Party hereby states and warrants that all communications signed by its Representative, shall be considered as communication of the Contracting Party itself and shall bind it legally in accordance with this Contract, without the other Contracting Party having to enquire as to the authority and power of the Representative of the first Party.

1.3.6 Legality, accuracy etc. of the submitted data.

The Concessionaire and all the above parties under any property represent to the State, being personally liable for this representation that all the above legalisation documents deposited to the State at the signature of this contract:

- a. Are legal, correct and accurate and
- b. Do not come in contradiction with the terms of the present Contract and its Annexes, and that even if a contradiction exists, they unreservedly accept and expressly undertake the responsibility to rectify the contradiction at their own care and expense, without pretext and within reasonable time from the day they shall be notified or shall become aware of the existence of the contradiction.

**Comment [ID4]:** This will depend upon the scope of the documents submitted. However studies and surveys are based on best information and may not always be completely accurate as it would not be cost effective to survey each and every inch.



## 2. CONDITIONS PRECEDENT TO THE ENTRY INTO FORCE OF THE CONTRACT

2.1 The present Contract shall come into force upon the date of fulfilment of the following conditions:

2.1.1 [Law ratifies present Contract, and both this Contract and the Ratifying Law, are published in the Official Government Gazette.]

2.1.2 a. The Founding Shareholders have undertaken to secure to the Concessionaire in accordance with the Financial Plan updated at the day of Financial Closing, an aggregate amount equal to the difference between the Minimum Share Capital and the share capital and have delivered to the Concessionaire corresponding letters of guarantee in accordance with the provisions of article 17.1.1. of the present Contract.

b. The Concessionaire has entered into the Financial Agreements or the Financial Agreement in relation to the Subordinated Loans, provided for in its Financial Plan and such Agreements have been notified to the State and have come into force, provided such loans are foreseen in its Financial Plan which (Financial Plan) the Concessionaire must have notified to the State, with copies of the Financial Agreements or of the Financial Agreement, which have come into force.

2.1.3 The Concessionaire has entered into all Financial Agreements provided for by its Financial Plan, which shall be duly signed by the Lenders, and all conditions precedent to the first draw down of funds under the Financial Agreements, have been fulfilled or waived and has notified relevant copies of such Financial Agreements to the State. Such event, i.e. when the above conditions have been fulfilled or waived, is defined as “Financial Closing”.

2.1.4 The Concessionaire has submitted in writing to the State copies of the Good Performance of the Construction and the Good Performance of the Operation and Maintenance Letters of Guarantee, which shall be given to the Concessionaire in accordance with article 17.2 herein.

2.2 [After signing the present Contract, the State shall timely submit it for ratification to the Parliament of [COUNTRY], and shall handle all procedures and prepare all documents necessary to this effect].

2.3 In the event that [either (a) the Contract is not ratified by law by the Parliament of [COUNTRY] by the end of the [fourth (4th)] month from the date of the signature of this Contract, or (b)] the conditions referred to in paragraphs 2.1.2., 2.1.3. and 2.1.4. of present article, have not been satisfied by the end of the [sixteenth (16<sup>th</sup>)] month from the date of signature of this

**Comment [ID5]:** Note the financial strength of the State will be paramount. The obtaining of land rights is not a condition precedent to the Effective date. Lenders will be nervous about delays caused by failure by the State to make available possession of land as the damages could be very substantial.

**Comment [ID6]:** Financial Agreements may have as a condition precedent the coming into force of the Concession Agreement. It would not be unusual to see an exception in a clause like this to allow for this.

Contract, save any extensions that might be agreed in writing between the Parties, then present Contract shall not produce any results, it shall be null and void and the Parties shall not be held responsible or be liable for compensation to one another.

**Comment [ID7]:** In some jurisdictions it may be thought reasonable for Government to compensate the successful bidder for the costs of bidding if the necessary law is not passed. In addition not only does the law have to be passed it also has to be gazetted under this Concession Contract so the provision as to null and void should be extended to cover this issue-otherwise what happens if the law is passed but not gazetted?

### 3. CONTRACTUAL SCOPE

#### 3.0 General

With this Contract and the terms set out herein, the State grants to the Concessionaire the right and the Concessionaire hereby undertakes the obligation to finance, design, construct, commission, complete, develop, maintain, manage and operate the Metro, at its own risk and responsibility, without being entitled to claim at any time from the State any money or guarantees of the State, unless otherwise provided in this Contract.

**Comment [ID8]:** The definition of Concession Contract includes the right to exploit but that right is not conveyed by this article but see also article 3.1 which covers the point..

#### 3.0.1 Knowledge of conditions

Unless otherwise provided for in this Contract, the Concessionaire:

- a) is fully aware
  - of the state of the land and installations, on which it is granted rights,
  - of the type and extent of the risk it undertakes in respect of the Concession,
- b) has gathered all necessary information in order to carry out present Contract, including inter alia, information about the nature, the location and the state of the land and the sub-soil, the hydrological, geological, geotechnical and underground conditions,
- c) has taken in consideration
  - the particularities of the local conditions and installations,
  - the quality of the existing structures which will be used as part of the Metro,
  - the conditions and availability of labour,
  - the salaries, the safety and hygiene requirements for the workers,
  - the environmental issues linked to the Project's construction,
  - the sufficiency of public utility services,
  - the obligations arising out of the current legislation in general and in relation to the above,
  - the permits and approvals required for the Project's construction.

**3.0.2** The Concessionaire shall not be discharged of any of the obligations arising out of the present Contract, in case any of the information given by the State prior to the date of signature of the Contract, or by anyone else, are false or/and insufficient and the Concessionaire shall proceed to its own examination, regarding the accuracy and completeness of such information.

**3.0.3** With regards to the deepening of the level of the project, which is described in article 6.15.5 herein, the Concessionaire undertakes all the necessary expenses for the additional works with regards to this deepening but does not bear the expenses of the additional works resulting from the existence of water, provided such is met, at any point it is met, due to the deepening of the level of the project from the foreseen level of Annex 1 to the new depth level.

**3.1 The scope of the Concession Contract is :**

- a.** the design, study, construction, financing, operation, exploitation and maintenance of the Metro, in accordance with the terms hereof, in consideration of the concession by the State to the Concessionaire of the exclusive right to operate, maintain and exploit the Metro in accordance with the terms hereof.
- b.** The design and construction of the Concessionaire Parallel Works, in accordance with the terms set out herein.

**3.1.1 Concessionaire's Consideration**

The Concessionaire undertakes, on the basis of this Contract, the obligation to:

- a.** Carry out all studies and relevant investigations in relation to the Main Works of the Metro and the Concessionaire Parallel Works, in accordance with the provisions of Annex 1.
- b.** Timely Construct all works, installations, and equipment of the Metro, with the required high quality, and in accordance with the provisions set out herein and Annex 1, so as it is fit for purpose and with the required safety that is appropriate for a modern European Metro.
- c.** Operate the Metro, during the whole duration of the Operation Period and maintain it in accordance with the provisions hereof, at its own responsibility and expenses. More specifically, it undertakes to ensure after the first year of operation and during all the remaining years of the Operation Period, an Average Monthly Technical Availability of the Metro equal to [0,98].

- d. Finance the Metro (studies, investigations, construction of Main Works, including expenses for installations, equipment and rolling stock, maintenance and operation), beyond the Contribution of the State, in accordance with the provisions hereof.
- e. Finance the Project with a sum of [AMOUNT AND CURRENCY] in [DATE] prices), for the design and execution of the Parallel Works, in accordance with the terms set out herein.
- f. Deliver the Metro to the State, including its movable and immovable equipment and the rolling stock, in full operation and in good condition, having regard to fair wear and tear, after the end of the Concession Period, in accordance with article 33 herein.
- g. The Concessionaire shall ensure at its own responsibility and expenses, that the Administrator shall assist the State in the operation and maintenance of the project during the Maintenance Assistance Period, in accordance with the provisions set out herein.
- h. Adapt, at its responsibility and expenses the Metro to the needs of passengers' traffic up to the limit of [ ] passengers per hour and direction during the peak hours.

3.1.2 Subject to the provisions of this Contract, the Concessionaire also undertakes at its own care and expenses, the following obligations:

- a. To carry out the studies for the operation, exploitation and maintenance of the Metro.
- b. To draw - up the Operation and Maintenance Manual of the Metro and to update it whenever required, for the duration of the Contract.
- c. To maintain and/or renew the movable or immovable equipment of the Metro within the framework of the present Contract and the specifications of Annex 1, in order to cover maintenance needs and to comply with the requirements of the Contract with regard to safety and service level and to comply with the safety regulations, being in force from time to time.
- d. To train, during the last year of the Concession Period, personnel up to [ ] persons, which shall undertake on behalf of the State the operation and maintenance of the Metro.

**Comment [ID9]:** This seems a bit odd. Either the requirements of the State should require this at the outset or there should be a minimum requirement with a subsequent ridership adjustment. However the problem with this latter concept is that there is no certainty that the Concessionaire will be able to raise finance for the upgrades particularly if the upgrade is only required towards the end of the concession period and there is insufficient time to earn sufficient to meet the consequent debt service provisions.

### 3.1.3 State Consideration (Contract Price)

Subject to the provisions of present Contract, the State:

#### 3.1.3.1 Undertakes the following obligations :

- a. To pay to the Concessionaire an amount equal to [AMOUNT AND CURRENCY] in [DATE] prices. This amount shall be revised with the Escalation Coefficient and shall be paid during the Construction Period of the Metro, proportionally to the progress of the Works and in accordance with the Financing Plan which will be drawn up upon the “financial closing” and with articles 6 and 13 hereof.
- b. To pay to the Concessionaire the price corresponding to the Parallel Works exceeding [AMOUNT AND CURRENCY] in [DATE] prices, in accordance with the terms set out herein.

**Comment [ID10]:** This gives rise to an interesting conflict. In NPV terms it makes sense for the State to pay the contribution sooner rather than later. However in risk transfer terms it makes sense to have the lenders on the hook sooner so that if things start going wrong during the construction period there is a stronger incentive on the lenders to assist in resolving the problem.

3.1.3.2 Grants hereby to the Concessionaire, the exclusive right and benefit to operate, maintain and exploit the Metro, up to the end of the Concession Period. The Concessionaire shall exercise this right, by collecting the revenues from the tickets and from the tickets’ subsidy, in accordance with article 15 herein, as well as through the potential revenues from other exploitations according to the provisions of article 3.1.3.4.

3.1.3.3 Undertakes the obligation to pay, during the whole duration of the Operation Period of the Metro, a subsidy on the tickets corresponding to a percentage of their price, in accordance with the provisions of article 15 herein.

3.1.3.4 The State grants to the Concessionaire the right to install advertising or commercial space in the Metro, in accordance with the provisions herein.

**Comment [ID11]:** In some jurisdictions there is a value to building above the station or over the maintenance/stabling depots. The issue for the State is that the property cycle may not follow the construction cycle. Thus the bidders may not reflect full value for property development in their bids. Similarly there may be an allocation of risk issue if the State requires the Concessionaire to carry out enabling works so that the State can itself grant property development rights over the stations or depots to property developers. An option may be to agree either in the Concession or in a separate “Development Agreement” a share of the revenue from the development to be paid to the State as the development takes place.

### 3.2 Concession Period

3.2.1 The Concession Period starts upon the Effective Date and ends [25] years later, unless the Contract is terminated or extended before such date, in accordance with the provisions of this Contract.

3.2.2 Extensions of the Concession Period of the Project, provided for herein, shall be granted in the following cases :

- a. In cases where according to the provisions of this Contract, an extension of the Completion Deadline of the Construction shall be granted.

- b. In cases where such an extension is provided for force majeure or other reasons provided for herein.

**3.3** Without prejudice to the provisions of article 28 herein, the Concessionaire shall fulfil its obligations in such a way, as to comply with all relevant laws and regulations, as in force from time to time.

**3.4** Each Party hereby declares, warrants and confirms that :

- a. it has full power, authority and legal right to execute this Contract and to perform its obligations hereunder.
- b. it has been legally authorised for all actions required in that respect in order to perform its obligation and, with regard to the State, with all necessary legislative, executive, administrative and other governmental acts, subject to the provisions of article 2.1.1. herein.
- c. it has legally signed this Contract and that such Contract constitutes the legal, valid and binding obligation, between the parties, in accordance with the terms set out herein.

The State hereby declares, warrants and covenants that in order to ensure the legality, validity, enforceability or acceptance of this Contract, it is not necessary that this Contract be registered, recorded or filed with any court or other authority or be certified or that any stamp or similar tax be paid in respect of this Contract, subject to its ratification by law, in accordance with article 2.1.1. herein.

#### **4. DESIGN OF THE METRO PROJECT – SUPERVISION**

**4.1** Obligations of the Concessionaire with regard to design. Design Check. Appointment of the Independent Engineer.

**4.1.1** The Concessionaire undertakes the obligation to draw up and complete the General and Detailed Final Design including the Construction Drawings, in compliance with the provisions hereof, the Specifications, Annex 1 and the quality assurance manuals for the elaboration and check of the design according to [ISO 9001] procedure.

**4.1.2** The Concessionaire also undertakes the obligation to carry out any investigations and tests it considers necessary for the design and study of the Main Works, in compliance with the provisions hereof, the Specifications and Annex 1.

- 4.1.3** The Concessionaire undertakes the obligation to carry out any further reasonably necessary Site investigations and tests, which the Independent Engineer may indicate upon its review of the schedule of Site investigations and tests prepared by the Concessionaire, as well as any additional design deriving therefrom.
- 4.1.4** Any part of the elaboration of the Final Design may be subcontracted to a design subcontractor without the Concessionaire being relieved in any way of its responsibilities towards the State by virtue of present Contract. The design subcontractor will have the relevant qualification and experience for the scope of work subcontracted to it. The Service and the Independent Engineer will be informed by the Concessionaire of the identity of any design subcontractor and of the scope of work subcontracted to it.
- 4.1.5** The Concessionaire and the State will jointly hire the Independent Engineer, of international reputation and status, of relevant qualification and experience for the purposes of duties and responsibilities defined herein and independent from the parties, at least two (2) months before the date of the Financial Closing. The selection of the Independent Engineer shall be made out of a list of firms which collaborate / are acceptable by the lending Banks, by a committee including the State, the lending Banks and the Concessionaire. Such committee shall select three candidate firms and the final selection of one among the three shall be made by the State, within a deadline of [fifteen (15)] days from the notification to the State of the above list of candidates. In case where the State does not select the Independent Engineer within the above mentioned period, its selection will be made by the lending Banks among the above three candidates. The Concessionaire shall then enter into a respective agreement with the Independent Engineer, in accordance with the main terms of Annex 13. The same procedure shall be followed in case of replacement of the Independent Engineer. The Independent Engineer to be hired should also meet the approval of the lending Banks.

## **4.2** Scope of the Design

- 4.2.1** The Concessionaire shall undertake the elaboration of the General Final Design within the first six months, in compliance with the Specifications and Annex 1 and on the basis of the results of the investigations and tests.
- 4.2.2** The General Final Design will contain the main dimensions and main technical characteristics of the Main Works.

4.2.3 Following the check and certification of the General Final Design by the Independent Engineer, the Concessionaire shall elaborate the Detailed Final Design containing all necessary details and dimensions to enable the execution of the Main Works.

### 4.3 Design – Investigations Checking

4.3.1 The Independent Engineer will exercise all its rights and duties in accordance with the provisions of present Contract and of the Independent Engineer's Agreement. With respect to the Designs, the Independent Engineer shall :

- check the scope of the investigations and tests, prepared by the Concessionaire, check and comment on their suitability and adequacy for the purposes of the design and provide the Concessionaire and the Service with a copy of the scope checked.
- follow up the elaboration of investigations and tests.
- check and certify (by way of the Design Check Certificates), that the General and Detailed Final Design comply with the Specifications and Annex 1.
- check and certify that the quality assurance and quality control manuals comply with [ISO 9001] procedures and other relevant terms of the Contract, audit their implementation and provide the Concessionaire and the Service with a copy of such checked and certified-manuals.
- draw up and provide the Concessionaire and the Service with periodic progress reports covering the activity of the previous period and comment on potential risks of delays.
- issue and provide the Concessionaire and the Service with all the Design Check Certificates and the certified documents.
- check, report and comment on the status of Site acquisition and delivery, Permits, environmental studies and consents, traffic diversion arrangements, Parallel Works and any other events or circumstances which may delay the commencement of the construction or the progress of the Main Works in accordance with the Construction Time Schedule.
- advise of action required to avoid or reduce delays.

4.3.2 The Service receives from the Independent Engineer the above mentioned progress reports, the submission schedule of the elements of the design (as defined in the Construction Contract), and copies of all certified parts of the General and Detailed Final Design. The Service is entitled to request from the Independent Engineer information as to its activity in general,

**Comment [ID12]:** This imposes upon the Independent Engineer a higher duty of care than traditionally applies. It may therefore give rise to a higher level of intervention and therefore conflicts between Constructor/Concessionaire/Independent Engineer than might otherwise exist.



- to visit the premises and offices of the Independent Engineer and
- to attend the meetings held between the Concessionaire, the Constructor, the Administrator and the Independent Engineer.

#### **4.4 Remuneration of the Independent Engineer**

The remuneration of the Independent Engineer is included in the total cost of the project and will be received through withdrawals automatically, upon the approval of the Lenders (either from a revenues account or in another way) as it will be defined during the financial closing, in agreement with the Lenders.

#### **4.5 Checking Procedure by the Independent Engineer of the Investigations and Tests and the Final Design**

**4.5.0** The Concessionaire shall be entitled to divide the Final Design in portions, each forming itself a reasonably independent part of the Main Works, based on its particularity or its geographical location or other criteria and to effect the required submissions in different stages in accordance with the above division.

**4.5.1** The Design Check Certificate issued by the Independent Engineer in relation to any part of the General and Detailed Final Design, will certify that such part of the General or the Detailed Final Design, meets the Specifications and Annex I.

**4.5.2** Within [30 (thirty)] days from the date of submission of any part of the General or of the Detailed Final Design, the Independent Engineer shall certify the compliance of the said part of the General or Detailed Final Design with Annex I and with the Specifications, or shall notify and justify in writing all its observations.

The Concessionaire shall rectify any non-compliance and re-submit such rectified design and the Independent Engineer shall certify or notify its comments, within [fourteen (14)] days from the date of resubmission, following the same procedure as above.

Failing the written reply of the Independent Engineer within the above mentioned deadlines, the Independent Engineer shall be deemed to have certified the compliance of the submitted design with Annex I and the Specifications, and the related Design Check Certificate shall be deemed issued at the expiration of the above mentioned period.

**Comment [ID13]:** The Independent Engineer may require a programme for the delivery of drawings. It will not want all drawings delivered at the same time as it may not be able to process them within the requisite time.

Following the issue or the deemed issue of the Design Check Certificate, the Service and the Concessionaire will simultaneously receive a full copy of the corresponding parts of such Designs.

- 4.5.3** The Service may, within a deadline of [twenty (20)] days from the receipt of the part of the Design for which a Design Check Certificate has been issued or is deemed to be issued, notify the Independent Engineer and the Concessionaire in writing, of any observations or objections related to the non-conformity of such part with the Specifications or Annex 1 and/or its inconsistency with previously certified drawings and designs and may thereafter pursue the matter as a dispute under the disputes resolution procedure provided for in articles 38 and 39 herein.
- 4.5.4** The decisions of the Independent Engineer whether issued or deemed to be issued, will be binding and executable by the Parties, unless and until changed, pursuant to a recourse to the Disputes Resolution Procedure.
- 4.5.5** In the cases where the Concessionaire is required to apply for the issue of a Design Check Certificate, the relevant deadlines stated in Article 4.5.3 shall apply with regard to the observations or objections of the Service, following the issue of such Design Check Certificate.
- 4.5.6** Either Party may refer to the Technical Panel any disagreement over any decision of the Independent Engineer, whether issued or deemed to be issued in accordance with the Contract, within [twenty five (25)] days of receipt of such decision, in accordance with the Disputes Resolution Procedure of article 38 herein.
- 4.5.7** Neither the submission or the non submission of observations or objections by the State in accordance with paragraph 4.5.3 herein, nor the recourse or the non recourse to the Disputes Resolution Procedure in accordance with Articles 38 and 39 hereof, will relieve the Concessionaire from its obligations and responsibilities hereunder.
- 4.5.8** No breach by the Independent Engineer of its obligations under the Independent Engineer's Agreement will relieve the Concessionaire from its obligations and responsibilities hereunder.
- 4.5.9** No delay on the part of the Independent Engineer in performing its obligations resulting from any dispute between the Independent Engineer and the Concessionaire will relieve the Concessionaire in any way from its responsibilities and obligations hereunder.

**4.5.10** The State or the Concessionaire may, if they discover that the Independent Engineer is in breach of its material obligations, ask for the termination of the Independent Engineer's Agreement and the Independent Engineer shall be replaced in accordance with the procedure of article 4.1.5 herein. It is clarified that the untimely certification of the designs and Manuals, in accordance with the terms set out herein, constitutes a breach of the material obligations of the Independent Engineer.

Any dispute between the State and the Concessionaire with respect to their right to terminate the Independent Engineer's Agreement, shall be referred to the Disputes Resolution Procedure, in accordance with Article 39 herein.

**4.6 Obligations of the Concessionaire with regard to the Construction**

The Concessionaire shall ensure that the Constructor shall execute the Main Works as defined in Annex I in accordance with the terms of the Construction Contract. Indicatively, he shall:

- commence the Main Works, following the issue of the Certificate of the necessary part of the Detailed Final Design,
- undertake the full risk and responsibility for the care, and protection of the Works under construction,
- undertake the risks associated with soil conditions, underground waters, artificial obstructions, bad weather, plant availability and risks of defects in the construction of the Main Works due to poor design, materials or workmanship, in accordance with the terms set out herein.
- design, construct and complete the project in order to ensure its proper operation, in accordance with the present Contract (fit for purpose).

**4.7 Subcontracts**

**4.7.1** The Concessionaire shall not be relieved of any of its obligations hereunder, by reason of the works being carried out by subcontractors of the Constructor. The identity of main subcontractors and the scope of relevant subcontract shall be notified to the State via the Independent Engineer, within [ten (10)] days from the signature of the subcontract.

**4.7.2** The Concessionaire shall ensure that the Constructor and the above-mentioned subcontractors shall accept the direct intervention of the Service, when such intervention is necessary to prevent imminent danger of body injury.

## 4.8 Supervision of the Works

4.8.1 The Independent Engineer, hired in accordance with the procedure defined in article 4.1.5., shall have the responsibility for the follow-up and checking of the Works.

The Independent Engineer shall exercise its rights and obligations according to the provisions of the Independent Engineer's Agreement and this Contract.

The Concessionaire shall ensure that the Constructor complies with the decisions of the Independent Engineer regarding the execution of the project according to this Contract.

4.8.2 With respect to the construction, the rights and obligations of the Independent Engineer shall comprise inter alia the following :

- issue and submit a monthly report on the progress of the Works to the Concessionaire and the Service,
- follow up the progress of the Works against the Construction Time Schedule and submit its observations with respect to delays and proposed actions to be taken in this regard,
- express its opinion with respect to the necessity, scope, manner and schedule of execution of the Parallel Works,
- check the quality of the Works and the measurements, wherever required,
- check and express its opinion, with regard to all the propositions of the Concessionaire with respect to Variations or to issues of liability of the State, from technical and economic point of view,
- check and express its opinion, with regard to all the propositions of the Concessionaire for extensions of time,
- check the implementation of the traffic arrangements,
- express its opinion regarding the compliance of the insurance policies with the terms of this Contract,
- follow-up and check that the quality assurance and quality control procedures are in accordance with [ISO 9001] regulation and are implemented by the Constructor so that
  - a) the Main Works executed by the Constructor meet the Specifications (including the environmental protection specifications) and the Detailed Final Design,
  - b) the materials and the equipment used, comply with the Specifications and the Constructor takes all necessary measures to remedy any non-compliance,

**Comment [ID14]:** Again this goes further than the traditional scope of the role of the Independent Engineer.

- follow-up the quality control (tests, samplings) and the issue of the quality control certificates, before proceeding to the issue of the Construction Check Certificate,
- follow-up and check that the Health and Safety Plan and its implementation, comply with the relevant provisions of the Contract and the law,
- certify the achievement of Key Events, by issuing the corresponding Intermediate Certificate,
- issue the Works Completion Certificate in accordance with the provisions of Article 12 herein,
- check the quality assurance and quality control manuals,
- check the implementation of the environmental terms,
- check the suitability and adequacy of the Concessionaire's laboratories, according to [ISO 9001] and similar procedures,
- check and approve the suitability and adequacy of the external laboratories that the Concessionaire shall choose to carry out specialised tests,
- check and approve the compliance of the Operation, Maintenance and Safety Manuals with the provisions of the articles of present Contract,
- check the compliance with the acceptance criteria for the Main Works, in accordance with the acceptance procedure,
- review, report and comment on the status of the Sites acquisition and delivery, Permits, environmental consents and studies, traffic diversion arrangements, Parallel Works and any other events, or circumstances which may delay the commencement of the construction or the progress of the Main Works, in accordance with the Construction Time Schedule,
- advise of action required to avoid or reduce delays.

**4.8.3** The Service shall be entitled during the Construction Period :

- to receive copies of the Construction Time Schedule and revised versions thereof;
- to be informed by the Independent Engineer via monthly progress reports, of the progress of the Works, adherence to the Programme of Works, the quality control results and all above checkings;
- to be duly informed of any discovery of antiquities,
- to receive from the Independent Engineer all correspondence between the Independent Engineer and the Concessionaire or/and between the Independent Engineer and the Constructor,
- to have access to the Site for the purpose of following-up the progress and the quality of the Works and after receiving notification on time from the Independent Engineer, attend the execution of important phases of the Works;

- to attend the meetings related to the progress of the Works, held between the Concessionaire, the Independent Engineer and the Constructor;
- to intervene directly in the works carried out by the Concessionaire or the Constructor or the subcontractors, in the event of imminent danger of body injury;
- to receive from the Independent Engineer copies of the Intermediate Certificates,
- to be invited and attend the intermediate and final inspection of the Works, leading to the issue of the Works Completion Certificate,
- to receive from the Independent Engineer, within three (3) months from the issue of the Works Completion Certificate, the as-built drawings of the parts of the project,
- to receive from the Independent Engineer the Maintenance, Operation and Safety Manuals, checked by the Independent Engineer,
- to have access to all the Documents produced by the Constructor or the Administrator or on their behalf, for the Project and to the investigations and laboratory tests records

#### **4.8.4 Construction Check Certificate**

The Independent Engineer shall issue a Construction Check Certificate for the substantial compliance of each section of the Main Works, to the Specifications.

Substantial compliance to the Specifications, means the compliance of the works of each part of the project with the provisions of the Contract, regarding structural stability, for Civil Engineering Works and the lack of apparent defect of the construction for the remaining works.

Simultaneously, the Independent Engineer shall issue the list of all non-compliances and defects of the works of such section, in respect of the requirements of the Contract.

- 4.8.5** Where the Service considers that the Constructor is constructing or executing or preparing to construct or to execute any part of the Main Works in a way that does not comply with the Specifications or the Detailed Final Design, it shall notify the Independent Engineer and the Concessionaire in writing, stating the grounds for its opinion. The said notification shall be delivered within [ten (10)] days from the day upon which the said non-compliance or deviation, has been observed by the Service.

- 4.8.6** The Independent Engineer shall have a deadline of [ten (10)] days from the date of receipt from the Service of such notice referred to in article 4.8.5, to decide in writing whether to accept or to reject the objection in question and to notify the Service, the Concessionaire and the Constructor in that respect. Its decision shall be binding, and executable by the Parties, unless and until it is changed further to reference to the Disputes Resolution Procedure of Articles 38 and 39.
- 4.8.7** Either Party is entitled within [twenty-five (25)] days from the receipt of said decision of the Independent Engineer, to refer the matter to the Disputes Resolution Procedure of Articles 38 and 39 hereof.
- 4.8.8** Neither the submission of objections by the State in accordance with paragraph 4.8.5, herein, nor any reference or not to the Disputes Resolution Procedure of Articles 38 and 39 hereof, will relieve the Concessionaire in any way of its obligations hereunder, or diminish its responsibilities under this Contract.
- 4.8.9** No breach by the Independent Engineer of his obligations under the Independent Engineer's Agreement, will relieve the Concessionaire of its obligations towards the State arising hereunder.
- 4.8.10** No delay on the part of the Independent Engineer resulting from any dispute between the Independent Engineer and the Concessionaire concerning the performance of the Independent Engineer's obligations, will relieve the Concessionaire in any way of its obligations towards the State arising hereunder.

#### **4.9** General

- 4.9.1** The Independent Engineer and the State are not entitled to interfere in any manner in the activities of the Concessionaire, the Constructor or the Administrator unless and to the extent it is provided herein and shall at all times act reasonably and restrict objections and references to the Disputes Resolution Procedure, to the possible minimum.
- 4.9.2** Neither Party shall be entitled to prohibit or hinder the delivery to the other Party of any report, information or certificate, provided by the Independent Engineer.

The Independent Engineer shall report to the Parties and shall disclose or transmit copies to them, as the case may be, of all information provided to him by the Parties and he shall report to them any possible non compliance of the Constructor or the Administrator with respect to the obligations deriving from their contracts.

The State and the Concessionaire shall not delay the performance of the duties of the Independent Engineer and shall, within a reasonable time, provide to the Independent Engineer, free of cost, all information in their possession in relation to the Project, which may reasonably be required for the execution of duties and obligations of the Independent Engineer.

- 4.9.3** Any objections, observations, comments by the Independent Engineer, the State, or the Concessionaire on any document provided by the Concessionaire, the State or the Independent Engineer pursuant to any provision of this Contract, shall be substantiated adequately and in detail so as it is possible to understand the grounds on which the objections, comments and / or observations are based.
- 4.9.4** The Concessionaire shall include in the Independent Engineer Agreement, a provision according to which, the latter shall have the obligation to notify all documents related to the Project to the State.

## **5. RIGHTS ON REAL ESTATE**

- 5.1** The State hereby grants to the Concessionaire during the whole duration of the Concession Period, the right of exclusive use and possession of the totality of surface and underground spaces with adequate access thereto, which are necessary for the construction of the Works and the Operation and Maintenance of the Metro, in accordance with the provisions herein, at no charge to the Concessionaire. For the use and possession of the above spaces, the Concessionaire shall not pay any Tax. The State undertakes the obligation, during the whole duration of the Concession Period, not to grant any burden or any real or personal servitude, or other rights of any nature on the Metro and the Site or any part thereof, which affect or limit or infringe the Concessionaire's rights on the Metro or the Site or any of its legal interests over them, unless otherwise provided herein.

In case the State fails to comply with the obligations of this article, the Concessionaire shall be entitled to the Positive Damages and to the corresponding extension of the construction period to the extent that such non-compliance brings delay, which affects adversely the critical path of the PERT diagram. Moreover, the Concessionaire shall be entitled to the corresponding extension of the Concession **Period**.

### **5.2 Expropriations**

- 5.2.1** The State is responsible for the carrying out of the expropriations which are needed for the completion of the Project, in accordance with plan No 1 of

**Comment [ID15]:** Risk of double recovery. Losses to the Concessionaire during delay would include interest roll up or capitulation and if delay is extensive may result in delay in making debt service payments. Issue therefore is what is extension of Concession Period meant to compensate?



Annex 10, which shows the occupation areas of the Metro as defined in Annex 1. Following the Concessionaire's request in accordance with articles 5.2.5 and 5.2.6 herein, the State shall proceed to all necessary procedures in this respect.

It is clarified, that additional expropriations which are needed for the Main Works, will be carried out only if necessary, having due regard to the engineering solutions described in Annex 1 and that the Service reserves the right not to approve the proceeding of such an expropriation, which is not reasonably necessary.

- 5.2.2** The properties which are necessary for the carrying out of all the works of the present Contract, which are ostensibly works of public or common utility, shall be expropriated in favour and at the expense of the State, following the common decision of the [MINISTRIES], published in the Official Government Gazette. As for the rest, and subject to the specific provisions made herein, the provisions of [LEGISLATION] as in force, shall be applicable for the above mentioned expropriations. The provisions of any provision of the law regarding expropriations with regard to town planning application will not be applicable for these expropriations.
- 5.2.3** Following the publication in the Official Government Gazette of the *announcement of the completion of expropriations*, the Concessionaire or the State, can ask for the handing over of the expropriated property (ies), with the procedure of [RELEVANT LEGISLATION].
- 5.2.4** The boring of underground tunnels shall be allowed for the purpose of executing the Works, by using appropriate technical methods to the depth imposed by the technical requirements, without the Concessionaire being committed to compensate the owners of the surface properties, provided that the current use of subject properties is not affected by such boring. The State guarantees, that the owners or possessors and occupants of the properties and any third party which benefits from them, are obliged to permit and to withstand the boring of the above underground tunnels and of any work or annoyance, necessary for their construction, use, repair and maintenance and the State undertakes the responsibility of the choice of the alignment.
- 5.2.5** The Concessionaire shall draw up simple cadastral diagrams and respective cadastral tables (with, as much as possible, accurate recording of the owners information at the time of the drawing up), along the alignment of the Metro lines, in the locations of sites, other auxiliary installations, excavation materials dumping locations, areas of Parallel Works and in general at every location which is temporarily or permanently affected by the construction and operation of the Metro. The Concessionaire shall make its best efforts

for the accurate recording of the above information without holding any responsibility in case of any inaccuracy or insufficiency of the said information.

- 5.2.6** The above diagrams corresponding to each location needing expropriation and the corresponding tables, shall be submitted to the Service at least [twelve (12)] months before the commencement of the Works in the locations provided for by the Construction Time Schedule of the Project.

The Concessionaire shall take care for the expedition of all procedures and formalities required in order to enable the State to complete the expropriations in a timely manner. By taking care for the expedition of all procedures and formalities, is meant the preparation of the above cadastral diagrams, tables, etc. in accordance with paragraph 5.2.5. of present article.

The Concessionaire shall act in accordance with the provisions of articles 5.2.5 and 5.2.6, for any additional expropriation, which might be needed.

- 5.2.7** The Concessionaire shall not receive additional payment for the works of articles 5.2.5. and 5.2.6. mentioned above.

- 5.2.8** Any delays to the Project, due to the Concessionaire's failure to comply in a timely manner with all formalities required herein in order to make possible the issue of the common Ministerial Decision of article 5.2.2. hereof, shall not justify any extension of deadlines or payment of escalation in respect of the delayed works, or any other compensation.

- 5.2.9** Provided that the Concessionaire fulfils its above mentioned obligations, any delay in handing over to the Concessionaire the expropriated areas beyond the [12 (twelve)] months deadline starting on the date of submission by the Concessionaire of the above diagrams and tables in accordance with article 5.2.6., with no fault of the Concessionaire and to the extent it adversely affects the critical path of the PERT diagram as updated from time to time, shall result in an extension of the deadlines of the Construction Period and in an extension of the duration of the Concession Period, to the benefit of the Concessionaire, which shall be corresponding to the consequences of the delay, as well as a relevant compensation for the Positive Damages of the Concessionaire.

**5.3 Temporary Occupations / Dumping Areas of Surplus and Unsuitable Excavation Material**

The Concessionaire is entitled to temporarily occupy areas which are necessary for the creation of the sites in accordance with drawing 2 of Annex 10, for the execution of geotechnical and other investigations and in

general for the execution of works facilitating the Project (installations, offices, storage, etc.), in accordance with the following:

- 5.3.1** The Concessionaire can use for the execution of the Works of this Contract provided it is necessary and for as long as necessary, public, municipal and communal areas as well as areas belonging to public law legal entities which shall be delivered in each case with a proposal of the Concessionaire to the Service, [three (3)] months before the date such areas are required and provided the Service has not objected to the proposals of the Concessionaire [one (1)] month at the latest before the above mentioned date. In case one of these areas cannot be granted, the Service will use its best efforts to secure another suitable area to the Concessionaire. The Concessionaire occupies these areas without further formalities. For the occupation of these areas, no compensation or duty is due. The Concessionaire is obliged to reinstate at its own cost, in their previous condition, streets, and squares and in general any of the above areas the Service shall indicate.
- 5.3.2** Apart from the areas to which the provisions of paragraph 5.2 herein apply and regarding the temporary occupations, further to the request of the Concessionaire, the State shall be responsible to carry out the expropriations in order to establish a servitude in favour and at the expense of the Concessionaire, for the creation of sites and in general for the needs of the Works of present Contract, for as long as necessary.
- The private areas which shall be required and the time during which servitude should be maintained in favour of the Concessionaire, shall be defined following the Concessionaire's proposal and the approval of the Service, [twelve (12)] months before the commencement of the works.
- 5.3.3** As for the rest, the provisions of article 5.2 herein, shall apply respectively.
- 5.3.4** The Concessionaire shall be responsible of the drawing up and submission to the Service, of all data (diagrams, plans, etc.) necessary to inform the relevant authorities in relation to the establishment and the operation of the sites or any part thereof.
- 5.3.5** The Concessionaire shall remove at its own expenses from the temporarily occupied areas, any temporary installations placed or installed, the waste, tools, scaffoldings, machinery, useful or waste surplus material, temporary machinery installations, etc. and reinstate in their previous condition the sections of the carriage-ways, pavements, buildings, etc. installations in the areas which were temporarily occupied or damaged by the execution of the Works. The above shall be executed at the Concessionaire's expenses, before these areas in which the relevant parts of the project were completed are returned to their owners. The Concessionaire shall also remove or

destroy at its own expenses, any auxiliary temporary works which will be designated by the Service as useless or detrimental to the subsequent operation of the Metro and the town, level the areas where the above materials were stocked or installed and deliver the site areas clean and neat in their previous condition and in general take care for anything else needed for the smooth operation of the Metro and the town, in accordance with the terms set out herein.

The Concessionaire shall remove, at its own cost, following the Service's instructions, any protective structures which were made to prevent from damages of any nature, or accidents and are no longer required. In case the Concessionaire does not start the above mentioned works for the clearing of the site areas within [fifteen (15)] days from the Service's written instructions to do so, or in case these works are not executed in accordance with the Time - Schedule that shall be approved, such works will be executed at the expenses and on behalf of the Concessionaire and the corresponding cost, once finalised, shall be deducted from the payments of the contribution.

- 5.3.6** Unless otherwise provided herein, excavation materials shall be removed and laid at the care and cost of the Concessionaire, in locations which will be chosen by the Concessionaire and approved by the Service, such approval not to be unreasonably withheld or delayed. In addition to transportation and laying in the dumpsites, the Concessionaire shall ensure without seeking additional compensation, the stabilisation of the excavation material by taking all necessary measures, appropriate consolidation, so that the final surfaces are in a condition to be developed by third parties into recreation areas or sports areas by just adding on their final levelling a surface layer of soil and plants, concluding thus the application of the environmental design which shall be elaborated by the Concessionaire, and shall be approved by the competent authorities after having been certified by the Independent Engineer.

The Concessionaire at its own expenses and responsibility shall prepare the access roads to the dumping areas.

- 5.3.7** Unless otherwise provided herein, the cost of the above mentioned environmental impact studies which will be performed for the construction of the infrastructure works in the dumping, laying and consolidation areas, shall not be paid separately neither for the excavation material of the Main Works of the Concessionaire, nor for the excavation material of the Parallel Works, since this cost is either included in the lump sum price (SB) of the Project, or (proportionally) in the unit prices for excavation of the Parallel Works Price List.

**5.4** The State shall ensure for the Concessionaire, the conditions which are necessary for the unobstructed execution of the Project during the Construction Period, and shall secure for the Concessionaire, all exploitation rights arising out of the Contract and the law during the Operation Period, and shall provide him with any assistance needed in that respect.

**5.5** Within the framework of subject obligations, the State transfers hereby or/and undertakes the responsibility to take all legal actions needed in order that the already constructed Pilot-Project is transferred by the Municipality to the Concessionaire, in a timely manner so that the Project shall not be delayed. The Concessionaire undertakes the responsibility of the full completion of the Pilot tunnel and its integration in the remaining network. The Concessionaire shall not be liable for any possible defect (in particular with regard to any latent defect) arising out of the design, study and/or construction of the Pilot-Project, debt or liability of any nature or any assignment of Municipality debts or the debts of any other contractor involved in the construction of the Pilot - Project vis-à-vis any third party or the State or any other Public Service.

In case the existing structure is judged as needing to be improved in order to be appropriate for the Construction, Operation and Maintenance of the Metro, due to the time elapsed from its construction and due to the special local conditions, the cost of the improvement shall be borne by the State. Such improvements do not include modifications of the geometrical characteristics of the tunnel, provided its construction was in conformity with the drawings of the Tender Documents.

## **6. METRO CONSTRUCTION WORKS**

**6.1** The Concessionaire shall execute the Works in accordance with the terms set out herein. Unless otherwise provided herein, the Concessionaire shall be solely responsible for the supply of materials and the construction of the Works.

**6.2** The total project cost consists of the lump sum price (SB), for the Main Works and of a provision for the Parallel Works, according to the following:

**6.2.1** The lump sum price (SB) for the Main Works is as follows :

[AMOUNT AND CURRENCY].

The lump sum price (SB) mentioned above, is expressed in [DATE] prices and is subject to escalation, in accordance with the Escalation Coefficient defined in paragraph 6.5 of present article.

The lump sum price mentioned above is not inclusive of the Value Added Tax (VAT), which shall be entirely borne by the State.

It is clarified, that the amount of the lump sum price (SB) for the Main Works, does not form either the basis for the creation of the Parties' intention to contract or a contractual stipulation and does not affect the financial obligations of the State as there are described in article 6.4.1 herein.

**6.2.2** Subject to the other special provisions set out herein, Parallel Works means a) the works which are related to traffic diversions and Networks which are located outside the perimeter of open cut excavations or of the excavation front of the tunnel of the Main Works as defined in Annex I, b) the works for the diversion or relocation of public utility networks which are located within such perimeter and c) the works certified as Parallel Works and related to discoveries and/or investigations of antiquities.

The provision for the Parallel Works rises to the amount of [AMOUNT AND CURRENCY] in [DATE] prices, and is subject to escalation in parts upon payment, in accordance with the Escalation Coefficient defined in paragraph 6.5.2 herein. With this amount, the Concessionaire shall finance the Parallel Works. The part of the cost of the Parallel Works exceeding the above-mentioned amount, will be borne by the State.

### **6.3 Parallel Works – Service Works**

Apart from the Service and the Archaeological Works which shall be executed by the PUO and the Archaeological Services, the Parallel Works shall be executed either by the Concessionaire (Concessionaire Parallel Works) or by the State by means of another contract work (State Parallel Works). The State has the right to decide if the above Parallel Works are to be executed in whole or in part, as Concessionaire Parallel Works or as State Parallel Works. The Concessionaire shall allow the execution of the State Parallel Works in the Metro occupation areas.

The Parallel Works are financed either by the Concessionaire or by the State, in accordance with article 6.2.2 herein.

**6.3.1** The Concessionaire shall co-operate with the competent Authorities and the Service for the works (including, without limitation, the design, scheduling, the terms and conditions under which these works shall be performed) related to the locating, removal or relocation of the networks of the Public Utilities Organisations (P.U.O.) and other works defined as Concessionaire Parallel Works and shall perform some of these works (the Concessionaire “Parallel Works”) whenever this is required and decided in accordance with the terms set out each time on the basis of the provisions of this Contract.

Before the Effective Date, the Concessionaire will complete the necessary investigations and will come in contact with the competent authorities and will submit to the State a schedule for the Parallel Works, which will be compatible with the Time Schedule of the project, or part of it. This schedule shall also include the Service Works, on the basis of the period of time required for their execution as notified to the Concessionaire by the Service or the competent Organisations.

The Concessionaire will be responsible for the execution of the Concessionaire Parallel Works and it undertakes also to comply with the Construction Time Schedule related thereto. The State is responsible for the co-ordination of the PUO or Public Services and Entities, which are competent for the execution of the Service Works. The State is also responsible for the execution of the Service Works, so that the execution of the Main Works or any part thereof, shall not be delayed. The State also bears the above responsibility for the State Parallel Works. The State guarantees that the State Parallel Works will be executed in a manner which shall not negatively affect the unimpeded and smooth execution of the Main Works.

The Concessionaire shall inform the State regarding the necessity of execution of any Parallel Works as soon as the necessity of execution of such works is ascertained, as well as regarding the period of time within which such works must have been executed. Within a period of [ten (10)] days from the above informing, the State shall notify the Concessionaire if the specific Parallel Works shall be executed by the State as State Parallel Works. In case the above [ten (10)] days period elapses idle, the above Parallel Works shall be considered as Concessionaire Parallel Works.

The Parallel Works are executed after the Service has been notified in writing in that respect and provided the latter does not express any objections as to the necessity of the works to be executed, within a period of [ten (10)] days from the notification. In case of a dispute arising here above, the provisions of articles 38 and 39 herein will be applicable.

For the State Parallel Works financed by the Concessionaire and for the services the Concessionaire offers with regards to the economic management and the planning of such works, the Concessionaire is entitled to an amount equal to [ ]% of the value of such works (VAT not included).

- 6.3.2** The cost for the construction upon the instruction or the approval of the Service, of the Concessionaire Parallel Works, shall be calculated on the basis of the Parallel Works Price List (Annex 4), reduced by the reduction of paragraph 6.3.4 of this article.

In case of construction of works for which no unit prices exist in the Parallel Works Price List, new unit prices will be drawn in accordance with the provisions of [LEGISLATION], as in force today.

The above unit prices of the Parallel Works Price List, will be reduced by the discount mentioned in article 6.3.4 herein and increased by a percentage equal to [ ]%, representing the overhead expenses and the profit of the contractor (G.E. + C.P.), unless otherwise defined herein.

- 6.3.3** The cost of the Parallel Works up to the amount of [AMOUNT AND CURRENCY] in [DATE] prices, escalated in parts upon payment, in accordance with the Escalation Coefficient defined in paragraph 6.5.2 herein, shall be borne by the Concessionaire. The above cost refers as much to the Concessionaire Parallel Works as to the Service Works, the Archaeological Works and the State Parallel Works and includes the respective overhead expenses and contractor's profit as well as the economic management of the State Parallel Works. The cost of the Parallel Works exceeding the above amount, shall be borne by the State. The State, with a bidding procedure and in accordance with the legislation per public works, may assign the execution of Parallel Works exceeding the cost of the above amount of [AMOUNT AND CURRENCY] to another contractor.

The unit prices of the Parallel Works Price List, refer to [DATE] prices and are subject to the legal escalation of prices, in accordance with the current legislation provisions which were in force on the date of the tender of the Project [DATE]. These prices are not inclusive of Value Added Tax (VAT), which shall be entirely borne by the State.

- 6.3.4** The Concessionaire shall prepare provisional statements of account for the Parallel Works, in time intervals of not less than one month.

These statements of account for the part concerning the Concessionaire Parallel Works, shall be based on the measurements of the works executed up to the date the statement of account was drawn up. The measurements



are drawn up by the Concessionaire, checked by the Independent Engineer and approved by the Service. For the calculation of the cost which corresponds to the measured quantities of the Concessionaire Parallel Works, the corresponding contractual unit prices shall be used, i.e. the prices of the Parallel Works Design Price List, decreased by the discount percentage, or the unit prices of new works which were agreed, in accordance with the provisions of article 6.3.2.

The above discount percentage amounts to [ ]% of the prices of the Parallel Works Design Price list, for the Concessionaire Parallel Works financed by the Concessionaire, (i.e. the Parallel Works up to the amount of [AMOUNT AND CURRENCY] in [DATE] prices, escalated in parts upon payment, by the Escalation Coefficient of article 6.5.2 herein). For the Concessionaire Parallel Works which shall be financed by the State after the above amount will have been exhausted, the discount percentage amounts to [ ]% of the prices of the Parallel Works Design Price list or to a higher discount percentage provided that the State and the Concessionaire agree on such.

These statements of account shall be approved by the Service and shall become payable by the State to the Concessionaire, when the aggregate value of the works including overhead expenses and the profit of the contractor and the escalation, exceeds the amount of [AMOUNT AND CURRENCY] in [DATE] prices, escalated in parts upon payment, by the Escalation Coefficient of article 6.5.2 herein, and only for the amount in excess. The Concessionaire is entitled to escalation of the Parallel Works according to the above, for the works executed in excess of the above amount of [AMOUNT AND CURRENCY].

The VAT corresponding to the total cost of the Parallel Works is borne by the State and paid to the Concessionaire upon approval of the statements of account. Regarding retention on the statements of account, the provisions of par. 3 of [ ] shall be applicable. These retentions shall apply to the part of the cost of the Concessionaire Parallel Works exceeding the amount of [AMOUNT AND CURRENCY] in [DATE] prices, escalated in parts upon payment, by the Escalation Coefficient of article 6.5.2 herein.

#### **6.4 Contribution**

- 6.4.1** The Contribution on the State in the cost of the works provided for by article 3.1.3.1 (a), is defined as follows :  
[AMOUNT AND CURRENCY]

The above amounts refer to [DATE] prices and are subject to escalation in accordance with the Escalation Coefficient of article 6.5 herein, upon the date of their payment.

The sum of the above amounts is equal to [AMOUNT AND CURRENCY] in [DATE] prices.

**6.4.2** The Contribution shall be paid to the Concessionaire in parts with the occurrence of the “Key Events” on the basis of Annex 5 and in accordance with Annex 3 as updated upon Financial Closing.

The exact programme of payment of the Contribution of the State will be defined at the signature of the Financial Agreements. For this payment, will be taken in consideration the necessity of mobilisation of the totality of financial sources (Contribution of the State, Equity of the Concessionaire, Loan Capitals), which are necessary for the completion of the project in accordance also with the result of the negotiations between the State, the Concessionaire and the Financial Organisations which will participate in the financing of the project. The programme of the payments of the Contribution of the State will be included in a relevant financial agreement. It is clarified that a Key Event shall be considered having occurred upon the issue by the Independent Engineer of the relevant Intermediate Certificate certifying the date of occurrence of the Key Event further to the relative application of the Concessionaire. In case the Service disagrees with the issue of such Intermediate Certificate, it shall address to the Concessionaire and to the Independent Engineer a notification by which it explains the reasons for which, to its opinion the Key Event has not occurred. The Service shall address the above notification within [ten (10)] days from the receipt of the Concessionaire request.

If the Independent Engineer agrees that a Key Event has been achieved, but the Service disagrees with the opinion of the Independent Engineer, the Independent Engineer shall issue the relevant Intermediate Certificate, within [fifteen (15)] days from the date of receipt of the Concessionaire’s request and the State shall pay to the Concessionaire the relevant portion of the Contribution, escalated up to the date of issue of the respective Intermediate Certificate. In case the Service disagrees with the issue of the above mentioned Intermediate Certificate, the dispute shall be resolved in accordance with articles 38 and 39 herein.

In case the Independent Engineer does not agree that a Key Event has occurred, it shall notify its opinion to the Service and to the Concessionaire and shall specify the reasons justifying its opinion within [ten (10)] days from the date of receipt of the Concessionaire’s request.

The Concessionaire is entitled to re-submit its request for the issue of the Intermediate Certificate, upon occurrence of the said Key Event.

If the Concessionaire disagrees with the opinion of the Independent Engineer, then the Concessionaire may consider the matter as a dispute, which will be resolved in accordance with articles 38 or/and 39 herein.

If the Independent Engineer fails to reply within the above-mentioned [fifteen (15)] day period, in any of the above mentioned cases, the Intermediate Certificate shall be deemed to be issued by means of a legal presumption.

In each case, the Intermediate Certificate shall be issued upon the actual occurrence of the corresponding Key Event and not at the time that occurrence of such Key Event has been provided for by the Construction Time-Schedule. In case the actual occurrence of any Key Event occurs after the time provided for the occurrence of such Key Event by the Construction Time-Schedule, approved from time to time, for reasons due to the Concessionaire's fault, the escalation of the corresponding parts of the Contribution, as defined in Annex 4, shall be calculated on the basis of the completion time provided for by the Construction Time-Schedule.

If any Intermediate Certificate has been issued during the course of a calendar month, the payment of the corresponding portion of the Contribution shall take place before the end of subject calendar month and in any case no later than [ten (10)] days after the date of submission of the application for partial payment to the Service.

Following the issue of the Intermediate Certificate, the Concessionaire shall draw up an application for partial payment which will include the relevant portion of the Contribution for which the Intermediate Certificate has been issued, in accordance with Annex 5.

**6.4.3** The applications for partial payment of the Contribution will be drawn up in such a way as to separate in two different columns the value of each payment in [local currency] and Euros, and shall show the aggregate part of the Contribution which has been paid to date in prices [DATE].

The Concessionaire shall be paid in [CURRENCY].

The part of the Contribution, which is expressed in [ANOTHER CURRENCY], shall be paid in the following manner:

[ ]

The amounts of the above applications for partial payment which are payable either in [CURRENCY] or [ANOTHER CURRENCY], are not subject to retention.

## **6.5 Escalation Coefficients**

The calculation of the escalation for the lump sum price of the Main Works prices, will be done in accordance with the terms set out herein.

The amounts referred to in the Contract and which shall be escalated pursuant to the Contract, shall be escalated in the following manner:

### **6.5.1** Amounts expressed in [ANOTHER CURRENCY].

- a. The escalation period is defined as yearly, between the 1st January and 31st December of each calendar year.

The last escalation period shall be the time interval between the 1st January of the year in which the Works Completion Certificate (WCC) was issued and either the end of the month precedent to the month in which such WCC was issued, if this occurs before the 15th of the month or the end of the month in which the WCC is issued, if this occurs after the 15th of the said month.

- b. Except for the last escalation period, the Escalation Coefficient for [ANOTHER CURRENCY] shall be the following:

For the escalation period n:

$C_n = (\text{Arithmetic average of the values of the Index I during the escalation period } n) / I_o$

For the last escalation period, the Escalation Coefficient for [ANOTHER CURRENCY] shall be the following:

$C_{last} = (\text{Arithmetic average of the values of the Index I during the last escalation period}) / I_o$

being understood that the Indexes I and  $I_o$  are defined as follows :

I = National Consumer Price Indices quoted officially by the competent authority of [ ] and  $I_o$  is the National Consumer Price Index of the [DATE].

For clarification purposes, some indexes are hereafter mentioned:

$I = [X]100$  in [DATE]  
 $I_0 = [Y]$  on [DATE]  
 $I = [Z]$  on [DATE]

- c. Escalation shall be provisionally made by multiplying the amount to be escalated by the Escalation Coefficient, which is last known. As soon as the applicable Escalation Coefficient shall become known, the adjustment shall be made for these amounts, which were escalated provisionally.
- d. Escalation shall be paid to the Concessionaire in drachmas following the procedure defined in article 6.4.3. in relation to the conversion of [ANOTHER CURRENCY]'s in other currency, which remains the Concessionaire's care and responsibility.

**6.5.2** The Amounts expressed in [CURRENCY] shall be escalated as follows:

- a. The escalation period is defined as yearly, between the 1st January and 31st December of each calendar year.
- b. The escalation of the prices of the first escalation period is made with a coefficient equal to a decimal number, of which the integer part is the unit and the decimal part is half the annual average variation of the general consumer price index of the given period as published by the [National Statistics Service], expressed as a decimal number.
- c. For each escalation period apart from the first, the escalation coefficient is defined as the product of a number of coefficients, the integer part of each being the unit and the decimal part being the total annual average variation of the general consumer price index published by the [National Statistics Service], for each of the previous escalation periods multiplied by the escalation coefficient of the given period, which is defined in the same way as in the above subparagraph b.
- d. The works having been executed from the end of the last twelve month escalation period to the end of the construction of the Project (on the basis of the Works Completion Certificate), are escalated with a coefficient as per above, but of which the decimal part is half the average annual variation of the general consumer price index of the [National Statistics Service], for the period of time of execution of the works, whereas the last month is the month preceding the Works Completion Certificate, if the latter has been issued up to the 15<sup>th</sup> of the month, otherwise the next month.

For the provisional calculation of the escalation of any current escalation period, for the calculation of the escalation coefficient of the said period as per above, the provisional index of the previous escalation period shall be used.

- e. The final escalation of prices of each escalation period is calculated immediately after the issue of the average annual variation of the general consumer price index of the said period, by the National Statistic Service and is paid to the Concessionaire in [CURRENCY].
- f. For the sake of indication, it is mentioned that the average annual variation of the general consumer price index published by the [National Statistics Service] for [DATE] is [ ]% and for [DATE] [ ]%.

**6.5.3** The Concessionaire undertakes the obligation to agree in the Construction Contract it will enter with the Construction Joint Venture which shall undertake the construction of the Project, a lump sum price, which cannot be greater than the sum of the cost of the lump sum price of its offer, in [DATE] prices, plus the Escalation which shall be calculated in accordance with paragraphs 6.5.1 and 6.5.2 of the present article.

## **6.6 Percentage for Overhead Expenses and Contractor's Profit**

**6.6.1** For the Main Works, the percentage corresponding to the overhead expenses and the profit of the Constructor (G.E. and C.P.), is included in the lump sum price of the Main Works.

**6.6.2** The percentage for overhead expenses and Constructor's profit in respect to the unit prices mentioned below (to the exception of the lump sum price), i.e.

- a. prices of the Parallel Works Price List (Annex 4b)
- b. works which will be paid by means of a protocol of unit prices for new works (PUPNW), which will be drawn up in accordance with [ ], as currently in force and is set to [ ] per cent ([ ]%), to be added on the above unit prices.

**6.6.3** For the Service Works and Archaeological Works, the percentage to remunerate the co-ordination services (overhead expenses and contractor's profit), is set to [ ]%, while for works that are paid by day rates to the Concessionaire, it is set to [ ]%.

The amounts deriving from the application of the above percentages, shall be added on the amounts of the Service Works or the Archaeological Works or the Concessionaire Parallel Works.

**6.6.4** The amounts corresponding to the percentages defined in articles 6.6.2 and 6.6.3 herein, shall be considered as an expense of the Concessionaire Parallel Works, Service Works or Archaeological Works, as the case may be.

**6.6.5 Certification of Parallel Works**

Without prejudice to the provisions of paragraph 6.3.4. herein, the provisions of [ ] will be also applicable on the certifications of Parallel Works.

**6.7** The Service may at any time, enter the Site and follow-up the progress of the Works on site and the good execution of the project, in general.

**6.8** The Concessionaire shall bear the cost of the necessary visits of the Service's employees to the plants where parts of the Metro shall be constructed and to the quality control laboratories in [COUNTRY] and abroad. These visits will be scheduled in agreement with the Concessionaire and the Constructor, within the framework of the Project's needs.

**6.9** The Concessionaire shall provide the Service with any required assistance and shall co-ordinate its activities with the ones of the Service, during the execution of the Service Works.

**6.10** The Concessionaire shall inform the competent Public Service about the works it considers necessary, including the works in relation to the networks, which may be Concessionaire Parallel Works or Service Works. If the competent Public Service considers such works as Service Works to be only executed by itself, the Concessionaire shall pay the cost of the Service Works on the basis of invoices issued by the Public Services and Organisations which executed the relevant works and on the basis of the relevant documentation exchanged between the competent Public Services and Organisations, the Service and the Concessionaire. Provided the Concessionaire receives the prior approval of the Service for the execution of the Service Works, the expenses of the Public Services which executed the relevant works and for which they received payment by the Concessionaire, shall be included in the provision of [AMOUNT AND CURRENCY], in [DATE] prices, for which the Concessionaire shall be compensated, in accordance with article 6.3 herein.

- 6.11** The Concessionaire undertakes, in the framework of the lump sum price of the Main Works, the responsibility to design, study, finance, construct and complete the Metro so as to ensure its proper operation, in accordance with the provisions herein, even if such obligation implies works which are not included in Annex 1 or in the Detailed Final Design.
- 6.12** In case the State decides, to its reasonable judgement, that there are works to be executed outside the perimeter of the vertical excavations, in order to ensure the correct design, construction and completion of the Metro and these works have not been defined in Annex 1 or in the approved General Final Design or in the Detailed Final Designs, then subject Works shall be considered as Parallel Works. The Concessionaire shall execute these works, after informing the Service in relation to their estimated cost and to their consequences on the Project's time schedule. The cost of these works shall be defined in accordance with the provisions herein. If the Concessionaire reasonably believes, that these works are not needed for the correct design, construction and completion of the Metro, then it shall submit its justified objections, in which case it shall be considered that a dispute has arisen, to be settled in accordance with articles 38 and 39.
- 6.13** The magnitude of the final cost of Parallel Works is not subject to the limitations imposed by the current legislation for the execution of public works.

**6.14 Town Operation – Environmental Protection**

- 6.14.1** The Concessionaire shall design the Metro lay out and shall program its construction, so as to provoke the minimum reasonably expected nuisance to the town's operations and structure, as much during its construction as during its operation, the minimum reasonable aesthetic, noise and other environmental pollution, and the minimum reasonably possible nuisance to monuments, buildings and installations of any kind.

During the above works, no access road shall be entirely closed even if it becomes temporarily a dead end, unless and to the extent it is absolutely necessary for the needs of the works.

Access of fire-fighting vehicles, emergency access of ambulances, pedestrians circulation and catering and supply of stores, workshop units, etc. shall be facilitated in all cases and in all locations of the Metro, in a way acceptable by the Service.

At least two traffic lanes per direction will be maintained in the main road axes [ ] and [ ], even if in some cases, temporary decks are needed to be constructed in order to cover the excavations performed in whole or in part.



In case the placing of temporary decks requires temporary traffic interruption, the Concessionaire shall see that subject decks are placed during night hours or during days and hours of light traffic.

- 6.14.2** Given the fact that the Metro shall be constructed in an area with heavy traffic problems, the Concessionaire shall program its works so as to maintain at all times the least possible, number of open cut excavations, sites and other works which obstruct the traffic, in accordance with the Construction Time Schedule.

Furthermore, the Concessionaire shall take great care of the timely and effective confrontation of temporary or permanent traffic arrangements which will be needed for the execution of excavations, machinery and cars access, etc. always complying with the provisions in force and the Service's recommendations and to the traffic arrangement design.

During the Construction Period, modifications of the traffic direction of some single direction roads, or creation of new single direction roads shall be possible, following a traffic arrangement design, so as to create preference routes which will enable the deviation of the zone affected by the works.

The cost of all traffic signs and signals, which are necessary for the local traffic diversion in the streets of the City of [LOCATION] due to the Works, as well as the cost of fencing, and barriers, shall be borne by the Concessionaire.

The State shall secure for the Concessionaire the relevant Permits, in the framework of the current legislation so that the detailed construction time schedule is complied with, provided that the Concessionaire submits in due time the documents which are necessary for the issuing of the Permits.

- 6.14.3** During the execution of the Works, the Concessionaire shall protect the sites, open excavations and other works' locations with aesthetic fences, which should comply with the safety regulations, and help avoid the pollution of the surrounding area. The Concessionaire should also take all necessary measures to minimise, to a reasonable extent, the air pollution with dust, particles or chemicals in accordance with the decision of approval of the Environmental terms.

The Concessionaire shall maintain the above fences and all parts of the Project, clean from signs, posters or other materials.

The right to place advertisements of any nature or information data on the fences, belongs exclusively to the Service and the Concessionaire shall facilitate the materialisation of the Services' relevant decisions.

**6.14.4** The provisions of present article 6.14, concern all locations where works are executed by the Concessionaire due to the Metro (open cut excavations, Parallel Works, dumping areas of excavation material, borrow pits, warehouses, manufacturing areas for parts of the project) and the Concessionaire shall not receive additional compensation, to comply with subject provisions.

**6.14.5** The Concessionaire shall set out (or cause to be set out), the Works in relation to original points, lines and levels of reference, determined by the State in writing.

**6.15** **Period Elapsing between ratification by Law and Effective Date**

**6.15.1** After ratification by law of the present Contract, the Concessionaire shall execute the following Precursory Works:

- (i) gathering of available information from Public Services and Public Utility Organisations, regarding :
  - P.U.O networks
  - Pilot Tunnel
  - archaeological investigations
  - locating on Site of relevant networks, if deemed necessary,
- (ii) execution and evaluation of geotechnical investigations.
- (iii) assessment of consequences of such information on the design and schedule of the Main Works, so that a schedule of the Main Works incorporating the available information is submitted to the Service and accepted by it.
- (iv) elaboration of the General Final Design of the Metro.

These Precursory Works as well as their schedule are defined in more detail in Annex 12 attached hereto. During the Precursory Works period, Drawings 1 and 2 of Annex 10 hereof shall be finalised.

The Parties agree that the price for the above Precursory Works amounts to [ ]% of the Lump Sum Price for the Main Works and that the Concessionaire shall bear [ ]% of this price.

**Comment [ID16]:** Note this amount will need to be out of equity as no debt is likely to be available at this time.

The above price also includes the remuneration of the Supervising Engineer who will certify the progress of the said Precursory Works, in accordance with the time schedule and scope of work defined in Annex 12 and shall certify that the investigations and the General Final Design are fit for their purpose, in accordance with the provisions herein. The commencement date of the above works, their specifications and the other provisions which apply to the execution of these Precursory Works, shall be agreed on between the Parties within [thirty (30)] days from the ratification by law of the present Contract. This agreement shall also include inter alia:

- The detailed Specifications according to which the said works shall be executed, given that these are not covered by the provisions of Annex 1 of this Contract.
- The duties of the Supervising Engineer which are in principle agreed to be correspondent to the ones foreseen as duties of the Independent Engineer.

**Comment [ID17]:** What happens if agreement is not reached?

The Supervising Engineer shall be independent from the parties, shall have an appropriate experience of this kind of works and shall be selected upon proposal of the Concessionaire and agreement of the State. The same procedure shall be followed in the case of possible replacement of the Supervising Engineer.

**6.15.2** In consideration of the execution of the Precursory Works, the State shall pay to the Concessionaire, an amount in [CURRENCY] equal to [ ] of the above price, in four instalments as follows:

- (i) [ ]% of the above amount to be paid by the State, shall be paid within [ten (10)] days from the commencement date of the above works and after the Concessionaire has furnished a letter of guarantee of [ ]% of the amount of the first payment, guaranteeing the good performance of the above Precursory Works. The above letter of guarantee shall be returned to the Concessionaire within [twenty (20)] days from the certificate of the Supervising Engineer stating that the Precursory Works have been completed or at the date of the Financial Closing, whichever is earliest.
- (ii) [ ]% of the above amount shall be paid to the Concessionaire no later than the end of the [fourth] month following the commencement date of the Precursory Works, following also the certificate of the Supervising Engineer about the progress of the works.
- (iii) [ ]% of the above amount shall be paid no later than the end of the [seventh] month following the commencement date of the Precursory

Works, following also the certificate of the Supervising Engineer about the progress of the works.

- (iv) [ ]% of the above amount shall be paid within [twenty (20)] days from the certificate of the Supervising Engineer stating that the Precursory Works have been completed or at the date of the Financial Closing whichever is the earliest.

**6.15.3** After the Contract has come into force, the amounts paid by the State to the Concessionaire, prior to the Effective Date, shall be brought into account and treated as partial payment of the Contribution. After the execution of the Precursory Works, the Concessionaire is considered as having got full knowledge of the conditions, as these are mentioned in article 3.0.1 herein and it undertakes the relevant risks in accordance with the terms set out herein.

The Concessionaire assumes the responsibility regarding the suitability and the sufficiency of the Precursory Works so that the latter are certified by the Independent Engineer after the Effective Date of the Contract.

In case the Contract does not come into force, the ownership of the results of the above Precursory Works shall pass on to the State, whilst the Concessionaire shall not return to the State the amounts it has received. No other amount shall be returned or due to the State by the Concessionaire or to the Concessionaire by the State.

**6.15.4** In case during the period of the Precursory Works, it is observed that the selected alignment (basic solution of the tender) burdens significantly the duration of the construction of the project or the cost of the Parallel Works, either due to necessary exhaustive archaeological excavations, or to extended overlapping with the PUO networks, the State may choose, before the Effective Date hereof, the implementation of the alternative solution (throughout boring) of the offer. In such case, the Concessionaire undertakes to implement the alternative solution of the offer of the Joint Venture in accordance with the elements and provisions of its offer which have been included in annexes 1a, 3a and 7a. In the case where the above solution was chosen, the annexes 1, 3 and 7 hereof shall be replaced by annexes 1a, 3a and 7a, also attached hereto. The necessary modifications of this Contract for the implementation of the alternative solution shall be entered for ratification before the Parliament.

**6.15.5** In the case where after the execution of the Precursory Works, it is necessary, due to the discovery of archaeological findings, to deepen down to one (1) meter, the level of the part of the Metro from [ ] to [ ], in relation with the foreseen level of this part of the project, all necessary additional

expenses for this deepening (additional excavations and concreting, additional mechanical equipment, etc.) are borne by the **Concessionaire**.

**Comment [ID18]:** One result of this approach is that all bidders will bid on the basis that this deepening down will be required and therefore if it is not required the successful bidder will benefit from the savings which will result. This may be a case where it would be better to have some form of risk/cost sharing.

## **7. METRO CONSTRUCTION COMPLETION DEADLINE - EXTENSIONS**

- 7.1** “Substantial completion” means, for the purpose of this Contract, the completion of the construction in accordance with the Contract, with the exception of defects, deficiencies, finishing works, which shall not materially impair the safe and proper operation of the Metro and the Town. Substantial completion of the works shall take place within a period of five (5) years from the Effective Date of present Contract, subject to possible extensions, in accordance with the terms set out herein. The Concessionaire promises the State to substantially complete the Works within such period.
- 7.2** If it considers it necessary, in order to meet the intermediate deadlines of article 8 herein and the substantial completion deadline of article 7.1, the Concessionaire shall increase its mechanical resources and apply work in 3 shifts (24 hours work on site), or work overtime or weekends or holidays, always complying with the necessary provisions of the competent authorities, in order to recover any intermediate delay (in parts of the Project or in isolated activities) which has occurred or will occur, if subject delay is due to the Concessionaire’s fault.
- 7.3** Without prejudice to the terms set out herein, the following events, shall constitute reasons entitling the Concessionaire to an extension of the deadlines of article 7.1 and of the deadlines of article 8, and of the other deadlines possibly provided for in this Contract, provided these delays affect the critical paths of the PERT diagram, as updated from time to time and submitted to the Service.
- 7.3.1** Force Majeure Events, as defined in article 23.1. herein.
- 7.3.2** Any delays attributable to restrictions imposed by the archaeological service in accordance with article 11, or to overruns of the execution time schedule of the Service Works or of the State Parallel Works.
- 7.3.3** Instruction issued by the Service to suspend all Metro works, or any part thereof, for reasons for which the Concessionaire is not responsible.
- 7.3.4** Delays due to the approval of Documents by the Service in accordance with the provisions herein.

- 7.3.5** Delays due to the exclusive or partial fault of the Service, proportional to the percentage of liability.
- 7.3.6** Variations requested by the State.
- 7.3.7** Suspension of the works following a court decision, for reasons for which the Concessionaire is not liable.
- 7.4.1** In all cases of article 7.3, an extension of the Construction Period shall be granted, being equal to the adverse effect of the events of the delay on the critical path of the PERT diagram, as updated from time to time.
- 7.4.2** Extensions granted according to the above, shall extend equally the Concession Period, provided the Construction Period exceeds the duration foreseen by article 7.1. herein, as a result thereof.
- 7.4.3** The State shall pay to the Concessionaire the Positive Damages in relation to any delay for which the State is liable or in relation with any of the events of articles 7.3.2 to 7.3.7 herein, irrespective of whether the Concessionaire is entitled to an extension of time due to these events. More specifically for the case of 7.3.5, the State shall pay Positive Damages proportionally to its percentage of liability. Any possible insurance indemnities shall be deducted from the above.
- 7.4.4** If any extension of time has been granted to the Concessionaire, or an event occurs, which entitles the Concessionaire to such an extension, then the State may request the Concessionaire to quote the price which the Concessionaire, the Constructor or and the Administrator would require to cancel or reduce the extent of the extension of time granted or due. The Concessionaire shall inform the State in relation to the proposed acceleration measures, their consequences on the construction time, as well as about the quoted price and relevant particulars. Within 14 days from the receipt thereof, the State may either:
- a.** approve the acceleration measures proposed and accept the said quotation of the Concessionaire and if it has granted an extension, reduce it accordingly.
  - b.** inform the Concessionaire that it has decided not to approve the acceleration measures proposed.
  - c.** approve of the measures proposed and disapprove of the price quoted. In such case, the dispute shall be settled in accordance with the provisions of articles 38 and 39 herein, the other provisions of article 20.9 being applicable for the rest.

- 7.5 Events that do not justify an extension of time or compensation are indicatively the following :
- 7.5.1 financial difficulty of the Concessionaire,
  - 7.5.2 sickness and other leaves of the basic personnel of the Concessionaire, the Constructor and their subcontractors,
  - 7.5.3 strike of the personnel of the Concessionaire, the Constructor and their subcontractors only, or a general strike of a duration up to two (2) days, or of a total duration, per year, of less than five (5) days, during the Construction Period.
  - 7.5.4 periodical lack of material on the market, difficulty in finding specialised or not specialised personnel and plant,
  - 7.5.5 Concessionaire applications that request clarification, completion or correction of Documents,
  - 7.5.6 application for clarification of the terms of this Contract,
  - 7.5.7 difficulties due to the relocation of P.U.O. installations executed by the Concessionaire.
- 7.6 If any of the above-defined events, derives as a result or is related to an event or circumstance of which the Concessionaire is not responsible in accordance with the provisions of this Contract, the Concessionaire shall be entitled to an extension of deadline.
- 7.7 Without prejudice to the analogical application of the provisions of [ ]. and taking into consideration the works of article 6.15 herein, no extension of deadlines will be granted to the Concessionaire, on the grounds of lack of knowledge of the geological, geotechnical and hydrological conditions of the areas of the Project, the working hours of materials supply sources, access roads conditions, difficulties in transportation and dumping of excavated material, or failure to timely find manpower, machinery and material from the [COUNTRY] or foreign industry.
- 7.8 After the execution of the works of article 6.15 herein, the Concessionaire is not entitled to an extension of time due to the lack of information data or false information given regarding the underground installations of the Public Utility Organisations, the preliminary investigation trenches it will execute to determine the location of P.U.O. installations, and antiquities, the supporting or relocation of P.U.O. installations found within the perimeter

**Comment [ID19]:** The issue of contaminated land will be a concern particularly in relation to tunnelling and the treatment of material which has been excavated and has to be taken away to external sites. The approach under this Contract is linked into archeological finds but it might be better to indicate this earlier in the contract.

of vertical excavations and the Parallel Works, to the exception of archaeological excavations, for which the specific terms of article 11 shall apply.

**7.9** The Concessionaire shall be entitled to an extension of deadline and Positive Damages in case where the execution of the project is delayed by the discovery of Public Utility networks, the existence of which could not have been reasonably determined by the investigations which shall be performed by the Concessionaire during the execution of the precursory works of article 6.15 herein and provided the Concessionaire was not aware or did not have to be aware of their existence from the elements given to him by the P.U.O.

## **8. DEADLINES FOR THE CONSTRUCTION OF PARTS OF THE METRO**

**8.1** Subject to their possible extension, in accordance with the terms set out herein, the following Intermediate Deadlines shall be compulsory:

**8.1.1** Completion and submission of the General Final Design, within a maximum duration of [six (6)] months.

**8.1.2** Completion of site installation works (B2), within a maximum duration of [eight (8)] months.

**8.2** All above deadlines commence on the Effective Date.

## **9. [PENALTIES]**

**9.1** If the Concessionaire exceeds the deadlines of articles 7 and 8, the following penalties shall be imposed:

**9.1.1** For each day of delay exceeding the deadlines of articles 8.1.1, 8.1.2., the Concessionaire shall pay a [penalty] of [AMOUNT AND CURRENCY]. Subject penalties shall be cumulative and shall be recalled in case the Concessionaire is not liable for any penalty under article 9.1.2. herein.

**9.1.2** For each day of delay for which the Concessionaire is liable, exceeding a six (6) months period after the end of the total completion deadline of the Works of article 7.1., the penalty for an additional delay up to three (3) months, shall be calculated as follows :

**Comment [ID20]:** In some jurisdictions penalties are irrecoverable and liquidated damages must be a genuine pre-estimate of the losses of the innocent party. Double the deposit rate would in those circumstances be difficult to argue as a genuine pre-estimate. Further there will be interest roll up on the Concessionaire's loans so it is a matter of balance as to whether a further financial incentive on the Concessionaire is necessary as any increase in debt service will reduce the return on equity.



- a. As the daily interest applied on the total sum of the parts of the Contribution which are calculated in [CURRENCY] and have been paid by the State till the date of the total deadline, at an interest rate equal to the double of the interest rate for deposits in [CURRENCY] for a period of six (6) months, which is published in Reuters page [ ] as of 1:00 p.m. ([LOCATION] time) on the business day in [LOCATION] falling immediately before the day the State served its notice for the imposition of the above penalty, and
- b. As the daily interest applied on the total sum of the parts of the Contribution which are calculated in [ANOTHER CURRENCY] and have been paid by the State in [CURRENCY] up to the day of the total deadline, at an interest rate equal to the double of the interest rate for deposits in [ANOTHER CURRENCY], for a period of one year, which is published in [ ] as of 11 a.m. ([ ] time), the business day in Athens falling immediately before the day the State served its notice for the imposition of the above penalty.

For delays exceeding the three months period above, and for every three months delay period, the imposition of penalties is repeated as above.

- 9.1.3 The penalties in case the Concessionaire exceeds the deadlines of articles 8.1.1, and 8.1.2 may reach a percentage equal to [ ]% of the Escalated Total Project Cost, as of the day the relevant deadline was exceeded.
- 9.1.4 The penalties defined in paragraphs 9.1.1. and 9.1.2. of the present article, shall not exceed in aggregate a percentage equal to [ ]% of the value of the Main Works, no other compensation being due in such case. In case the above percentage is exceeded, the State may terminate the Contract.
- 9.2 Penalties are payable, within one month, either from the first day such penalty was imposed, or monthly, if the delay continues, or in case of a dispute, from the date of issue of the irrevocable relevant decision, according to articles 38 and 39, in which case legal default interest shall be due on the amount which has not been paid, starting one (1) month after the relevant deadline was exceeded.

## 10. RELATIONS BETWEEN THE STATE - THE CONCESSIONAIRE - THE CONSTRUCTOR - THE ADMINISTRATOR

- 10.1 The Concessionaire shall not replace the Constructor or the Administrator of the Metro, without the prior consent of the Service. The Service shall give its consent, unless according to its reasonable judgement, the entity, which is suggested by the Concessionaire, does not dispose of the

substantial criteria which are required for the execution of the task it shall undertake. The Concessionaire shall ensure that the contract it shall enter with the Constructor and the Administrator, shall impose compliance of the latter with the relevant terms set out herein.

**10.2** The contracts to be entered into between the Concessionaire on one part and either the Constructor or the Administrator on the other part respectively, are attached herein as Annexes 6 and 11. A term shall be included in the contract with the Constructor, providing that in case the Concessionaire is substituted by the State, the Constructor shall continue the performance of the contract under the same terms, provided that the State requests so and provided that the State shall undertake the obligations of the Concessionaire arising under said contract, after the substitution.

**10.3** The Concessionaire shall notify to the Service the identity of the subcontractor and the scope of work subcontracted under the main sub-contracts entered by the Constructor or the Administrator.

## **11. ANTIQUITIES - PROTECTION OF THE CULTURAL HERITAGE**

**11.1** All archaeological findings discovered during the execution of the project, belong to the State, according to the relevant provisions of the legislation related to antiquities. Upon discovering the existence of antiquities, the Concessionaire shall immediately interrupt the execution of the works in the area of the findings and shall take all measures necessary to maintain the same, and it shall notify the Service and the competent archaeological service. Within the next [five (5)] working days, the archaeological service shall send a team of specialists for the identification of the findings, and the Service shall issue its instructions with regard to the execution of the works, within the following [fifteen (15)] days.

After the first identification of the findings by the archaeological service, instructions shall be given to the Concessionaire either to resume the works or to interrupt the works for the duration of time needed by the archaeological service for the performance of the investigations itself, or for the execution of the archaeological works by the Concessionaire with its own means, under the supervision of the Archaeological service.

**11.2** The area between the station of the [Location] Station and the [Location] Station is considered to be an area where the discovery of antiquities is assessed to be probable.

**11.3** In case the duration of archaeological investigations in the area defined in 11.2 as well as in the areas which shall be identified in the course of the

performance of the Investigations and tests during the preparation of the Final Designs as probable to contain archaeological findings, does not exceed [six (6)] months, the Concessionaire shall not be entitled to a time extension or compensation.

The duration of archaeological investigations shall be considered to start upon the day following the day of the first discovery and terminate upon the day of completion of the last archaeological investigations.

**11.4** If archaeological discoveries and/or investigations adversely affect the critical path of the PERT diagram of the Works as updated from time to time or any other deadline provided herein, the Concessionaire shall be entitled to a corresponding extension of the Construction Period or of the said deadline and to Positive Damages in relation to such events in the following cases:

- a. In case of a duration of the archaeological investigations in the areas defined in 11.3 exceeding [six (6)] months; or
- b. In case of a duration of the archaeological investigations located elsewhere than the above areas exceeding [30 (thirty)] days in total or in case of such a duration in relation to a single discovery exceeding 15 (fifteen) days.

Subject to the provision of paragraph 11.5 of the present article, when in the cases defined in the paragraph hereof, durations exceed the above limits provided case by case, and irrespective of whether or not such events affect the critical path of the PERT diagram of the Works, the Concessionaire shall be paid by the State the Positive Damages in relation to such events for such period of time exceeding those limits.

**11.5** The Concessionaire, when organising its sites, shall take all necessary measures so as to move, if possible, its equipment and manpower from one work front to another, without seeking additional compensation, in order to reduce the delays caused by the archaeological investigations.

**11.6** The Concessionaire shall pay the cost of the works executed by the archaeological service and shall provide the required assistance. These costs may also include following the Service's approval, the regular and extra compensations of the archaeological service's personnel. Such works shall be priced as archaeological works and shall be certified to the Concessionaire as Parallel Works. As for the rest, the provisions of article 6.6.3. herein shall be applied.

**Comment [ID21]:** It may be prudent to express this period in the aggregate. With tunnelling as opposed to cut and cover it is highly likely that the tunnel boring machine will have hit and gone through the antiquity or part of it before the position of the antiquity is realised. If the six month period ran from each time an antiquity was hit this would create a problem.

**11.7** If following the Service's instructions, archaeological investigations are executed by either the Concessionaire or the Constructor, under the supervision and guidance of the archaeological service, such works shall be classified as Concessionaire Parallel Works and shall be certified on a day-rate basis, and their cost shall be increased by a percentage of [ ] % for general overhead and contractor's profit, and shall be reduced by the discount percentage of article 6.3.4 herein.

**11.8** In the event of discovery in any Site, of hazardous material, contaminated material, munitions or other dangerous material or such materials are discovered in an adjacent area to the site which affect the operation of the Site or any part thereof, the Concessionaire may, at the State's cost and responsibility, take the necessary measures for the unobstructed operation of the Site that it shall agree with the State.

For the above mentioned additional works, the provision of par. 11.4 herein shall be applicable mutatis mutandis with the exception of cases "a" and "b".

**11.9** The State guarantees that the competent authorities shall use their best efforts to minimise or avoid any costs, expenses, damages or delays created to the involved persons by any discovery or removal of archaeological findings or hazardous material or other relevant remedial works, referred to in the present article.

## **12. ASCERTAINMENT OF WORKS COMPLETION - COMMENCEMENT OF OPERATION AND MAINTENANCE OF THE METRO**

### **12.1 Certificate of Works Completion**

**12.1.1** Provided that the Intermediate Certificates in respect of the sections of the Project the completion of which is imperative for the operation of the Metro have been issued, the Concessionaire shall inform the Service, the Independent Engineer and the Administrator in writing, that all relevant works have been substantially completed and that the Metro is ready to be tested for operation, the commencement of which shall be done [fifteen (15)] days after the Concessionaire's above notification. Within the above [15] days time limit, the Service, the Administrator and the competent service of the [Ministry of Transport], shall inform in writing the Concessionaire of the representatives they have appointed for the inspection of the Metro's testing operation.

**Comment [ID22]:** It would be better to tie this into the testing and commissioning procedure of the Concessionaire. Ghost running for example would give the State an opportunity of witnessing whether the system was functioning or not although it would be likely to last more than 15 days..

The scope of the testing operation of the Metro, which will take place under real operation conditions (full load, nominal engines power), shall be to evidence compliance to the acceptance criteria, in accordance with the approved Final Designs and Annex 1 hereof.

The duration of the testing operation of the Metro shall be the one defined in the Construction Time Schedule of Annex 7, as updated from time to time.

- 12.1.2** At the end of the above testing period and within [fifteen (15)] days from the notification sent by the Concessionaire to the Service, the Independent Engineer and the Administrator in that respect, the Independent Engineer shall after having ascertained a) that the Works have been substantially completed and that the acceptance criteria have been met and b) that the Administrator has not within a deadline of [five (5)] days expressed objections with regard to the beginning of operation of the Metro, issue the Works Completion Certificate, in collaboration with the competent services of the [Ministry of Transport], and shall notify the Service and the Bank Agent accordingly.
- 12.1.3** In case of deficiencies in the Metro or/and of non-compliance to any criteria of article 12.1.1, the Works Completion Certificate shall be issued with remarks. As soon as the Concessionaire shall rectify such deficiencies, which affect the substantial completion of the Metro, it shall re-submit its request to the Independent Engineer and the latter shall issue the Works Completion Certificate within [fifteen (15)] days. Same procedure shall be repeated till the Concessionaire remedies all such deficiencies which affect the substantial completion of the Metro, in order for the Independent Engineer to issue the Works Completion Certificate without remarks, in relation to subjects which could materially impair the safe and unimpeded operation of the Metro. The Concessionaire reserves the right in case the Independent Engineer has remarks after any of the submission / re-submission mentioned above, either to accept in full or in part these remarks or to consider the matter as a dispute which shall be settled in accordance with article 38 or/and 39 herein. The above certificates of the Independent Engineer are also simultaneously notified to the Service.
- 12.1.4** In case where the Independent Engineer fails to answer within the deadline of [fifteen (15)] days mentioned in paragraphs 12.1.2 and 12.1.3 herein, the Concessionaire may refer the matter for resolution to the dispute resolution procedure. In such case, the matter is referred to the Panel, which shall take a decision within a maximum deadline of [28] days from the day the matter was referred to it. In the case where the Panel decided that the Works Completion Certificate should have been issued, the latter shall be deemed issued.

**12.1.5** In case where the Independent Engineer issues the Works Completion Certificate within the deadline of [15] days of article 12.1.3 herein, the State may within a deadline of [five (5)] days from the notification of the above Certificate, have recourse to the Panel of Experts of article 38 herein. As for the rest and in relation with the above recourse, article 12.1.4 herein shall be applied mutatis mutandis.

In case where the matter has been referred to the Panel based on the provisions of article 12.1.4, the Panel shall simultaneously take a decision on the objections and on the matter, within the relevant deadline of article 12.1.4.

In the case where objections are raised by the State, the Concessionaire or the Administrator as per above, the Good Performance Letter of Guarantee shall be immediately released after the issue of the decision of the Panel confirming the proper issue of the Works Completion Certificate.

In the case where the Panel of article 38 does not confirm the issue of the Works Completion Certificate, the Concessionaire may refer the dispute in accordance with article 39 herein.

**12.1.6** Within [fifteen (15)] days from the issuance of the Works Completion Certificate, without substantial observations, the Independent Engineer shall draw up an exhaustive list with all the non substantial works to be executed defining in each case the duration of time within which each work must be executed, taking in consideration the nature of the above works and the necessary actions to be taken for their completion. The Concessionaire shall execute these works within the programmed time. Within [fifteen (15)] days from their completion and further to a prior notice by the Concessionaire to the Service and the Independent Engineer, the latter issues the Completion Certificate of such works. If it fails to do so, the State is entitled to execute such works on behalf and at the expense of the Concessionaire.

## **12.2** Commencement of Operation

The Operation and exploitation of the Metro by the Concessionaire, shall commence, provided:

**12.2.1** The Works Completion Certificate is issued or when the negative decision has been issued by the Panel on the possible relevant objections of the Service.

**12.2.2** The operation permit of the Metro is issued by the [Ministry of Transport].

### **12.3 Operation Permit of the Metro**

**12.3.1** The Service shall notify in writing the [Ministry of Transport], as soon as the Works Completion Certificate is issued according to the above. The Ministry of Transportation shall issue the operation permit within [fifteen (15)] days from the issue of the Works Completion Certificate or from the issue of the decision of the Panel according to the above article (12.2.1.) and notify it to the Bank Agent.

**12.3.2** In case the [Ministry of Transport] delays the issue of the Metro's Operation permit, in respect of the deadline of article 12.3.1, despite the concurrence of the terms set out in present article, the Concession Period shall be extended for a time equal to the delay and the Concessionaire shall be compensated for the Positive Damages it shall sustain as a result of the above delay. If the delay extends for a period of more than [one (1)] month after the deadline of article 12.3.1, the operation permit of the Metro shall be deemed issued by means of a legal presumption upon the end of the month.

In the case where the beginning of Operation and Maintenance of the Metro is delayed due to a decision of the Panel of Experts ruling against the relevant objections of the Service, the Concessionaire is entitled to compensation for its Positive Damages and to an extension of deadline equal to the delay.

**12.3.3** The above procedure shall be also followed in case a part of the Metro is completed which could be integrally operated. In such a case, a provisional Works Substantial Completion Certificate and a provisional operation permit shall be issued for such part of the Metro.

### **13. CONTRIBUTION ADVANCE PAYMENT**

**13.1** Upon the issue of the relevant Intermediate Certificates by the Independent Engineer, and the submission of the relevant applications for partial payment by the Concessionaire, the State shall pay to the Concessionaire the corresponding amounts of the Contribution, in accordance with the terms set out herein.

**13.2** Within [one (1)] month from the Effective Date, the Concessionaire shall be given by the State, following a relevant request, as an interest bearing advance payment, an amount equal to [ ] % of the Escalated Contribution, in [CURRENCY] and [ANOTHER CURRENCY], as of the Effective Date, in accordance with article 6.

The advance payment shall be given to the Concessionaire provided the latter furnishes to the State letters of guarantee for an amount equal to the sum of the advance payment plus interest, calculated for a period equal to half the Construction Period, at an interest rate calculated as follows:

- a. For the part of the advance payment expressed in [CURRENCY], the interest rate of the interest bearing advance payments in Public Works, valid on the Business Day falling immediately before the date of issue of the above letter of guarantee, today set at [ ]% of the interest rate of the six month duration interest bearing notes.
- b. For the part of the advance payment expressed in [ANOTHER CURRENCY], the interest rate shall be equal to [ ]% of the interest rate of deposits in [ANOTHER CURRENCY] for a period of 12 months, which is published in [ ] at 11.00 a.m. ([LOCATION] time) on the Business Day in [LOCATION] falling immediately before the date of issue of the above letter of guarantee.

The amortisation of the advance payment and of its interest, shall be done in parts, by withholding corresponding percentages (P) of the amount of the parts of the Escalated Contribution to the Concessionaire, from the payment of such parts.

The above (P) percentage derives from the relation  $P=(r/S) \times 100 \times 1,10$  where

r the amount of the advance payment in [CURRENCY] or [ANOTHER CURRENCY] respectively and

S the part of the Escalated Contribution in [CURRENCY] or [ANOTHER CURRENCY] respectively that has not yet been paid to the Concessionaire upon the granting of the advance payment. Correction shall be made on the last part of the amortisation, so that the total amortised amount of the advance payment is equal to the advance payment.

Along with the retention for partial amortisation of the advance payment, a retention shall be made on worked interests in accordance with the above, for the part of the advance payment still non-amortised. Interests are calculated until the date of submission of the relevant application for partial payment, for a whole number of months. A fraction of a month is considered as a whole month.

The letters of guarantee shall be released in parts, following amortisation progress of the advance payment and of its interest.



## **14. FINANCING OF THE PROJECT BY THE CONCESSIONAIRE**

### **14.1 The Concessionaire**

The Concessionaire undertakes the obligation to finance the Main Works and the Parallel Works, as well as the operation and maintenance of the Metro, subject to and in accordance with the provisions of the Contract.

### **14.2 Equity**

**14.2.1** The Concessionaire's Equity consists of the contributions of the shareholders in the share capital of the Concessionaire, and of any Subordinated Loans.

**14.2.2** The Concessionaire undertakes to have, upon the date of Financial Closing, raised Equity in accordance with the terms and conditions of the Financial Plan as of such date.

For the financing of the Investment Cost, the relation between Equity and Loan Capitals shall not be inferior to the ratio [ ]% Equity to [ ]% Loan Capitals, unless the State is responsible for any increase of the Investment Cost.

**14.2.3** During the Construction Period, the share capital of the Concessionaire shall be increased and paid up in accordance with the Financial Plan, as updated from time to time and at the end of the Construction Period, the share capital of the Concessionaire shall not be less than the Minimum Share Capital.

**14.2.4** During the Operation Period, the share capital of the Concessionaire shall not be less than the Minimum Share Capital.

**14.2.5** Payment of the Concessionaire's Equity shall be done in accordance with the Financial Plan, as updated from time to time.

**14.2.6** Any transfer of shares of the Concessionaire is subject to the prior written consent of the State, such consent not to be unreasonably withheld or delayed. The solvency and reliability of the new structure shall be the criteria in the granting of the State's consent.

**14.2.7** No material modification of the Concessionaire's Articles of Association shall be done without the prior written consent of the State, which cannot be unreasonably withheld or delayed.

### **14.3 Loan Capitals**

- 14.3.1** The Concessionaire shall use its best endeavours in order to secure the Loan Capitals, without any obligation of the State to provide any guarantee or other form of assurance.
- 14.3.2** The Concessionaire shall use its best endeavours in order to secure loans from the Export Credit Agencies and/or Commercial Banks which shall be denominated in [CURRENCY] and/or [ANOTHER CURRENCY] and in accordance with the Financial Plan. Subject loans shall have the minimum characteristics defined in Annex 2 and shall be subject to the approval of the State as defined in 14.3.4 herein.
- 14.3** One month before Financial Closing, the Concessionaire shall submit to the approval of the State, the final drafts of the Export Credit Agencies and/or Commercial Banks loans referred to in paragraphs 14.3.2. and 14.3.3., such approval to be granted within 15 days from receipt of such documents, having checked their consistency with the characteristics defined in Annex 2 and with the Financial Plan.
- 14.4** The Concessionaire assumes the obligation not to act or to allow the Constructor or the Administrator or their subcontractors to act in such a way as to cause the termination of the Financial Agreements by fault of the Concessionaire. The State undertakes the obligation not to do or omit to do anything, which may entitle the Lenders to refuse withdrawals by the Concessionaire on the fixed dates, provided for in the Financial Agreements, provided the Concessionaire meets the terms of this Contract.
- 14.5** The Concessionaire undertakes not to modify substantially the Financial Plan attached herein as Annex 3, without the prior written consent of the State, such consent not to be unreasonably withheld or delayed.

### **15. TICKETS' PRICE DETERMINATION AND ADDITIONAL EXPLOITATIONS**

- 15.1** The ticket's price for the user of the Metro, is set at [AMOUNT AND CURRENCY] in [DATE] values, including the corresponding VAT. Subject price shall be escalated annually on the 1st of January, in accordance with the average annual variation of the general index of consumer's prices which derives from the data of the National Statistic Service in [COUNTRY] for the period extending from [DATE] to the day of each escalation. During calculation of the escalation, the ticket's price shall be rounded to the previous integer ten for its part being less than [AMOUNT AND CURRENCY] and to the next integer ten for its part being more than [AMOUNT AND CURRENCY]. The value of the ticket's

price calculated according to the above, shall be collected by the Concessionaire, free from any burden (duties, withholdings, etc. other than VAT).

- 15.2** The Concessionaire may negotiate with the entities exploiting other surface mass transportation means within [LOCATION] area, the possibility of co-operation between the various means and the set-up of the “through ticketing system”.
- 15.3** In case the Concessionaire has income from other exploitations, such as advertising or rental of commercial space, the kind and the extent of advertising or other exploitations and the sharing of revenues arising therefrom, shall be agreed between the State and the Concessionaire. It is hereby clarified, that in case of termination of the Contract for any reason, the income from the above exploitations shall not be taken into consideration in the calculation of the compensation of the parties.
- 15.4** The Concessionaire shall bear all expenses in relation to the tickets’ collection.
- 15.5** The Concessionaire is entitled to set a reduced ticket price for certain passengers’ categories, like students, soldiers as well as packages of tickets or multiple run cards, with or without discount on the total price.
- 15.5.1** The State may:
- a.** ask the setting of a reduced price for certain passengers’ categories for which the Concessionaire has not set a reduced price, or
  - b.** ask a bigger discount for the price set by the Concessionaire for certain passengers’ categories, or
  - c.** ask the free use of the Metro, for certain passengers’ categories.
- 15.5.2** In the cases of article 15.5.1 above, the State shall pay each month to the Concessionaire:
- a.** In the case of article 15.5.1 (a), the difference between the tickets’ price of article 15.1 and the ticket price requested by the Service, multiplied by the number of passengers paying such decreased ticket price, or
  - b.** In the case of article 15.5.1 (b), the difference between the reduced ticket price set by the Concessionaire and the ticket price requested by

**Comment [ID23]:** The modern approach is to a single stored card to pay for public transport. The initiative behind such a card would come from the State/Municipality and there would need to be an accounting agreement in order to ensure that cash flows in the appropriate directions. Further the State in order to encourage the use of such a card may wish to offer a discount on travelling. The issue for the Concessionaire is the cost of installing equipment to read the stored card against the savings in revenue collection.

the Service, multiplied by the number of passengers paying such latter ticket price, or

- c. In the case of article 15.5.1 (c), the ticket price of article 15.1, multiplied by the number of passengers using the Metro for free.

**15.6** The State guarantees that the annual number of passengers of the Metro shall not be inferior to [ ].

In case the number of passengers is inferior to [ ], the State shall compensate the Concessionaire in parts, as described in article 15.8. However, at the end of each year, it shall be verified if the compensation paid to the Concessionaire actually covers the tickets cost for the difference between the annual number of passengers and [ ]. In case of a difference, a relative correction shall be made and the Concessionaire shall return to the State the possible surplus amount it shall have received within the deadlines of last part of article 15.8 herein.

**15.7** In case the number of passengers using the Metro per year, exceeds [ ] passengers, the State shall be entitled to part of the ticket price of the passengers exceeding [ ] as follows:

- a. If the number of passengers of the Metro per year exceeds [ ] passengers but is inferior or equal to [ ] passengers, the Concessionaire shall pay annually to the State [ ]% of the revenues originating from the tickets exceeding [ ]. These revenues are calculated without VAT on the ticket fare, which the Concessionaire has accounted or has to account to the State.
- b. If the number of passengers of the Metro per year exceeds [ ] passengers, the Concessionaire shall pay annually to the State the sum of the above amount of para. (a) and of the amount which shall be agreed on between the State and the Concessionaire. This amount shall correspond to a percentage not smaller than [ ] percent of the part of the revenues corresponding to the product of the difference of the number of tickets, minus [ ], multiplied by the escalated ticket price, taking in consideration the increase of the cost of exploitation, operation and maintenance of the Metro which has been incurred by the Concessionaire as well as the cost of the possible necessary additional equipment. The said amount shall not be smaller than [ ] percent of the part of the revenues corresponding to the product of the difference of the number of tickets, minus [ ], multiplied by the escalated ticket price. These revenues are calculated without the VAT on the price of the ticket, which the Concessionaire has accounted or

**Comment [ID24]:** I there is genuine competition in types of transport then a reason for the public not using the Metro is the standard of service. However it is not unknown for the bus fares not to be raised so that in reality it is cheaper to use the bus. This would impact on the number of users. The whole issue of competing services needs to be understood before the contract is entered into.

has to account back. All the above payments are not charged with VAT.

The amounts of the above paragraphs (a) and (b) shall be paid to the State in accordance with the provisions of par. 15.8 of this Contract.

In each case, it shall be verified at the end of each year if the amounts which have been paid to the State correspond to the provisions of the above cases 15.7.a and 15.7.b. In case of a difference, the relevant correction shall be made and the shortfall or the surplus shall be accounted to the beneficiary.

- 15.8** Each quarter of a year of operation starting from the Operation Date, a passenger shortfall/surplus will be calculated by deducting the sum of actual passengers in the given quarter from the forecasted number of passengers for that quarter, defined as one quarter of the State guaranteed number of passengers of [ ]. If this difference is positive, it will be defined as a shortfall. If this difference is negative, it will be defined as a surplus.

The above calculation shall produce a numerical quarterly shortfall/surplus for inclusion in the calculation of the Ticket Compensation.

For the avoidance of any doubt, a passenger shortfall results in a payment of the Ticket Compensation by the State to the Concessionaire and a passenger surplus results in a payment of the ticket compensation by the Concessionaire to the State.

In case of shortfall, the ticket compensation is calculated as follows:

For any given quarter, the actual ticket compensation will be calculated by multiplying the ticket price of [AMOUNT AND CURRENCY], value [DATE], by the relevant escalation coefficient and by the quarterly passenger shortfall reduced by the VAT of the tickets, since this additional subvention is not subject to VAT.

In case of surplus, the ticket compensation is calculated as follows:

- a. if the surplus is smaller than [ ] tickets, the compensation is then set as [ ]% of the tickets revenues in excess of [ ] tickets. These revenues are calculated without VAT on the ticket fare, which the Concessionaire has accounted or has to account to the State. This payment is not charged with VAT.
- b. if the surplus is higher than [ ] tickets, the compensation is then set as the sum of the above compensation of paragraph a and of the amount which shall be agreed between the State and the Concessionaire.

This amount shall correspond to a percentage of the part of the revenues corresponding to the product of the difference of the number of tickets, minus [ ], multiplied by the escalated ticket price, taking in consideration the increase of the cost of exploitation, operation and maintenance of the Metro which has been incurred by the Concessionaire as well as the cost of the possible necessary additional equipment.

The Concessionaire will notify to the State in writing the calculation of its passenger shortfall/surplus as well as a calculation of the ticket compensation, payable for each quarter by the 7<sup>th</sup> day of the following month. Compensation payments by the State or by the Concessionaire will be paid by the relevant party to the other within [14] days from the date of notification.

**15.9** Without prejudice to the above, the State will pay to the Concessionaire a Subsidy on the Ticket in accordance with the following:

For every year of the Operation Period, the amount of the annual subsidy which shall be paid by the State to the Concessionaire, shall be equal to the percentage set in Annex 3, multiplied by the Escalated Ticket Price and multiplied by the guaranteed number of the Metro passengers which is set to [ ] per year.

For the purpose of the calculation of the Subsidy, the Escalated Ticket Price shall not be rounded.

At the beginning of each three-month period of every year of the Operation Period, the State shall pay [one fourth (1/4)] of the annual subsidy of the relevant year, in accordance with the above provisions.

At the beginning of the first three-month period of Operation, the State shall pay to the Concessionaire an additional amount equal to the subsidy of the first three-month period of operation in order to face the costs of mobilisation and preparation of the operation of the Metro. This amount shall be paid back by the Concessionaire to the State in 24 equal quarterly instalments starting the first quarter of the second year of operation. The amounts of the above instalments shall be respectively deducted from the amounts of the payments of the Subsidy on the Tickets.

**15.10** In case it is decided that the subsidy of tickets by the State is subject to VAT, relevant VAT on the ticket subsidy of article 15.9, shall be borne by the State and shall be paid to the Concessionaire. The Concessionaire shall

deduct from the VAT, the VAT of its expenses and shall account the rest to the State, according to the Law.

- 15.11** The State may increase the ticket fare, as it is defined in paragraph 15.1 herein, beyond the escalation mentioned in the same paragraph, reducing correspondingly the ticket subsidy of paragraph 15.9 herein paid to the Concessionaire, in such a way as not to affect by this reason the financial situation of the Concessionaire.

## **16. OPERATION AND MAINTENANCE**

- 16.1** The Maintenance Period and the Operation Period starts upon the Operation Date and ends at the end of the Concession Period. The Concessionaire shall have the exclusive right, responsibility and benefit to operate, maintain and exploit effectively, economically and rationally the Metro, to provide the services and assistance which are necessary or reasonably expected for the operation of the Metro, and to care for the reasonable servicing of the Metro users. The Concessionaire shall maintain the Metro, in accordance with the terms of the Operation and Maintenance Manual and shall assist the Operation and Maintenance of the Metro for three (3) more years after the end of the Concession Period.

- 16.2** Without prejudice to a different provision made herein, the Concessionaire shall bear full responsibility for all safety requirements in respect to the Metro and shall comply with every safety regulation regarding the Metro, as in force, from time to time.

- 16.3** The Concessionaire shall develop a Safety Plan and shall submit it to the Independent Engineer and to the Service, at least [six (6)] months before the commencement of the Operation Period. The Safety Plan shall comply in all respects with the legislation in force, rules, regulations and the preliminary safety plan referred to in Annex 1. For the approval of the above safety plan by the Independent Engineer, the provisions of article 16.4 herein shall be, applicable, mutatis mutandis.

- 16.3.1** The Concessionaire shall not be liable for the police surveillance of the Metro areas or for the cost arising therefrom for which the State shall be liable, notwithstanding anything provided to the contrary herein.

- 16.3.2** The Concessionaire shall provide the necessary assistance to the competent police authorities, for the performance of their duties.

- 16.4** The maintenance and operation of the Metro shall be performed according to the Operation and Maintenance Manual of the Metro, which shall be

**Comment [ID25]:** It would be normal to allow the police access to CCTV and to provide areas for the police at certain stations etc. Again these requirements should be identified and allowed for before the contract is signed.

drawn up by the Concessionaire before the Operation Date, shall comply with the Basic Guidelines for Operation and Maintenance defined in Annex 1 and in the relevant Specifications and shall be submitted for approval to the Independent Engineer and notified to the State, at least six (6) months before the commencement of the Operation Period.

- 16.4.1** Within two months from its submission, the Independent Engineer shall approve the manual, or send to the Concessionaire its justified objections / remarks, if such manual does not comply with the Basic Guidelines for Operation and Maintenance as defined in Annex 1 and the relevant Specifications. In case of objections / remarks made by the Independent Engineer according to the above, the Concessionaire shall modify the Manual accordingly and resubmit it, in which case the Independent Engineer shall approve it within a month from such re-submission.
- 16.4.2** If the Concessionaire disagrees with the opinion of the Independent Engineer, the matter shall be considered as a dispute, which shall be resolved in accordance with article 38 or/and 39 herein.
- 16.4.3** If the Independent Engineer fails to respond within any of the deadlines defined in 16.4.1., the Manual shall be considered approved, upon the expiry of the said periods.
- 16.4.4** The State may, within one month from the date of approval of the Manual or from the date it is deemed to be approved, submit its objections with regard to the compliance of the Manual with the Basic Guidelines for Operation and Maintenance and the relevant Specifications and may thereafter refer the matter as a dispute which shall be settled in accordance with the procedure of articles 38 and 39 herein.
- 16.4.5** The Concessionaire shall upgrade and update, if required under the terms herein, the said Manual during the Operation Period, under the same terms, manner, and procedure described above.
- 16.5** During the Operation and Maintenance Period, the Service may enter the Metro areas at any time and inspect the Metro, in order to ensure that the Concessionaire fulfils its obligations in respect to the operation and maintenance of the Metro as provided in present Contract and complies, at all times, with all safety regulations. For this purpose, the Concessionaire shall secure that the Service is provided with all necessary data as well as with the data needed to check the actual number of moving passengers, and the average monthly Technical Availability.

The State may install under its own responsibility and at its own cost, a system to control the real number of tickets. Such system must not interfere



with or affect the operation of the system that has been provided for and installed by the Concessionaire.

- 16.6** In case any checking of the Metro's safety measures or any inspection referred to in article 16.5 or 16.10, results in the necessity to execute remedial works which are imperative for the Metro's safe operation, the Concessionaire shall be responsible for the execution of such remedial works, the cost of which shall be borne either by the Concessionaire or the State, depending on the cause for such remedial works, in accordance with the provisions herein. The Concessionaire shall, upon drawing up of the contracts with the Constructor and the Administrator of the Metro, include terms with respect to the transfer of liability to the Constructor and the Administrator, depending on the grounds having provoked the necessity of execution of such works. In case the Concessionaire does not execute such remedial works of which it should bear the cost according to the above, whilst the Service has instructed him so to do, the Service may take care of the execution of subject remedial works and shall be entitled to charge the Concessionaire with the reasonable cost of such works, having first notified the Concessionaire of its intention, [fourteen (14)] days in advance (or even immediately, in case the Service believes that there is danger for the safety of persons ).
- 16.7** [Six (6)] months before the commencement of the Operation Period at the latest, the Concessionaire shall draw up a Regulation providing for the relations of the Concessionaire with the Metro users and shall submit it to the Service for approval. Within two (2) months from the submission of the regulation, the Service shall approve it, or send to the Concessionaire its reasonable comments or objections. In case the Service has responded with comments or objections, the Concessionaire shall improve the regulation accordingly and shall resubmit it to the Service, which shall approve it within a month.
- 16.7.1** If the Service still has objections / remarks, the Concessionaire may either accept in full or in part subject remarks of the Service or consider the matter as a dispute, which shall be resolved in accordance with article 38 or/and 39 herein.
- 16.7.2** In case any of the deadlines of article 16.7 expires without any reply from the Service, the Regulation shall be considered as being approved, upon the expiry of the said periods.
- 16.7.3** During the Operation Period, the Concessionaire shall have the right and the obligation to upgrade and update the regulation, as necessary from time to time, in the same manner and with the same terms and procedures.

- 16.8** During the period of [twelve (12)] months before the end of the Concession Period, the Concessionaire shall train, in accordance with the specifications and the training requirements generally applied during operation and maintenance of Metro Systems, the reasonably required personnel which shall undertake on behalf of the State the operation and maintenance of the Metro, provided that the number of persons to be trained shall not exceed [ ].
- 16.9** During the Operation Period and subject to the terms set out herein, the Concessionaire shall take all necessary measures so as to ensure:
- a. The safe, orderly and of a high servicing level operation of the Metro.
  - b. The smooth and unobstructed movement of the public.
  - c. The direct and effective response of the operation system to extraordinary or emergency situations.
  - d. The safety of Metro users and the compliance of the operation and maintenance system with all safety rules as in force from time to time.
- 16.10** The duties of the Independent Engineer during the Operation Period shall consist inter alia of the following :
1. Indicate and check in the manner provided for under articles 16.3 and 16.4. any required upgrading of the safety plan or of the Operation and Maintenance Manual.
  2. Provide yearly, no later than three months after the end of any given year, a report of audit with regard to the compliance of the Concessionaire with all its contractual obligations deriving from the Operation and Maintenance Manual and in particular with regard to readiness, safety, availability, exploitation and servicing level of the system the good maintenance of the vehicles and signalisation, power supply, telecommunication, passengers control and traffic control systems, identifying, if any, all material non- compliances of the Concessionaire which have not been remedied at the end of the said year.
  3. Check and certify yearly, no later than three months after the end of any given year, that at the end of the said year, the Metro was in good condition, as required by the Contract, having regard to fair wear and tear, the fact that the Metro was free of any latent or other defects, and the fact that all properties, structures, installations, immovable

equipment and Movable Property consisting the Metro, were in operation as provided herein.

4. In case of any defect in the Metro and any non-compliance of the Concessionaire with its obligations under this Contract, the Operation and Maintenance Manual or the safety plan, whether identified by the Independent Engineer or by the State, determine, as soon as reasonably practicable, the nature and the cause of such defects and the time period within which the Concessionaire shall remedy such defects or shall not comply without prejudice to the rights of the Concessionaire under this Contract.
5. Follow-up and indicate any need to take supplementary measures in respect of the Concessionaire's obligation under article 3.1.1. herein.
6. Check the compliance of the insurance policies as provided herein.

## **17. LETTERS OF GUARANTEE**

### **17.1 Letters of Guarantee of the Equity**

**17.1.1** On the date of the Financial Closing, the shareholders shall provide to the Concessionaire letters of guarantee for their payment of the Share Capital of the Company which will have been established by the shareholders for the execution of the Concession Contract, in accordance with the Financial Plan of the same date and for the maximum total amount of the difference between the Minimum Share Capital and the Share Capital as of the above date. The above letters of guarantee shall be reduced respectively according to the part of the share capital, which shall be paid from time to time.

**17.1.2** On the date of the Financial Closing, the Concessionaire shall receive from the providers of Subordinated Loans letters of guarantee for an amount equal to the totality of the Subordinated Loans in accordance with the Financial Plan of the same date. The above letters of guarantee shall be reduced respectively according to each part of the Subordinated Loans that shall be paid from time to time.

On the date of the Financial Closing, the shareholders shall provide the State with a letter of guarantee for their payment, in the case where the State terminates the Concession Contract by default of the Concessionaire and substitutes the Concessionaire, in accordance with the provisions herein, for an amount equal to the difference between the total amount of the Equity, as it derives from the Financial Plan at the Financial Closing and the total

amount of the Equity paid to the Concessionaire up to the date of the termination.

**17.1.3** On the date of the Financial Closing, the Concessionaire shall furnish to the Lenders or the State, letters of guarantee which will cover the balance of the required Equity of the Financial Plan, after the deduction of the Share capital and the Subordinated Loans. The above letters of guarantee shall be reduced respectively according to each part of the balance of the Equity as per above that shall be paid from time to time.

**17.2 Good Performance Letters of Guarantee**

**17.2.1 Letters of Guarantee for the Good Performance of the Construction**

**17.2.1.1** No later than the Effective Date of the Contract, the Concessionaire shall obtain from the Constructor, a Good Performance Letter of Guarantee for the due performance by the Constructor of its obligations under the Construction Contract, for an amount equal to [ ] per cent of the escalated lump sum price for the Main Works on the Effective Date. A copy of such letter of guarantee shall be submitted by the Concessionaire to the State. For the determination of the amount of the above letter of guarantee, it shall be considered that the above mentioned percentage of [ ]%, refers both to the part of the escalated lump sum price of the Main Works expressed in [CURRENCY] and to the part expressed in [AOTHER CURRENCY]. If the Service modifies the Main Works so as to cause a decrease of the Escalated Lump Sum Price of the Project on the day of the Variation, the above letter of guarantee shall be accordingly decreased. The decrease shall follow the relevant request of the Concessionaire. The release of the above good performance letter of guarantee shall be defined in the Construction Contract.

After the budget of the Concessionaire Parallel Works has been defined, the Constructor, before commencement of these works, shall furnish to the Concessionaire a Good Performance Letter of Guarantee for these works, of an amount equal to [ ]% of the budget. In case where part of or the whole of these Concessionaire Parallel Works is paid by the State, because the amount of [AMOUNT AND CURRENCY] in [DATE] values has been covered, due to the execution of Service Works and Archaeological Works, then the Concessionaire will assign to the State the part or the whole of such letter of guarantee which corresponds to the works that shall be paid by the State.

Such Good Performance Letter of Guarantee shall be assigned to the State in case the State substitutes the Concessionaire in this Contract.

- 17.2.1.2** If the Service requires from the Concessionaire the execution of additional Main Works, following a Variation, according to article 20 herein, or of Concessionaire Parallel Works above the amount of [AMOUNT AND CURRENCY] in [DATE] prices, then, before the commencement of such works, the Concessionaire shall furnish to the State a corresponding good performance letter of guarantee, for an amount equal to [ ]% of their cost or at its choice, assign to the State the good performance letter of guarantee it was provided with by the Constructor.
- 17.2.1.3** The letters of guarantee referred in paragraphs 17.2.1.1 and 17.2.1.2 of present article, guarantee the due performance by the Constructor of all the terms of the Construction Contract in respect of the execution of the Works. The Concessionaire undertakes the obligation to include a term in the Construction Contract it shall enter with the Constructor, that the Constructor will guarantee also under the Good Performance Letters of Guarantee, any claim of the State in relation to Main or Secondary Social Security Organisations arising out of the execution of the Works.
- 17.2.1.4** Release of the letters of guarantee of paragraphs 17.2.1.1 and 17.2.1.2 of the present article, shall be made in accordance with the terms of paragraph 17.2.1.5.
- 17.2.1.5** The amount of the guarantees of articles 17.2.1.1 and 17.2.1., shall be released upon the issue of the Works Completion Certificate in accordance with article 12.

In the case where upon the issue of the Works Completion Certificate, non substantial works are still to be completed, the Concessionaire shall receive from the Constructor a Supplementary Letter of Guarantee amounting to [ ]% of the Escalated Lump Sum Price on the day of issue of such Letter as a guarantee for the completion of such works. Such Letter of Guarantee shall be released after the issue of the Certificate by the Independent Engineer with regard to the completion of such works, in accordance with article 12.1.5 herein.

**17.2.2** Letters of Guarantee for the Good Performance of the Operation and Maintenance

- 17.2.2.1** Before the Effective Date, the Concessionaire shall demonstrate to the State a Good Performance Letter of Guarantee received from the Administrator, for the due performance of the obligations of the latter in respect of the Operation and Maintenance of the Metro, for an amount equal to [AMOUNT AND CURRENCY]. This letter of guarantee shall enter into force upon the Operation Date.

**17.2.2.2** The letter of guarantee of article 17.2.2.1, shall be supplemented each year of operation (within a month from the end of such year, starting from the Operation Date), with an additional letter of guarantee of an amount equal to [AMOUNT AND CURRENCY]. The final guarantee provided to the Concessionaire shall be equal to an amount of [AMOUNT AND CURRENCY], which shall remain in force until the end of the Concession Period. Each year (within one month from the end of such year), after the year during which such level of [AMOUNT AND CURRENCY] has been obtained, the Administrator shall furnish to the Concessionaire an additional letter of guarantee for an amount equal to [AMOUNT AND CURRENCY].

During the [first three months] of the following year, the Independent Engineer shall issue its report of audit with regard to the compliance of the Concessionaire with the Operation and Maintenance Manual during the previous year and shall check and certify that at the end of the said year, the Metro was in good condition, as required by the Contract, having regard to fair wear and tear.

If this report does not show any substantial non-compliance on behalf of the Concessionaire, such additional Good Performance Letter of Guarantee of [AMOUNT AND CURRENCY] shall be released.

If such report shows substantial non-compliance on behalf of the Concessionaire, such additional Good Performance guarantee shall be released when such substantial non-compliances have been remedied or upon the issue of the additional report of the Independent Engineer certifying that the Concessionaire complied with its obligations.

**17.2.2.3** The letters of guarantee referred to in articles 17.2.2.1 and 17.2.2.2, guarantee the due performance by the Administrator of all its contractual obligations in relation to the Operation and Maintenance Contract of the Metro.

Such Letters of Guarantees referred to in articles 17.2.2.1 and 17.2.2.2, shall be assigned to the State in case the State substitutes to the Concessionaire in this Contract. Such letters of guarantee shall be also transferred to the State, [six (6)] months before the end of the Concession Period.

**17.2.2.4** If, upon takeover of the Project, the Metro is in good condition, as required by the Contract, such letters of guarantees referred to in articles 17.2.2.1 and 17.2.2.2 shall be released, provided that the Administrator has furnished to the State a letter of guarantee of [AMOUNT AND CURRENCY], to guarantee the due performance of its obligations in relation to the assistance to the maintenance of the Metro during the Maintenance Assistance Period.

This letter of guarantee shall be reduced by [AMOUNT AND CURRENCY] each year.

- 17.3 Except for the letters of guarantee of paragraphs 17.1.1, 17.1.2 and 17.1.3., the Letters of Guarantee of present article should be issued by a Bank, acceptable by the State and should be payable “at first call”. They should not include terms or conditions, they should include a condition of waiver from discussion and upon their issue, subject letters of guarantee shall be attached in Annex 8 herein.

**Comment [ID26]:** There will be a cost in relation to this which will be factored in by the Concessionaire. Also transfer of the letters to State before Concessionaire ceases to operate Metro makes any claim between Concessionaire and Administrator more problematic.

## 18. OBLIGATIONS OF THE STATE

Without prejudice to the provisions of other articles herein, the State undertakes also vis-à-vis the Concessionaire, the following obligations:

### 18.1 Interruption in the construction or operation of the Metro

- 18.1.1 Unless otherwise provided for in the present Contract, the State shall neither itself nor through any Public Service or their employees, interfere or cause, with its actions or omissions, the temporary or final interruption of the design, construction, financing, completion, commissioning, operation, maintenance and exploitation of the Metro or any part thereof, by the Concessionaire or by third parties on behalf of the Concessionaire.

- 18.1.2 The State may exceptionally cause with its actions, the interruption of the design, construction, financing, completion, commissioning, operation, maintenance and exploitation of the Metro or any part thereof, in the following cases :

a. National Defence Interests

In case of war or mobilisation due to external dangers, or serious disturbance, or threat of the public order and safety of the State from internal dangers, the State is entitled to ask the immediate interruption of the design, construction or operation of the Metro, and to take the Metro or any part thereof under its direct administration and control, for as long as the war or the state of emergency lasts.

The above interruption of design, construction or operation of the Metro, shall not be considered as a breach of the terms of the Concession Contract, but shall be considered as an event of Force Majeure, in which case article 23 shall apply.

**b. Project's and users' safety**

In case the Service considers, that the Concessionaire violates the terms of this Contract in a way which endangers the safety of the Project or of its users, it shall instruct the Concessionaire to immediately stop the relevant violation and take all necessary measures for the elimination of the danger.

In case the Concessionaire does not remedy the above violation, the Service is entitled to interrupt the part of the Works or the operation of the Metro which are affected by such violation and to take itself or through a third entity, the necessary measures in order to remedy such violation.

In case of a dispute as to whether the Concessionaire is in breach of its contractual obligations, or as to the existence of danger for the safety of the Project or of its users, each party is entitled to recourse to the disputes' resolution procedure of articles 38 and 39 herein.

- c.** If during the Construction Period, the Service considers that there is danger to cause damages to monuments, buildings or other installations, it is entitled to instruct the interruption of the part of the works which create such danger or the immediate modification of the construction methods, even if these are executed after its prior approval. The issue, or non-issue of an instruction to interrupt the works, does not release the Concessionaire of any of its responsibilities for the above damages.

The Concessionaire shall comply with the above instructions of the Service, without being entitled to ask for an extension of deadlines, or additional compensation, unless otherwise provided herein.

In case of a dispute as to the existence of danger according to the above, or to the need of changing the construction methods, the Concessionaire is entitled to recourse to the disputes' resolution procedure of articles 38 and 39 herein.

- 18.1.3** In no case the duration or the extent of the interruption shall be longer than needed, depending on the circumstances and according to good faith.

- 18.1.4** In case either a) the State or any Public Service or their employees, interfere or cause interruption, violating article 18.1.1 or b) a decision is issued in favour of the Concessionaire in the case of article 18.1.2(b) or/and 18.1.2 (c) then :



- 18.1.4.1** If the interruption occurs before the Operation Date, the State shall compensate the Concessionaire for the Positive Damages it shall sustain as a result of the above interruption, and shall grant a corresponding extension of the total construction deadline of article 7.1 and of the Concession Period, equal to the adverse effect of the interruption on the critical path of the PERT diagram. Moreover, the State shall grant a corresponding extension of the intermediate deadlines, which were affected by the interruption.
- 18.1.4.2** If the interruption occurs during the Operation Period, the State shall compensate the Concessionaire for the Positive Damages it shall sustain as a consequence of such interruption.
- 18.1.5** Without prejudice to the above, if the interruption under article 18.1.4 extends for more than [one hundred and twenty (120)] days during the Construction Period, or more than [sixty (60)] days during the Operation Period, the Concessionaire is entitled to terminate the Contract. In such case, the provisions of article 29 shall be applicable for the rest.

## **18.2 Delay of Payments**

### **18.2.1 In the Construction Period**

- 18.2.1.1** If for any reason, the sums due by the State to the Concessionaire in relation to the Contribution, the Concessionaire's Parallel Works exceeding the amount of [AMOUNT AND CURRENCY] in [DATE] prices and the Variations, are not paid by the State on the date upon which such sums were due and payable, the State shall pay to the Concessionaire interest, after having been notified in writing. For payments in drachma, the annual interest shall be the interest rate for deposits in [CURRENCY] for a period of [twelve (12)] months plus one (1) unit, (or if such an interest rate for a (12) month period is not available, the interest rate shall be equal to the interest rate for deposits in [CURRENCY] for a period of six (6) months), which is published in [ ] at [TIME], on the Business Day in [LOCATION], falling immediately before the commencement of each interest bearing period. For payments in [ANOTHER CURRENCY], the annual interest shall be the interest rate of deposits in [CURRENCY], for a period of twelve (12) months, plus one (1) unit, which interest rate is published [ ] at [TIME] ([LOCATION] time), on the Business day in [LOCATION], falling immediately before the commencement of each interest bearing period.

The interest bearing periods shall be successive periods of twelve (12) months (or part thereof for the last interest-bearing period). The first period starts on the day the payment became due for the first time. The interest

shall be capitalised and added to the amount due at the end of each interest-bearing period.

**18.2.1.2** In case the above delay extends for more than one (1) month from the date upon which such sum became due and payable, the Concessionaire may interrupt the Works or any part thereof notifying first the Service, with a special written notice. Two (2) months after the submission of the special written notice mentioned before, and provided the State has not paid the amount due increased by the interest as defined above, the Concessionaire is entitled to terminate, the Contract. In such case, the provisions of article 29 shall be applicable for the rest.

### **18.2.2 In the Operation Period**

**18.2.2.1** If during the Operation Period of the Project, there is a delay in the payment according to the provisions of this Contract, of the amounts which are due and payable by the State to the Concessionaire under article 15 herein, the following consequences shall occur :

- a. The Concessionaire shall be automatically entitled to interest payment, as provided for by article 18.2.1.1. and 18.2.1.2.
- b. One (1) month after the date upon which payment was due and payable and provided the State has not paid the amount due increased by the interest defined herein, the Concessionaire is entitled to suspend, at any time, the operation of the Metro or any part thereof, having first notified the Service of its intention to do so three (3) days in advance, with a special written notice.
- c. If after one (1) month from the end of the one (1) month deadline of article 18.2.2.1 (b) herein, the State has not paid the amount due increased by the interest defined herein, the Concessionaire is entitled to terminate, the Contract. In such case the provisions of article 29 shall be applicable for the rest.

**18.2.3** In case of delay of payments being due to the Concessionaire, over and above those referred in articles 18.2.1 and 18.2.2 above, the provisions of article 18.2.1.1 shall be proportionally applicable.

### **18.3 Equal Treatment**

The State shall ensure that during the Concession Contract no other transportation means on rail tracks or/and the entity exploiting the same in the area of [LOCATION] shall enjoy special treatment or benefits from the State or from any other competent authority, in relation to the operation or

/and exploitation or/ and maintenance of subject means, compared to the one provided or offered to Metro and to the Concessionaire according to the present Contract. For the sake of indication, such special treatment or benefit may consist of regulations relative to the cost of energy, personnel social security obligations, tax payment, granting of subsidy at of a higher percentage than the percentage of ticket subsidy of the Metro, etc.

#### **18.4 Other obligations**

The State assumes also towards the Concessionaire the following obligations:

- 18.4.1** To ensure to the Concessionaire, the necessary conditions for the unobstructed execution of the Works, during the Concession Period, provided they fall within the State's sphere of responsibility and to fully ensure the rights deriving herefrom and from the law, during the Concession Period, and to provide the Concessionaire with all assistance needed in relation hereof.
- 18.4.2** To take all necessary actions and whenever reasonably requested by the Concessionaire, to ensure the necessary assistance of other Public Services during the Concession Period.
- 18.4.3** To timely act with care and diligence, in accordance with the provisions of article 36 herein, and to assist the Concessionaire in the issue by the competent Public Services of all Permits of any nature, provided for by the Contract and the law for the execution of the Works and for the operation and maintenance of the Metro, as well as of those Permits which will reasonably be requested by the Concessionaire for these purposes, even if not provided for herein, so that such Permits and consents are maintained, renewed and enforced as the case may be. The same shall be applicable for the application and maintenance of police and other provisions, for the compulsory payment of the ticket price by the users of the Metro and the maintenance of public order and safety in the areas of the Metro.
- 18.4.4** To ensure in accordance with the terms set out herein, the unobstructed access and depart to and from the installations and sites of the Concessionaire, both during the execution of the Works and the Operation and Maintenance of the Metro in accordance with the provisions herein.
- 18.4.5** Not to assign or to allow till the end or termination of present Contract, the construction or/and operation of other means of mass land transportation on rail tracks, within the Project's zone of influence, which extends 100 m on both sides of the Metro line axis, without the prior written consent of the Concessionaire. This regulation does not concern

- a. the mass transportation means operating on the date of signature of the present contract,
- b. any perpendicular to the Metro line, lines of any mass transportation means including the ones on rail tracks which will possibly be constructed,
- c. any lines of any mass transportation means in the area of the possible extensions of the Metro and
- d. coast shuttles
- e. people mass transportation means which may possibly be created through the underwater road artery planned to be constructed in [LOCATION].
- f. the suburban railways which will possibly operate in the area of [LOCATION].

**18.4.6** Without prejudice to the terms set herein, to assist the Concessionaire, upon the Concessionaire's reasonable request, itself or to cause any other Public Service to assist the Concessionaire, in disclaiming claims or demands pursued before or out of Court of any nature which are related to the Project, provided the Concessionaire duly notifies the State and timely furnishes it with all information in relation to the above. The State can not refuse its assistance without reasonable cause. The positive or negative answer of the State shall be provided to the Concessionaire within reasonable time to confront and investigate the possibility to resolve the dispute.

**18.5** In case the State fails to fulfil its obligations or/ and undertakings provided for in the present article, the Concessionaire shall be entitled to ask either to be compensated for the Positive Damages it sustained, or for readjustment of the consideration due to it.

## **19. SERVICES OF THE PUBLIC UTILITY ORGANISATIONS (P.U.O )**

**19.1** The Concessionaire shall bear the cost for the construction of P.U.O. installations, to the extent these works consist Main Works. The Concessionaire shall also bear the cost of the works for the connection of P.U.O. installations to the Metro. The cost of the above works is included in the lump sum price.

- 19.2** The construction cost of P.U.O. works shall be financed in accordance with article 6.2.2. herein, to the extent these works are Parallel Works.
- 19.3** The Concessionaire shall bear the cost of the works for the construction of P.U.O. installations and the cost of the works for the connection of P.U.O. installations to the Concessionaire's sites.
- 19.4** If the execution of the Works is hindered by existing pipes or networks of pipes of P.U.O., the Service assumes the obligation to assist the Concessionaire immediately, in the issue of the necessary permits for the relocation of the above pipes or networks in accordance with the provisions of article 18.4.3. herein.
- 19.5** The State shall immediately assist the Concessionaire in relation to the procedures needed for electrical power supply, telecommunication services and water supply required for the Metro installations and the sites of the Concessionaire, as well as for the connection to the sewerage network and generally for P.U.O. services, provided the Concessionaire submits such a request to the competent P.U.O. and notifies its request to the Service and provided that such request of the Concessionaire shall be accompanied with the justification documents provided for by the current provisions.
- 19.6** In the case of Service Works, the Concessionaire shall assist the P.U.O., coordinate its other works with them, and pay the expenses defined by the competent P.U.O. provided the approval and special instructions of the Service have preceded.

The relevant cost of these Service Works which shall be determined on the basis of the official documents presented by the P.U.O. which executed the works, shall be borne by the Concessionaire, provided these works concern Main Works in accordance with paragraph 19.1 herein, in which case, their cost is included in the lump sum price of the Main Works. The cost of the Service Works shall be financed in accordance with the provisions herein provided such works concern Parallel Works.

## **20. VARIATIONS**

- 20.1** During the Concession Period and without prejudice to the provisions of article 20 herein, the State may at any time, cause Variations provided these Variations are to the opinion of the State necessary for the Project and the Concessionaire is notified in writing by the Service, according to the provisions of articles 20.8 and 20.9.

- 20.2** Without prejudice to articles 20.4, 20.6, 20.9 and 20.10, the Concessionaire shall perform with due diligence and complete within reasonable time all the works which are necessary by any such Variation. The Concessionaire shall not be obliged to execute the works of a Variation, until the amount of the Contribution or/and the ticket's subsidy of article 15 that must be adjusted in accordance with article 20.6, are defined.
- 20.3** As soon as possible and in any case within [twenty eight (28)] days from the receipt of the notification of article 20.1, the Concessionaire shall notify the State, whether according to the Concessionaire's opinion :
- 20.3.1** The Variation requires an increase or decrease of the payments of the Contribution or the ticket's subsidy of article 15 (in which case the Contribution or the ticket subsidy shall be escalated according to article 20.6), or an extension of deadlines provided herein, and shall proceed to the evaluation of the relevant amount or time, or,
- 20.3.2** The Variation has other consequences and in particular it may impede the Concessionaire from performing in full or in part its contractual obligations arising hereof, in which case it will furnish the State with all data upon which it bases its opinion.
- 20.4** After the State receives the views of the Concessionaire according to the above, it shall ascertain or modify within reasonable time, the notification provided for by article 20.1. Until the State ascertains or modifies its above notification, subject notification shall be considered as not having been handed over.
- 20.5** The Concessionaire may suggest Variations to the State, for the execution of which the written consent of the State is required. Without subject consent, the Concessionaire may not materialise any of the Variations it suggests. It is clarified that the approval of such Variation does not imply the undertaking of the cost of such Variation by the State.
- 20.6** Without prejudice to articles 20.7. and 20.8., Variations requested by the State and which occur during the Construction Period and affect the Escalated Total Project Cost on the day the State notifies the Concessionaire in accordance with article 20.1., shall cause an increase or decrease on the payments of the Contribution which is paid by the State to the Concessionaire in accordance with the terms herein. Variations requested by the State and which occur during the Construction Period or the Operation Period and affect the operation or maintenance cost of the Metro, shall cause an increase or decrease of the payments of the tickets subsidy paid by the State to the Concessionaire in accordance with article 15. In the case of the above Variations which shall occur during the Construction Period

affecting the Escalated Total Project Cost, the amount which shall be added or subtracted from the payments of the Contribution, shall correspond to the cost of the Works which must be executed in order to implement the Variation, or to the cost of the Works which need not to be executed as a result of the Variation Subject cost shall be calculated by the Concessionaire proportionally to the extent of the Variation, with the following alternative methods:

- 20.6.1** The Parallel Works Price List, wherever the Works are same or similar to the works of the Variation, or
- 20.6.2** The prices' analysis of the [M.E.P.P.W.], wherever the works of the Variation are not the same or similar to the Parallel Works, applying also the discount of article 6.3.4., or
- 20.6.3** The real cost of the works of the Variation, or
- 20.6.4** The lump sum price which may be agreed between the Parties, or
- 20.6.5** The analysis AiBk of the Lump Sum Price for same or similar works and corresponding reduction or increase of the AiBk sums which are affected by the Variation.

In case the cost of the Variation is calculated on the basis of paragraphs 20.6.1, 20.6.2 and 20.6.3, such cost shall be increased with the possible cost of the designs that shall be elaborated by the Concessionaire or on its behalf, as well as with overhead expenses and contractor's profit at the rate of 18%. In the cases of par. 20.6.4 and 20.6.5, the cost of the designs and general expenses and contractor's profit are included in the prices. In all above cases, the Concessionaire shall be compensated for any Positive Damages it might sustain as a result of such Variation and shall be granted an extension of deadlines, according to the article 7.3 herein.

In respect to a Variation which is requested by the State and shall occur prior to the end of the Concession Period affecting the operation or maintenance cost of the Metro, the amount which shall be added or deducted from the subsidy of the ticket, shall be such so as to enable the Concessionaire to maintain or restore the financial status he should have enjoyed should such Variation not have occurred. Such amount, if not defined by agreement of the parties, shall be determined with the procedure of articles 38 and 39. In order to determine the financial status of the Concessionaire, all amounts paid to the Concessionaire by the State according to the present Contract shall be taken into consideration.

- 20.7** In the case of Variations of article 28.1, the procedure of article 20 shall be applicable.
- 20.8** During the Construction Period, the State may cause Variations regarding the Main Works which affect the Total Project Cost as this is defined in provision 6.2, escalated using the last known escalation coefficient at that time. Such variations are permissible, only to the extent that the total amount which shall be added or deducted from the payments of the Contribution of the State to the Concessionaire, in respect to these Variations, does not exceed [ ]% of the Total Project Cost as defined in provision 6.2, escalated using the last known escalation coefficient. Variations beyond the above limit [ ]%, may occur only after the written agreement of the parties and the consent of the Bank Agent.
- 20.9** If the State disagrees with the estimation of the Concessionaire given according to article 20.6 in relation to the cost and consequences of the Variation, the dispute shall be resolved following the procedure of articles 38 and 39. Without prejudice to article 20.10, the Concessionaire shall be obliged to execute the Variation after the issue of the decision of the panel of article 38, provided the State insists upon the execution of such Variation and notifies its decision for the execution of the said Variation in accordance with the terms of the decision. In the case of this paragraph and paragraph 20.10 herein, if according to the decision of either article 38 or 39, it is ruled that the Concessionaire should have been paid or has been paid for the works of the Variation an amount greater or smaller than the one which was actually due, the difference shall be paid to the Concessionaire or returned by the Concessionaire to the State, plus interest in accordance with article 18.2.1.1., from the day the amount should have been paid or has been paid to the Concessionaire up to the actual day of payment to the Concessionaire or payment back to the State.
- 20.10** In case the safety of the Project, of the users or of the Concessionaire's personnel is endangered, the Service may instruct in writing the Concessionaire, to execute a Variation, before the Concessionaire sends the notification of article 20.3 or before the determination of the sum which should be added or deducted in accordance with article 20.6. from the payments of the Contribution or the ticket's subsidy. In such case, the Concessionaire shall execute the Variation and shall keep data for the cost, the Positive Damages and delays arising out of or in connection with such Variation. The Service may inspect these data, at reasonable time intervals. As for the rest, the provisions of article 20.9. shall also be applied mutatis mutandis.



## **21. INDEMNITIES**

**21.1** During the Concession Period, and without prejudice to the other provisions of present article, the Concessionaire shall be liable for death or body injuries, loss or damage to properties (including damage to properties owned by the State or properties for which the State is responsible), which are attributable to acts or omissions of the employees or representatives of the Concessionaire, the Constructor or the Administrator within the framework of the present Contract, or which is due to a breach by the Concessionaire of any of its obligations under this Contract. The State, its representatives, and its contractors are discharged of any liability to compensate for the above acts or omissions.

**21.2** Provided the approved environmental terms, the provisions of this Contract and the laws are met, the Concessionaire, the Constructor, the Administrator, and their personnel shall not be liable towards any physical or legal entity for any claim, action or proceeding by such Person arising out of or in connection with :

- a. any nuisance, noise, vibration, pollution or/and limitation of activities, which shall be caused by the due construction and operation of the Metro, or any activity connected to its construction or operation.
- b. the use or occupation of the Site or any part thereof.
- c. the mere existence of the Metro of [LOCATION] or of the Construction Works or any part thereof or its normal operation and maintenance ;
- d. the State's right to execute the Project or any part thereof ; or
- e. any act or omission of the Independent Engineer, the State, their employees, agents or consultants or other contractors who are not employed by the Concessionaire, the Constructor or the Administrator or those having entered into contracts with them including, without limitation, any breach by the State of any of its obligations under this Contract.

The Concessionaire shall not be held liable for positive or consequential damages or loss of profit caused to third parties from the above causes except if due to its fault, the fault of the Constructor or the Administrator or those having entered into a contract with them. The State shall indemnify the Concessionaire, the Constructor, the Administrator, the Lenders, and their personnel from and against all consequences of any kind arising out of

or in connection with such claims, actions or proceedings, to the extent these are not covered by the insurance policies of the Project.

## 22. INSURANCE

22.1 The Concessionaire shall insure to the Social Security Institution and to other funds of main or secondary insurance, all personnel engaged by the same, the Constructor or their subcontractors in the Metro. In case this personnel is not subject to the insurance provisions of [ ], or of other funds of main insurance, or other insurance funds, the Concessionaire shall enter (or cause the interested Persons to enter) into an employer's liability insurance contract, with insurance companies legally recognised according to article 22.4.

22.2 During construction and operation stage, the Concessionaire shall insure (or cause the interested persons to insure) all cars and machinery used for the Project belonging to the Concessionaire or third parties, to a legally recognised insurance company, according to the legislation of [COUNTRY] regarding compulsory insurance of vehicles.

The Concessionaire is not entitled to seek compensation from the State for possible damage or total or partial loss or destruction of its machinery for any reason including cases of force majeure.

**Comment [ID27]:** Need to address issue of insurance not being available or not being available at commercial levels.

22.3 The Concessionaire shall insure all its material, apparatus, machinery and other equipment necessary for the operation of the Project at their full cost and against all risk (theft, damage, fire, flood or sliding etc.) on the basis of the provisions of article 22.12. The insurance shall also cover their transportation to the Metro sites.

22.4 The Concessionaire shall enter at its own expenses, into the following insurance contracts with one or more legally recognised insurance companies in [COUNTRY] or abroad which according to the legislation of [COUNTRY] could insure similar projects.

### 22.4.1 All Risk Insurance during the Concession Period

The scope of subject insurance will be:

22.4.1.1 to insure any loss, damage, or destruction of the executed Project, in part or in whole, which shall be due or caused by any cause or reason (even by force majeure, accidental events, false design or/and construction, defective material, defective or false work etc.) with the exception of risks which are usually excepted and are not covered by the usual "all risk" insurance

policies (like risks from war, invasion, mutiny, revolution, disruption of order, pollution from radiation etc.), in each case subject to the usual international insurance practice. In such a case, coverage shall refer to the total value of all the Main Works including that of Variations reflecting any possible decrease of the Total Project Cost in accordance with article 6. The Concessionaire shall ask from the insurers to readjust at regular time intervals, the insured capital, in accordance with the real value of all the Works and the insurers shall waive their right to sub-insure.

**22.4.1.2** to insure any loss or damage or destruction (mechanical or electrical damages are excluded) of the permanent or/and temporary site installations of the Concessionaire, in whole or in part, as well as of the mechanical equipment which shall be used for the Metro construction and which shall be due or caused by force majeure or/and accidental events, on the basis of the provisions of 22.12.

**22.4.1.3** to insure materials of any nature delivered on site to be incorporated in the Metro.

**22.4.2** The value of the Works in the insurance policies shall be expressed in [CURRENCY] or [ANOTHER CURRENCY], in accordance with article 6.2.1. herein.

**22.4.3** The Concessionaire shall submit for approval to the Service, the all risk insurance policy of article 22.4.1. herein, within [thirty (30)] days from the Effective Date for the Construction Period, and [thirty (30)] days before the issue of the Metro's operation permit for the Operation Period.

**22.4.4** Third party liability insurance

The scope of subject insurance shall be to cover the Concessionaire's liability against third parties for damages or injuries incurred to persons or things during and as a result of works in respect of the construction, maintenance, remedy of damages, operation and exploitation of the Metro which are attributable to the fault of the Concessionaire's personnel during performance of its obligations under the contract.

**22.4.4.1** The liability of the insurers shall commence upon the Effective Date of the Contract and shall end with the end of the Concession Period.

**22.4.4.2** The Concessionaire shall submit for approval to the Service the third party liability insurance policy(ies), [thirty (30)] days after the Effective Date for the Construction Period, and [thirty (30)] days before the date of issue of the Metro's operation permit for the Operation Period. The third party liability insurance policy(ies), which might be needed to cover the liability

of the Concessionaire against third parties due to the execution by the Concessionaire of maintenance or remedial or other works within the framework of the Concessionaire's obligations, should be submitted to the Service [fifteen (15)] days before commencement of subject works.

**22.4.4.3** The compensation limits within an integral third party liability insurance policy should be, per occurrence, the following:

- a. For direct or indirect material damages to third parties, independently of the number of the injured third parties, [AMOUNT AND CURRENCY].
- b. For body injury or death of third parties, per person and accident, [AMOUNT AND CURRENCY]
- c. For body injury or death of third party following a group accident, independently of the number of the injured, [AMOUNT AND CURRENCY]
- d. Minimum liability limit during the whole duration of the insurance contract, [AMOUNT AND CURRENCY].

The above limits refer to [DATE] prices and shall be increased case by case (increased risks, duration of insured capital etc.) and shall be escalated the first day of each year in accordance with the average annual variation of the general index of consumers prices, derived from the data of the National Statistics Service in [COUNTRY].

**22.4.4.4** The third party liability insurance policy(ies), should include the following special terms :

- a. The Service, its personnel, in general its consultants and their personnel are considered as "third" parties in accordance with the terms and exceptions of the cross liability.
- b. The insurance company shall defend any law suit raised against the Concessionaire or the Service, their personnel or their consultants in case the damage is due to their act or omission which is covered by the third party liability insurance and shall pay any guarantee for the lifting of any possible confiscation, related to the liability within the limits of the sums referred in article 22.4.4.3. herein.

**22.4.5** The following general terms should be incorporated in the insurance policy(ies), of articles 22.4.1. and 22.4.4.

- 22.4.5.1** The Service shall be co-insured.
- 22.4.5.2** These insurance policies may not be cancelled, amended or elapsed without the Concessionaire and the Service being so notified by the insurance company, with registered mail thirty (30) days in advance.
- 22.4.5.3** The insurance company waives its right to claim against the Service, its employees, consultants and associates and their employees, in case the damages are attributable to an unintentional act or omission of these persons.
- 22.4.5.4** The Service, its personnel as well as all its consultants and associates and their employees are considered third parties in respect of the performance of this Contract.
- 22.4.5.5** The insurance policy covers also the liability of the Service, which derives from [LEGISLATION].
- 22.4.5.6** In order to secure the Service, the Concessionaire shall ask the insurers to include in the all risk insurance policies that cover the Project itself, a clause covering the destruction or damage of the Project, in whole or in part.
- 22.4.5.7** The Concessionaire must furnish the above insurance policies to the Service, at least thirty (30) days before the commencement of each insurance period. In case the Concessionaire fails to do so, the provisions of article 22.8 herein shall be applicable.
- 22.5** During entering of the above insurance policies, the Concessionaire shall comply and take into consideration the provisions of the relevant legislative and regulating provisions, as these were modified and are in force, as well as the relevant Regulations, as in force and are applicable in [COUNTRY].
- 22.6** The Concessionaire shall comply with the terms of the insurance policies. The insurance coverage, the financial and insurance terms, exceptions, exonerations are in all cases subject to the Service's final approval, in order to comply to the terms of article 22 herein.
- 22.7** The above insurance policies do not relieve or limit in any way the obligations and responsibilities of the Concessionaire arising out of the Contract, especially with regard to the exceptions, discounts, benefits, limitations, etc., provided for by the relevant insurance policies, and the Concessionaire remains solely responsible for the remedy of damages to persons or things, in accordance with the terms set out herein, beyond the amounts covered by the insurance policies. In case of occurrence of force majeure insured events, article 23 herein shall apply.

- 22.8** In case the Concessionaire fails to comply with its insurance obligations, the Service is entitled to ask from the Concessionaire to make the relevant modifications or additional insurance policies and to the extent the Concessionaire does not comply within thirty (30) days from the receipt of the Service's relevant notification, the Service is entitled to enter on behalf and at the expenses of the Concessionaire into the above insurance policies and to retain (with the legal interest for delayed payment) the amount of the premium from the payments due to the Concessionaire under this Contract. Furthermore, in case the Concessionaire neglects or delays to pay to the insurers the premiums due, the Service in order to avoid an eventual annulment of the insurance policies, is entitled to pay the premiums to the insurers on behalf of the Concessionaire, provided the Concessionaire doesn't comply within reasonable time set out in writing by the Service, and retain the relevant amount from the amounts due to the Concessionaire according to the above.
- 22.9** In case the Works are suspended in whole or in part, due to the Concessionaire's fault, the Project may be insured by the Service against all possible insurable risks independently of the project phase, and the expenses of subject insurance shall be borne by the Concessionaire.
- 22.10** The insurance compensations shall be collected by the Concessionaire and shall be used for the remedy of damages and the continuation of the construction or the operation of the Metro, subject to any right of the Involved Persons and Lenders on such insurance compensations. The Concessionaire shall inform the Service, which is entitled to check the disbursements of the above compensations as provided herein. In case of a dispute, such dispute shall be resolved according to articles 38 and 39 herein.
- 22.11** The Concessionaire is entitled not to enter into the above insurance policies during the Construction Period, but to ensure that the Constructor shall enter and maintain the same during the whole Construction Period, and that it shall comply with the terms of article 22 herein.
- In such case, the Concessionaire, the Independent Engineer, the Concessionaire's consultants and their personnel, shall be co-insured in the insurance contracts of article 22 and shall be considered "third parties" within the framework of article 22.4.2.
- 22.12** The Parties agree that the all risk insurance policies shall exclude coverage of those risks which, in accordance with the usual international insurance practice, are usually excepted and are not covered by the usual insurance

policies (such as risks from war, invasion, mutiny, revolution, disruption of order, pollution from radiation etc.)

## **23. FORCE MAJEURE**

### **23.1 Force Majeure Events**

For the purposes of present Contract, the term “Force Majeure Event” means:

all those events or circumstances which fall outside the sphere of control or influence of the parties and which or the consequences of which could not have been foreseen or prevented or the consequences thereof could not have been prevented, even if the parties had been particularly diligent.

It is clarified that the consequences of Events of Force Majeure on the project, which are due to Concessionaire’s failure to comply with the terms of Annex 1, shall be borne by the Concessionaire.

### **23.2 Occurrence**

**23.2.1** If the Concessionaire considers that an Event of Force Majeure has occurred, which could give rise to a claim for extension of time and/or compensation by the State, it shall notify the Service, in writing, as soon as reasonably feasible, referring to the Event of Force Majeure which it claims it has occurred and to its consequences (to the extent it could be reasonably verified at that stage).

**23.2.2** If the State has doubts as to the occurrence of an Event of Force Majeure or as to its consequences, it will address the matter to be resolved according to the procedure of articles 38 and 39 within 14 days from the receipt of the Concessionaire’s notification. If the State does not do so within the said 14 days period, the State will be deemed to have accepted the Concessionaire’s notice.

**23.2.3** As soon as practically possible, the State and the Concessionaire shall meet to discuss in respect of the Event of Force Majeure and its consequences, and to the extent possible, to determine the most effective way for the continuation of the Works or the Metro’s operation.

**23.2.4** In case it cannot be immediately derived whether the Event of Force Majeure shall become a Prolonged Event of Force Majeure (as defined in article 23.6.2), the Parties (unless otherwise agreed or unless the Lenders define or foresee something different) shall take all reasonable steps to

continue the Project using the insurance compensations and if the case may be, the State's compensation.

### **23.3 Financial Responsibility of the Concessionaire**

Without prejudice to article 23.6.:

- a. To the extent the Concessionaire has insured the project in accordance with article 22 against the consequences of such Force Majeure Event, the Concessionaire shall bear the financial consequences of such Force Majeure Event, up to the amounts which shall have been received pursuant to the corresponding insurance policies.

In case the amounts that have been received are smaller than the amounts payable pursuant to the insurance policies, the Concessionaire shall, at its own responsibility and expense, attempt to collect the remaining amounts with any legal means and it will invite the State to participate in such proceedings. The State is entitled to request from the Concessionaire to assign to the State the relevant claim of the Concessionaire against the insurance company, for the remaining sum mentioned above.

- b. It is clarified that the Concessionaire shall bear the financial consequences of any Event of Force Majeure, if and to the extent such consequences are the result of a failure of the Concessionaire to comply with Annex 1 hereof.

### **23.4 Financial Responsibility of the State**

Without prejudice to article 23.6., the State shall compensate the Concessionaire for any Positive Damages due to any Force Majeure Event except for those which are borne by the Concessionaire in accordance with article 23.3., so that (i) if the Force Majeure Event occurs before the Operation Period, the State shall pay to the Concessionaire the Positive Damages in relation to such Force Majeure Event and (ii) if the Force Majeure Event occurs during the Operation Period, the State shall additionally compensate the Concessionaire for any loss of tickets' income it will incur (including the ticket's subsidy) in accordance with the Financial Plan provisions, after deduction of the amounts of the expenses which the Concessionaire has saved due to the occurrence of the Force Majeure event, in both cases within twenty one (21) days after the end of the calendar month during which the relevant sum was payable. In case of a dispute as to any such sum, the matter shall be referred to be resolved in accordance with the procedure of articles 38 and 39. The State shall pay no compensation in relation to equipment owned by the Concessionaire, the Constructor, the



Administrator and their subcontractors, to the extent that the consequences on such equipment as a result of the Force Majeure Event, are compensated by the insurance policies.

### **23.5 Extension of deadlines**

Without prejudice to article 23.6., if the Event of Force Majeure occurs before the Operation Date, the deadlines defined in articles 7 and 8 and other affected deadlines and the duration of the Concession Period shall be extended for a time equal to the adverse influence of the Force Majeure Event on the critical path of the PERT diagram of the Project, as updated from time to time.

### **23.6 Prolonged Event of Force Majeure**

**23.6.1** Without prejudice to any other provisions of the present Contract, in case of any Prolonged Event of Force Majeure (as defined in article 23.6.2.), the parties shall meet within ten (10) days from the end of the corresponding period of four (4), six (6), nine (9) or twelve (12) months referred to in article 23.6.2., to decide whether in the light of the consequences of the Event of Force Majeure known at that moment and of their opinion in relation to future consequences, they could agree in relation to the additional measures to be taken to confront the Event of Force Majeure and to continue the Contract. If the parties do not reach an agreement within thirty (30) days from the end of subject period, either Party is entitled to terminate the Contract by written notice. Such a termination shall be immediately effective upon receipt of the notice.

**23.6.2** “Prolonged Event of Force Majeure” means an Event of Force Majeure which is continuing or its consequences continue:

- a.** for a continuous duration exceeding nine (9) months, in case of a Force Majeure Event which occurs before the Operation Date, against the consequences of which the Concessionaire has been insured in accordance with article 22,
- b.** for a continuous duration exceeding four (4) months, in case of any other Event of Force Majeure occurring before the Operation Date.
- c.** for a continuous duration of more than twelve (12) months, in case of an Event of Force Majeure which starts after the Operation Date against the consequences of which the Concessionaire has been insured in accordance with article 22,

- d. for a continuous duration of more than six (6) months, in case of any other Event of Force Majeure occurring after the Operation Date.

**23.7 Termination due to a Prolonged Event of Force Majeure**

In case of termination by virtue of article 23.6, where termination is effected either by the Concessionaire or by the State, the provisions of article 29.3 herein shall be mutatis mutandis applied, with the exception of the ROE value which, for the totality of the Equity, is agreed to be reduced by [ ]%, in relation to the return on equity (ROE) defined in article 29.3 herein.

In case the Lenders have received compensation and the shareholders and the providers of the Subordinated Loans have already collected the relevant return or a greater one, the State shall be entitled to receive from the Concessionaire any insurance compensation which the Concessionaire has not yet paid, as a result of the Event of Force Majeure.

- 23.8** The State shall not be liable for any compensations which the Concessionaire shall pay due to the Event of Force Majeure to the people to whom the “other exploitations” of article 3.1.3.4, have been assigned and therefore the abnormal evolution of their contractual relations.

- 23.9** To the extent an Event of Force Majeure is the financial responsibility of the State and its consequences do not allow the normal operation of the Metro, the Concessionaire may be requested to restore the Metro to its operational condition, at the expenses of the State.

- 23.10** Any dispute arising between the parties as to the duration of the Event of Force Majeure, or the consequences thereof according to the provisions hereof, shall be referred to the disputes resolution procedure foreseen by articles 38 and 39.

## **24. COPYRIGHT AND INDUSTRIAL PROPERTY RIGHTS**

**24.1** The Concessionaire shall make available to the State and to any competent Public Service indicated by the State, free of charge and in order to be used in relation to the Project, all data and Documents which are obtained, or were obtained, or were created, in any way, by the Concessionaire or/and by the entities for which the Concessionaire is responsible, for the Specific Purpose of article 24.4.2. The Concessionaire shall use all reasonable endeavours in order to make available to the State or to any Public Service all data and Documents which were obtained or created by any third party for the purposes of the Project. The Concessionaire is entitled to make use of the data and Documents referred to in article 24.1 herein, for the purposes of the Project. Whenever the Concessionaire wishes to use these data and Documents for any other purpose, it shall do so, only after obtaining the prior written consent of the State.

**24.2** The Concessionaire may use for the purposes of the Project all data or Documents, which are obtained or were obtained or created, in any way, by the State or on its behalf, for the purposes of the Project, under the terms, set out by the State.

**24.3** The Concessionaire undertakes the obligation to enter into (provided it may do so under the Law), all contracts which may be required in order to obtain for the Specific Purpose of article 24.4.2, copyright on all data and Documents which are created by him or/and by entities for which the Concessionaire is responsible or on their behalf, and from the day such data or Documents were created, or to obtain an irrevocable, non exclusive and transferable license (with right of further license) to copy, reproduce, modify and use for the Specific Purpose, all data and Documents mentioned above, without obligation to pay royalties.

### **24.4 Licenses**

**24.4.1** The Concessionaire hereby grants to the State (provided it may do so under the Law), the irrevocable, non exclusive and transferable license without obligation to pay royalties (with the right of further license), to copy, reproduce, modify, translate and use, for the purpose exclusively defined below (the "Specific Purpose"), any Copyright which possibly belong or may be granted to the Concessionaire, the use of which may be requested by the State for the Specific Purpose. The Concessionaire agrees to grant to the State (provided it is entitled to do so under the Law), an irrevocable, non exclusive and transferable license without obligation to pay royalties (with a right of further license), to copy, reproduce, modify, translate and use for the Specific Purpose, any works upon which copyright can be obtained by the Concessionaire, or for which a use-exploitation license has been granted

to the Concessionaire, after the date of present Contract. If Copyright is owned by a third party, the Concessionaire shall use all reasonable endeavours in order to obtain the license under terms which permits the free reproduction, translation and use of subject copyright by the Concessionaire or the State for the Specific Purpose.

“Specific Purpose” is the design, construction, completion, commissioning, maintenance, operation, managing and/or development of the Metro by the State or by any Public Service or by any entity with which the State has entered into a development contract in that respect, or for any other purpose linked to the Project after the end of the Operation Period, or after the termination of the Contract, as well as for any other purpose linked to the Project. It is expressly agreed, that in relation to the rolling stock, and the signalisation, automation, telecommunication, power supply systems and tickets issuing / cancelling systems, the Specific Purpose is limited to the operation, maintenance, repair of the same as well as to the personnel’s training.

**24.5** The State and the Concessionaire agree to prepare or perform or ensure the preparation of the data, documents needed, etc., and to take all necessary actions to make the provisions of present article come in to force.

**24.6** The Concessionaire shall compensate the State and any public enterprise for any loss, cost, expense or damage they will incur or they may sustain from any claim, demand, request and procedure against them, due to any breach of Copyright referred to in article 24.4.1. herein.

In case of claim raised against the State or a public enterprise within the framework of present Contract for violation of Copyright (or Industrial Property Rights) of a third party, the Concessionaire shall assist the State or the public enterprise and shall pay the compensation possibly adjudicated to the third party, provided the State shall inform immediately the Concessionaire in writing for the claim raised against it and shall furnish to the Concessionaire all information needed, as well as any reasonable assistance.

In case of claims raised against the Concessionaire for Copyright (or Industrial Property Rights) infringement by third parties, the Concessionaire may, at its own expenses, either

- a. modify the contents of the Copyright (or Industrial Property Rights) so as to terminate the violation of the third party’s rights, or
- b. arrange that the State is granted a license to continue their use.

24.7 The provisions of present article shall remain in force even after the termination or expiration of the present Contract, without limitation of time.

24.8 Each contracting party shall remain the owner of its own Copyright (and Industrial Property Rights) in relation to the Project.

## 25. INFORMATION AND REPORTING OBLIGATIONS

25.1 During the Construction and Operation Period, the Concessionaire shall furnish to the Service the necessary documents and information relative to the project.

25.2 The approval of the Service shall not release the Concessionaire from its responsibilities arising out of this Contract, neither constitutes in any way acceptance of the sufficiency or accuracy of any data, unless these data constitute compliance of the Concessionaire to the written suggestions of the Service, despite the Concessionaire's prior written objections.

25.3 During execution of the Works, the Concessionaire shall provide the Service with accurate and complete information regarding the Works and the events affecting their execution.

25.4 The Concessionaire shall immediately refer to the Service all events that affect or might affect the execution of the Works.

25.5 During the Construction Period, and the Operation Period, the Concessionaire shall furnish the Service with all necessary information. The Concessionaire shall update the Financial Plan of Annex 3 at least once per calendar year, taking into consideration the real conditions of the period following the previous updating (average annual variation of the general index of consumers' prices, inflation index (EUR 15) for ECU, currency exchange rates etc.). The Financial Plan as updated according to the above, shall be notified to the State and shall be attached herein as Annex 3.

### 25.6 Financial Reports

#### 25.6.1 Submission of Annual Financial Statements and Reports

The Concessionaire undertakes the obligation to submit to the State within [one hundred and eighty (180)] days from the end of each financial year:

- i. its annual financial statements which include balance sheets, financial year results, and analysis of net dividends collected by the shareholders;

- ii. the report of the auditors on the financial statements, with their possible comments ;
- iii. report - statement for the financial sources and the disposal of resources in accordance with the sample used by the Concessionaire ;
- iv. the updated audited Financial Plan.

#### **25.6.2** Submission of other Reports or Information Data

The Concessionaire undertakes the obligation to furnish the State with the managing accounts, within [sixty (60)] days from the 1st of January and 1st of July of each year, accompanied by any notes or comments.

The Concessionaire undertakes the obligation to furnish to the State or the European Commission any financial information and data which it has been requested to give in accordance with the terms of the Financial Agreements (such as percentages of coverage of loans and amounts in any reserve account for the repayment of loans).

The Concessionaire shall furnish to the State a report of its activities for the precedent year and a financial and business budget for the next year.

#### **25.6.3** Audits

The Concessionaire undertakes the obligation to hire an independent auditing company, of an international reputation, which will review the accounts of the Concessionaire and shall prepare a report, a summary of which will be given to the State.

The State is entitled to audit at its own expenses the books and financial statements of the Concessionaire, either with its personnel or through an independent auditing company, provided these audits will be timely notified to the Concessionaire and shall be performed at time intervals which do not impede the regular functioning of the Concessionaire.

### **26. CONFIDENTIALITY**

The Parties are not bound by confidentiality obligations with regard to the furnishing of elements and information relative to the Project. The principles and practice followed in contracts for such projects shall however be respected.

## **27. ASSIGNMENT AND SECURITY**

- 27.1** During the whole period of the Concession Contract, the Concessionaire shall be entitled freely and without any limitations, to assign in whole or in part to the Lenders, any of its rights arising hereunder and the right to collect the revenues from the tickets and the tickets' subsidy of article 15 herein and the revenues from the other exploitations of the Project of article 3.1.3.4. herein.
- 27.2** Such assignment shall be performed with a private document and shall become valid, enforceable and binding for the State upon notification to the State of all documents relevant to the assignment.
- 27.3** As for the rest, the provisions of [RELEVANT LEGISLATION] shall be applicable in this Contract too, for its whole duration.
- 27.4** During performance of the Contract, execution of the whole or parts of the Project by the Constructor or the Administrator or their subcontractors as specifically provided for in article 10 herein, shall not be considered according to the provisions set out herein as assignment of the Project or substitution of the Concessionaire, even if the above have modified their company structure or expanded their participation or merged with other entities or formed a Joint Venture with another entity.
- 27.5** Without prejudice to the provisions herein, each member of the Constructor may assign to a subsidiary company, part or whole of its rights and obligations under the Construction Contract. Such assignment is only possible further to the prior consent of the State which the latter shall not unreasonably deny. Such assignment shall be valid upon its notification to all relevant Parties.

## **28. CHANGE IN LEGISLATION**

- 28.1** A Change in Current Legislation, which results in the application of, paragraphs 28.2. and 28.3. that follow, shall be considered as one which:
- 28.1.1** materially and adversely affects the design and construction of the Works, by means of an increase of the cost,
- 28.1.2** materially and adversely affects the Operation and Maintenance cost of the Metro, or

- 28.1.3** creates material discriminations against the Metro users and/or the Concessionaire and/or against any entities exploiting similar transportation means in [COUNTRY] in general,
- 28.1.4** modify materially the tax legislation with the exception of income tax legislation, provided that any modifications of the same do not affect specifically the specific transportation means or the specific Project.
- 28.1.5** Modify materially and adversely the Current Legislation relating to currency exchange controls or controls on any transfer of funds relating to the project.
- 28.2** For as long as the production and supply of electricity is controlled pricing wise by the State, a material change of the price of electricity as defined in Annex 3, shall also be considered as a Change in Current Legislation bringing about the consequences of article 28.1.2 herein. An increase of the price of electricity exceeding the escalation of article 6.5.2 herein, shall be considered as a material change of the above price.
- 28.3** Under the above circumstances, if the Change in Current Legislation occurs before the Operation Date, the deadlines defined in articles 7 and 8 and the Concession Period, shall be extended for a period equal to the delay provoked on the critical path of the Time Schedule of the Works as the same is updated from time to time as a result of the Change in the Current Legislation and the State shall compensate the Concessionaire for the Positive Damages in relation to the design, construction, operation and maintenance, for any additional expenses of the Concessionaire and additional financing or/and loan expenses, as a result of such Change in Current Legislation.
- 28.4** If the Change in Current Legislation occurs during the Operation Period, the State shall compensate the Concessionaire for its Positive Damages in relation to the above change (using the Financial Plan as a base of calculation). In each case, the sums payable under 28.2 and 28.3 shall be paid by the State within twenty one (21) days from the end of the calendar month during which the corresponding sums were payable. In case of a dispute, as to any such amount, the matter shall be addressed to the Panel in accordance with the disputes resolution procedure of article 38 and 39 herein, within fifteen (15) days from the notification of the dispute to the other party.

**Comment [ID28]:** It would not be unreasonable to have a materiality provision so that compensation only locks in if financial threshold is exceeded.



## **29. TERMINATION OF THE CONTRACT BY THE CONCESSIONAIRE**

**29.1** Unless otherwise provided for in the Contract the only reasons for termination due to the default of the State are the following:

**29.1.1** failure to grant to the Concessionaire the rights of article 5 herein, within the deadlines provided for by this article 5.

**29.1.2** failure of the State to pay to the Concessionaire the payments due, in accordance with the provisions of articles 18.2.1 and 18.2.2 herein, within the deadlines provided for in these articles.

**29.1.3** failure of the State to fulfil its obligations provided for by article 3.1.3. herein, or suspension of the construction or the operation of the Project, according to paragraph 18.1.5 herein.

**29.1.4** breach by the State of its material obligations, as a result of which the Concessionaire has no more justified interest to continue with the performance of present contract.

**29.2** In case of occurrence of reasons for termination as per paragraphs 29.1.1 and 29.1.3, the Concessionaire may notify the State defining the breach of the State's obligation and in case the default can be remedied, it may request the State to remedy it within a period no shorter than [three (3)] months or within a longer period set by the Concessionaire. If the above default cannot be remedied or if the above default can be remedied but the State has not taken the necessary remedial actions within the above time limit, the Concessionaire may, without prejudice to the provisions or articles 38 and 39 herein, terminate the Contract, by notifying the State and the Bank Agent in writing. In case of occurrence of reasons for termination as per paragraph 29.1.4, the concessionaire may terminate the Contract, notifying in writing the State and the Bank Agent, provided the Concessionaire has directly referred the matter to arbitration, in accordance with article 39 within a deadline of [forty (40)] days from the end of the above period of [three (3)] months and provided the Arbitration Court has decided there were grounds for termination on behalf of the Concessionaire, according to the Contract. In such case, the parties shall use their best endeavours so that the decision of the Arbitration Court is issued within a time limit of three (3) months from the reference of the matter to such court.

In the case of occurrence of reasons of termination, as per above, the following provisions shall be applicable.

**29.3** In case the Contract is terminated by the Concessionaire due to the occurrence of one of the reasons of par. 29.1 of present article, the State shall pay to the Concessionaire as compensation the following :

- a.** The amounts due and not yet paid by the Concessionaire to the Constructor or the Administrator on the basis of the relevant contracts, prior to or as a result of or in connection with the termination. Moreover, the amounts due and not yet paid by the Concessionaire to any other third parties on the basis of the relevant contracts, prior to or as a result of or in connection with the termination, provided that these contracts with third parties have been notified to the Service directly after their signature and that the Service did not raise any reasonable objections within thirty (30) days from their notification regarding their compatibility with the Contract and regarding any discriminatory provision to the detriment of the State, in case of termination or interruption of the Contract.
- b.** The amount of the Concessionaire's Equity which have been invested in the Project but have not been redeemed yet.
- c.** A compensation adequate enough to provide a revenue of the paid Share Capital (ROE) equal to the expected revenue of the Share Capital, calculated with a passengers traffic of [ ] per year or with the actual passengers traffic if the latter is higher than [ ] passengers per year.
- d.** A compensation adequate enough to provide a revenue (ROE) of the drawn Subordinated Loans, equal to the expected revenue of the Subordinated Loans calculated with a passengers traffic of [ ] per year or with the actual passengers traffic if the latter is higher than [ ] passengers per year.

In addition to the above, the State shall pay to the Lenders all amounts which are due and payable and not yet paid prior to or as a result of or in connection with the Contract's termination on the basis of the Financial Agreements.

**29.4** Without prejudice to articles 38 and 39 herein, as of the day the Contract is terminated, all the above amounts become payable and the State shall have all the rights of the Concessionaire on the Works or and the Metro, Site, Documents, Movable Property and the claims from insurance policies, for damages to the project which have not been restored and the Concessionaire shall be deprived of all such rights arising out of this Contract as of the same above date.

The Concessionaire shall pay to the State the insurance compensations it has received for damages to the project which have not been restored until the date of the termination.

**29.5** Provided the State shall have undertaken the fulfilment of all the above obligations, the State shall be entitled if it wishes so, to novate the Construction Contract of the project, with the same terms. The Concessionaire shall include a relevant term in the corresponding Contract facilitating the application of the above term.

**30. CAUSES FOR TERMINATION OF THE CONTRACT BY THE STATE DUE TO THE DEFAULT OF THE CONCESSIONAIRE**

**30.1** Except otherwise provided for in this Contract causes for termination, due to the default of the Concessionaire, shall be the following :

**30.1.1** Insolvency of the Concessionaire (except as a result of merging or reorganisation under terms which have been first approved in writing by the State), unless this event arises as a result of or in connection with an event or circumstance for which the Concessionaire is not liable under this Contract (including Force Majeure Events).

**30.1.2** Failure of the Concessionaire to pay to the Constructor or the Administrator the amounts due to them under the Construction and the Operation and Maintenance Contracts, except for the case where this failure occurs as a result of or in connection to an event or circumstance of which the Concessionaire is not liable under this Contract (including Force Majeure events).

**30.1.3** Abandonment, of the Project's design and construction, by fault of the Concessionaire for a continuous duration of more than [three (3)] months or of the operation and maintenance of the Metro for a continuous duration of more than [one (1)] month except for the case where such abandonment occurs as a result of or in connection to an event or circumstance of which the Concessionaire is not liable under this Contract (including Force Majeure events).

**30.1.4** The failure of the Concessionaire to achieve after the [second] year of operation, an average monthly availability for any year of operation equal or higher than [ ], in spite of the repeated warnings of the State, except for the case where this failure occurs as a result of or in connection to an event or circumstance of which the Concessionaire is not liable under this Contract (including Force Majeure events).

- 30.1.5** The failure of the Concessionaire to achieve after the second year of operation, an average monthly availability for a period of time of six (6) consecutive months equal or higher than [ ], in spite of the repeated warnings of the State, except for the case where this failure occurs as a result of or in connection to an event or circumstance of which the Concessionaire is not liable under this Contract (including Force Majeure events).
- 30.1.6** Continuation of the operation of the Metro in a way which seriously endangers the safety of the users, despite the written instructions of the Service to suspend the operation of the Metro by fault of the Concessionaire.
- 30.1.7** The transfer of shares of the Concessionaire by its shareholders and the modification of the Concessionaire's Articles of Association in breach of the provisions of article 14 herein.
- 30.1.8** Breach by the Concessionaire to meet its material contractual obligations, as a result of which the State has no justified interest to continue with to execution of the Contract.

During the Operation period, the only reasons for termination under this article, shall be the ones defined in articles 30.1.1, 30.1.2, 30.1.3, 30.1.4, 30.1.5, 30.1.6 and 30.1.7.

- 30.2** In case of occurrence of a cause of termination, the State may notify the Concessionaire, with a copy to the Bank Agent, determining the kind of the default and in case the default can be remedied, it shall request the Concessionaire to do so within a period of not less than [three (3)] months or within a greater period set out by the State. The intention of the State to terminate the Contract, in accordance with paragraph 30.4. of this article shall be declared in the same notification.
- 30.3** If the above default cannot be remedied or if the above default can be remedied, but the Concessionaire has not taken the necessary actions in order to remedy it, within the above deadline, or if the Concessionaire has taken the necessary remedial actions but has abandoned same and within fifteen (15) days from the notification of the State for reinstatement of such actions, it has not resumed the remedial works or has not adopted new measures in order to remedy the default, or the Lenders have not exercised their right to substitute the Concessionaire, in accordance with article 32, then the State may

- i. In the cases defined in articles 30.1.1, 30.1.2, 30.1.3, 30.1.5, 30.1.6 and 30.1.7 terminate immediately the Concession Contract notifying the Concessionaire and the Bank Agent in writing.
- ii. In the case of occurrence of the reason for termination of article 30.1.4 or article 30.1.8 during the Construction Period, terminate the Concession Contract, notifying the Concessionaire and the Bank Agent in writing, provided the State has directly referred the matter to arbitration, in accordance with article 39, within a deadline of forty (40) days from the end of the above mentioned period of three (3) months and provided the Arbitration Court has decided there were grounds for termination on behalf of the State, according to the Contract. In such case, the parties shall use their best endeavours so that the decision of the Arbitration Court is issued within a time limit of three (3) months from the reference of the matter to such Court.

In the case of termination, by the fault of the Concessionaire, article 31 shall be applicable.

**30.4** Upon the notification of the termination provided for in article 30.3, during the Operation Period, the State may request from the Concessionaire and the Concessionaire is bound to undertake the continuation of the operation of the Metro in accordance with the provisions of the Contract, for a period of [six (6)] months, which shall begin on the date of the notification and the training of the personnel which shall undertake on behalf of the State the operation and maintenance of the Metro, after the period of time of [six (6)] months, provided the number of persons to be trained shall not exceed [ ].

If the State requests the above, the termination of the Contract shall not occur before the end of the said period of six (6) months.

If the State does not request the above, the termination of the Contract shall occur upon the receipt by the Concessionaire of the notification of the termination in accordance with article 30.3.

### **31. CONSEQUENCES IN CASE THE CONTRACT IS TERMINATED BY THE STATE DUE TO THE DEFAULT OF THE CONCESSIONAIRE**

**31.1** The State may terminate the Concession Contract as a result of the Concessionaire's default in accordance with article 30.

**31.2** Upon termination of the Concession Contract in accordance with article 31.1., all rights of the Concessionaire with regard to the Works or and the

Metro, the Movable Property and the Site, deriving from this Contract, shall be transferred to the State, to which the Concessionaire shall also deliver all Documents related to the Project.

- 31.3** If the termination occurs during the Construction Period, the State may substitute the Concessionaire in this Contract. If the termination occurs during the Operation Period, the State shall substitute the Concessionaire in this Contract. The Concessionaire shall continue in all cases if not bankrupt, the construction or operation of the project according to the terms hereof, until its substitution by the State, or its rejection from the Project. During the same period, the State shall also perform its obligations in accordance with the terms hereof.

Subject to the provisions of articles 31.4.1., 31.5.1, 31.5.2.2 (a), (b) (c), (d) and (f) and 31.6 herein, it is agreed that in case the Concessionaire is substituted by the State, the State shall not be considered as the Concessionaire's successor nor shall the State accept any liability towards the Concessionaire's Creditors.

- 31.4** In case of termination during the Construction Period in accordance with article 31.1., the State shall notify in writing the Concessionaire and the Bank Agent, within [thirty (30)] days at the latest from the termination, if it shall substitute the Concessionaire in the Contract, in which case :

- 31.4.1** If the State chooses not to substitute the Concessionaire, the consequences of [RELEVANT LEGISLATION] shall occur mutatis mutandis. Therefore, the following consequences shall occur, inter alia :

- 31.4.1.1** The State's claim regarding the return of the part of the advance payment, which has not been redeemed, becomes immediately due.

- 31.4.1.2** The Good Performance Letters of Guarantee that correspond proportionally to the non-executed part of the Works and the Good Operation and Maintenance Letters of Guarantee, furnished by the Concessionaire until the termination, may be forfeited to the benefit of the State and at its exclusive judgement, if applicable under the terms of this Contract.

- 31.4.1.3** Penalties imposed to the Concessionaire till the day of termination according to the terms set out herein, shall be forfeited to the benefit of the State.

- 31.4.1.4** The State shall pay to the Concessionaire an amount equal to the value of the Main Works that have been duly executed and the value of the Parallel Works that have been duly executed and have been financed by the Concessionaire, minus the sum of the following amounts a) the

Contribution paid by the State, b) the total amount of the Equity of the Concessionaire (paid or not) in accordance with the Contract. The payment of the above amount shall take place at moments in time corresponding to the obligations of the Concessionaire under the Financial Agreements and in any case not earlier than [one hundred and twenty (120)] days from the date of termination. If the State sustains damage as a result of such termination, which is not compensated by the ownership of the Works, and provided such termination has been the result of a material default of the Constructor under the Construction Contract, the Concessionaire shall assign to the State its claims against the Constructor, under the Construction Contract.

It is clarified that the value of the works that have been duly executed, includes

- a. the cost of the project which has been duly built, in accordance with the Construction Contract,
- b. the costs which have been paid until the finalisation of the termination for the rendering of services of the Independent Engineer, of the Administrator and the members of the Panels of Experts and the costs for the services of external consultants rendering services for the project. These costs cannot exceed the amount mentioned in Table 2, which constitute an element of the offer and is attached in Annex 3 and
- c. the interests of the Loan Capitals which correspond to the above value and expenditure cost until the finalisation of the termination and the bank fees which are defined in the financial agreements until the same date, save for the ones of the Subordinated Loans.

**31.5** Substitution of the Concessionaire by the State during the Construction Period.

**31.5.1** The State may novate the Construction Contract under the same terms. In such case, the State shall have the rights of the Concessionaire and shall assume the obligations of the Concessionaire by virtue of the Construction Contract arising out after the substitution.

**31.5.2** In particular, if the State substitutes the Concessionaire, the following consequences shall occur :

**31.5.2.1** a. The provisions of articles 31.4.1.1., 31.4.1.2. and 31.4.1.3. herein shall be applicable.

b. The provisions of article 31.4.1.2 shall be applicable with the addition that in such case, the letters of guarantee of articles 17.1.1 and 17.1.2 herein shall be forfeited.

**31.5.2.2** Following the Concessionaire's substitution by the State:

- a. The State undertakes the obligations of the Concessionaire towards the Lenders, provided the relevant Financial Agreements have been approved by the State.
- b. The State substitutes the Concessionaire in the insurance policies in force at the day of substitution and until the time period for which the relevant premiums have been paid, the issue of additional acts not being required, but does not undertake the payment of delayed premiums, the Concessionaire being obliged to include a relevant term in the insurance policies.

The State substitutes also the Concessionaire in the claims under the insurance policies with regard to the Works.

- c. The State may terminate without being obliged to pay any compensation, the employment of the totality or part of the Concessionaire's personnel. Any legal compensations shall be borne by the Concessionaire.  
The State may continue to engage part of the Concessionaire's personnel, following special arrangements to be made with this personnel.
- d. The State may novate the Construction Contract under the same terms. In such case, the State shall have the rights and assume the obligations of the Concessionaire by virtue of the Construction Contract, arising after the novation of this contract.

**31.6** In case of termination during the Operation Period in accordance with article 31.1., the following consequences shall occur :

- a. All revenues from the Metro exploitation, belong to the State.
- b. Disposable cash and reserve funds of the Concessionaire, as these shall be determined on the day of substitution, become the property of the State. Subject amounts shall be entirely disposed to pay the unpaid Loan Capitals.
- c. The provisions of article 31.4.1.2 herein are applied.



- d. The State undertakes the obligations of the Concessionaire vis-à-vis the Lenders in accordance with the terms set out herein. The above obligation of the State is limited to the Loan Capitals which have not been paid back and their interests up to the day of the substitution, as provided for by the Financial Agreements, from the day of substitution, including any capitalised interest of the grace period and in the case of termination by the State of the Financial Agreements, including the cost of termination of such Agreements.
- e. The State substitutes the Concessionaire in the insurance policies in force on the day of substitution, and until the time period for which the relevant premiums have been paid, the issue of additional acts not being required, but does not undertake the payment of delayed premiums, the Concessionaire being obliged to include in the insurance policies a relevant term.
- The State also substitutes the Concessionaire from the insurance policies in relation to the Works.
- f. The State may terminate without the obligation to pay compensation, the employment of the totality or part of the Concessionaire's personnel. Possible legal compensations shall be borne by the Concessionaire. The State may continue to engage the Concessionaire's personnel following special agreements to be made with the specific personnel.
- g. The Concessionaire shall compensate the State for its Positive Damages provided the termination has occurred due to the reasons of articles 30.1.3, 30.1.4 and 30.1.5 herein..

In the case of a dispute as for the determination of these Positive Damages, the dispute shall be resolved by the procedure of article 39 herein.

- 31.7** In the case of either article 29, or 31, if the party in default considers that termination of the Contract should not have occurred in accordance with the terms set out herein, the dispute shall be resolved according to the procedure of articles 38 and 39. If it is finally judged that the termination of the Contract should not have occurred, the party in default is entitled to terminate the Contract for this reason due to the fault of the other party.

**31.8 Cancellation of Termination**

Termination of Contract either in accordance with article 29 or article 31 can be cancelled following the agreement of the State and the

Concessionaire, if the parties agree upon the measures to be taken to confront the damages occurred and the delay which resulted therefrom. In such case the termination is considered as null and void. The cancellation of termination shall become effective when the parties shall sign a relevant agreement, which shall also be notified to the Bank Agent.

## **32. TERMS REFERRED TO THE LENDERS**

- 32.1** The Concessionaire is entitled to provide security to the Lenders and to the providers of the Subordinated Loans in accordance with the terms of article 27 and the Lenders and the providers of the Subordinated Loans, shall be entitled to exercise their rights under the above security without the prior approval of the Parties, unless exercising of their rights under the above security, results to the Lenders or the providers of the Subordinated Loans exercising their rights for substitution, in which case articles 32.4 and 32.5 shall apply. The rights and obligations of the Concessionaire deriving from this Contract, shall in no case be affected by the Lenders exercising their above mentioned rights, neither shall the terms of this Contract referring to its end or termination.
- 32.2** In order for the Lenders and/or the providers of the Subordinated Loans to exercise their right to substitute the Concessionaire in accordance with article 30.3, they shall define through the Bank Agent, a legal entity (the “Substitute Entity”) which, without prejudice to the terms of this article, shall substitute the Concessionaire, and shall have all rights of this Contract and shall undertake towards the State all the obligations arising therefrom.
- 32.3** Substitution shall take place, in case the State approves the Substitute Entity. The State shall not withhold its approval, unless according to its reasonable judgement, the Substitute Entity does not possess the legal, financial and/or technical capabilities to fulfil the Concessionaire’s obligations deriving from this Contract (including its capability to operate the Metro safely). The State is entitled to receive from the Bank Agent or/and the Substitute Entity, all information it may reasonably require in order to establish whether above requirements are satisfied.
- 32.4** If the Lenders as well as the providers Lenders of the Subordinated Loans wish to exercise their right to substitute the Concessionaire in accordance with this article, and the Concessionaire denies or delays to deliver the Project to the Substitute Entity, the State is entitled to reject the Concessionaire from the Project and to install the Substitute Entity in its place. The State shall exercise its above right, following the relevant request of the Bank Agent, without delay.

32.5 In case the Concessionaire is substituted by the Substitute Entity, article 31.3 herein shall be proportionally applied.

### 33. END OF CONTRACTUAL DURATION

#### 33.1 Transfer / Delivery of the Project

33.1.1 At the end of the Concession Period, the Concessionaire undertakes the obligation to deliver the Metro and to transfer to the State all its rights regarding the Metro and the things it is consisted of.

33.1.2 The Concessionaire shall deliver in good condition having regard to fair wear and tear and free from defects, in operation, and at a high servicing level, in all cases in accordance with the requirements of the Contract, all properties, structures, installations, immovable equipment and Movable Property, required for the safe and of a high servicing level, operation of the Metro, including all improvement and updated interventions, executed by the Concessionaire during the Operation Period, as well as all structures, installations, immovable equipment and Movable Property, required for the maintenance and operation of the Metro. The Concessionaire shall also deliver, all spare parts in the categories and quantities defined by the average of the category, and the quantities of spares found in the Metro warehouses during the last [five (5)] years of the Concession Period. The Concessionaire shall furnish to the State all data reasonably required by the latter upon which the above determination was based.

33.1.3 Three (3) months before the end of the Concession Period, the State shall notify in writing the Concessionaire of its intention to come after the end of the Concession Period into the rights and obligations of certain employment contracts or other contracts or independent services contracts entered by the Concessionaire or the Administrator within the framework of the design, construction, commissioning, completion, maintenance, operation, administration and development of the Metro, which were imperative for its operation. In such case, the above mentioned contracts shall be continued with the consent of the third parties which have entered into such contracts with the Concessionaire and the Administrator and with no other condition after the transfer and substitution according to the above. The State shall in no case be obliged to undertake the above rights and obligations, unless it decides to continue the above contracts, in which case it shall undertake the responsibilities which derive therefrom, only after the date of transfer of subject contracts to the State and in all cases after the end of the Concession Period. In all cases, after the end of the Concession Period, the Concessionaire and the Administrator have no obligation or responsibility

whatsoever from the above contracts, with the exception of those obligations which had arisen already till the end of the Concession Period.

- 33.1.4** The Concessionaire shall deliver to the State, all items and equipment of the Metro in accordance with the provisions hereof, which are registered in its auditing books. In case the above cannot be traced, the Concessionaire shall replace them at its own expenses except if, to the judgement of the Independent Engineer, the above is not necessary for the operation and maintenance of the Metro.
- 33.1.5** [Six (6)] months before the end of the Concession Period, the Independent Engineer shall proceed to the relevant check and recording of the condition of the Metro as well as its quality of operation, in accordance with the Contract. The Independent Engineer shall submit the relevant report with the above results to the State and the Concessionaire, [three (3)] months at the latest before the end of the Concession Period. [Three (3)] months, at the latest, before the end of the Concession Period, the Concessionaire and the State shall appoint authorised representatives for the take - over of the Metro, by notifying each other in writing in accordance with article 37 and article 1.3. The above representatives shall proceed with the take - over of the Metro and at the end of the Concession Period, shall sign a take-over protocol, which shall include all items referred to in articles 33.1.2, and 33.1.4. Without prejudice to article 33.2 lack of co-operation between the representatives of the Concessionaire with the representatives of the State, does not bar or impede the delivery of the Metro to the State upon expiry of the Concession Period.
- 33.1.6** Take - over of the Metro shall be concluded upon signing the takeover protocol in accordance with article 33.1.5. To the extent the Concessionaire's representatives do not sign subject protocol, the signature of the State's representatives is sufficient for the transfer and take - over of the Metro, without prejudice to article 33.2.

**33.2** **Default in respect of Take - over**

In case the Concessionaire denies or delays to deliver the Metro according to article 33.1., or due to the execution of the works pursuant to article 33.4, the State is entitled to expel the Concessionaire and to replace it in the operation and maintenance of the Metro, without the latter being released from its obligations with respect to the maintenance, delivery of the project, in accordance with article 33.1.2.

In case the delivery of the Metro in accordance with the provisions of article 33.1, is delayed by reasons beyond the sphere of responsibility of the Concessionaire, for more than one (1) month after the end of the

Concession Period, the Concessionaire shall be discharged of its responsibilities regarding the operation and maintenance of the Metro, and the delivery of the Metro shall be considered as effected by means of a legal presumption. The Concessionaire shall assist the State in any suitable way and shall take all reasonable and appropriate actions to enable the quickest completion of the take - over procedure.

### **33.3 Transfer of Risk**

The transfer of the risk of the Project from the Contractor to the State, shall take place upon take - over of the Metro (actual or by legal presumption) in accordance with the above.

**33.4** In case the Metro is not in good condition, as required by the Contract, having regard to fair wear and tear and at least two months prior to the end of the Concession Contract, the takeover protocol is signed by the State with all the remarks, which the Concessionaire should remedy. In case the Concessionaire disagrees with the above remarks, it shall state its disagreements in writing to the Service and the Independent Engineer. Within reasonable time, the Service shall ascertain or modify the initial remarks, in which case the Concessionaire shall comply, even if it continues to disagree. If the Concessionaire does not comply, the State may take all necessary actions to remedy the above at the expense and on behalf of the Concessionaire, and is entitled to collect the necessary amounts even from the letters of guarantee which the Concessionaire has furnished to the State in accordance with article 17.2.2.3. Any dispute shall be settled with the procedure of articles 38 and 39 hereof and in case of ruling in favour of the Concessionaire, it is entitled to full compensation for the damages it sustained as a result hereof.

**33.5** Following the completion of the necessary works to lift the remarks on the protocol in accordance with article 33.4., the Concessionaire shall notify the State, which shall review and issue within a month, the take-over protocol without remarks. The take-over of the Project shall be considered completed upon signature of the take-over protocol, without remarks. In case the State does not issue the take-over protocol with or without remarks, within the deadlines provided for in article 33.4, due to no fault of the Concessionaire, then take-over shall be considered as completed, by means of a legal presumption at the end of the said deadlines.

**33.6** Upon signature of the take-over protocol without remarks, or the presumed take-over, the results of article 17.2.2.4 shall occur.

33.7 Starting from the date of delivery of the Metro, the Administrator shall assist the State in the operation and maintenance of the Metro during the Maintenance Assistance Period and as defined in Annex 1.

**34. TAXATION CLARIFICATIONS – ADMINISTRATIVE REGULATIONS**

34.1. The Concessionaire shall be taxed on the basis of the existing provisions for income taxation and shall not be considered as technical enterprise to that effect.

34.2 The members of the Constructor will be taxed on the basis of the provisions for technical enterprises executing public works. Each member of the Constructor will issue its own invoices to the Concessionaire regarding its particular scope of works to be performed and will fulfil its own tax obligations. The Constructor will not be considered as a Joint Venture under the meaning of the provisions of [RELEVANT LEGISLATION].

34.3 Equipment imported from [OUTSIDE THE COUNTRY] by the Concessionaire, the Constructor and the contractors with which they have entered into contracts, in order to be used for the needs of the Project, is exempted from duties, levies and charges, provided this equipment is re-exported or returned back to the country of origin when no more needed for the construction or maintenance of the Project.

34.4 On the basis of the current legislation regarding the refund of VAT, the Concessionaire is entitled to a refund of VAT charged on all goods and services rendered to the Concessionaire to the extent that such VAT is in excess of any VAT output. For the implementation of the VAT provisions, the project and any delivery of goods, services and parallel works related to it are considered as a single investment good.

The Concessionaire is entitled to apply for refund at any time if such refund is claimable under 43.4 above. This refund will be made within sixty (60) days from the date of submission of the relevant application for the refund. The State shall pay the Concessionaire for any delay in the refund of the VAT, a default interest on the amount of the VAT to be refunded as of the first day following the sixtieth day of the submission of the relevant application at a rate determined according to [ ] of the [Ministry of Finance] as in force from time to time.

34.5 Any accumulated losses of the Concessionaire may be carried forward to be offset against taxable income of following years, without time limitation

**34.6** The Escalated Total Project Cost decreased by the amount of the Escalated Contribution and any cost and expense of any nature, including interests of the Construction Period which were borne by the Concessionaire before, from and during the Construction Period, shall be depreciated upon the Concessionaire's choice, either with the straight line method provided for by the current legislation during the entire Operation Period or with the method provided for in [RELEVANT LEGISLATION] and in accordance with the procedure provided for in this paragraph. Apart from the above depreciation methods, the Concessionaire shall be entitled to use the depreciation method provided for in [RELEVANT LEGISLATION], with a statement to the competent taxation office which shall be notified to the competent [TAX AUTHORITY] anytime before the commencement of the Operation Period of the Metro.

The depreciation provided for under the present provision, refers to tax depreciation available as a deduction for tax purposes.

**34.7** Any expense borne by the Concessionaire after the issue of the Works Completion Certificate shall be amortized either fully within the year it was incurred or with the straight line method in accordance with the provisions of the current legislation.

**34.8** The Contribution and the Subsidy on the Ticket will form special reserves, that are not subject to income taxation, income tax withholding and stamp duties at the time of their formation. The Escalated Contribution is subject to an annual amortisation during the Operation Period in accordance with article 34.6 along with the amortisation of the Escalated Total Project Cost. The above amortisation of the Contribution shall be subject to income tax. The amount of the Special Reserve which shall be formed from the subsidy on the ticket and which shall be distributed to the shareholders shall be taxed at the time of its distribution on the basis of the existing provisions.

**34.9** The revenues collected by the Concessionaire on behalf of the State in relation to the revenues sharing arrangements provided herein shall not be considered as revenues of the Concessionaire for the purpose of the calculation of the corporation tax on the net profits.

**34.10.** [The provisions of [RELEVANT LEGISLATION] shall also apply to foreign Credit Institutions of Export Credits which are not established in [COUNTRY], provided these institutions grant credits or/and furnish guarantees to the Owner of the Project, or/and the Concessionaire and/or the Constructor for this Project.]

**35. MISCELLANEOUS**

**35.1** This Contract, including its Annexes forms the total and only agreement between the parties regarding the scope of this contract and prevails upon all prior agreements made between the parties regarding this scope.

**35.2** Subject Contract and its Annexes are mutually explanatory and in case of any ambiguity or contradiction between any of the above documents, the Contract and Annex 1 shall prevail over the other documents. In case the ambiguity or contradiction is not raised by applying the above criterion, it will be raised by agreement between the State and the Contractor. Otherwise, the dispute shall be resolved in accordance with articles 38 and 39.

**35.3** Each Party agrees, following the request of the other party, to draw up or prepare any Documents and to take all measures reasonably required to fully enforce this Contract.

**35.4** This Contract may be signed in any number of copies, all of which forms one, and sole contract and any contracting party may sign subject Contract by signing a copy.

**35.5** Nullity or impossibility to execute a term of this Contract, shall not affect the validity, legality and enforceability of its remaining terms. The relevant regulatory vacant shall be completed by explanation, within the framework of the general rules of the ratifying law, good faith and common ethics.

**35.6** Each contracting party, bears the cost and the expenses of the negotiations, drafting and signature of the Contract.

**35.7 Labour Matters**

In view of the particularity of the Works and in order to avoid the unfavourable consequences in the functioning of the town of [LOCATION], the Concessionaire, the Constructor and the Administrator and their subcontractors are entitled to work overtime, or during the night or consecutive shifts as well as during holidays during the whole Construction Period, provided the relevant legislation is met, with the exception of provisions referring to working hours of employees. Relevant permits shall be considered as granted, provided relevant notifications have been submitted to the competent Public Services.



### **35.8**      **Expatriates**

If according to the Concessionaire's opinion, specialised, technical and administrative foreign personnel is needed to be hired from countries outside [COUNTRY], where at least one of the shareholders of the Concessionaire company has its head offices, a branch or a subsidiary, the Concessionaire shall notify the Service in a timely manner, for the causes and the number of persons needed . The Public Service in charge for the issue of the residence permits and the work permits of foreigners, shall issue these permits within [fifteen (15)] days from the submission of the petition, provided the relevant legal conditions for the issue of such permits are met.

### **35.9**      **Police surveillance**

**35.9.1**      The Concessionaire shall allow the access of Police authorities during the whole duration of the Concession Period of the Project and shall co-operate with them for the maintenance of safety and order. It shall also comply with the Authorities' instructions for the safety and police surveillance during the operation of the Project.

**35.9.2**      Police surveillance, as for any public area, belongs to the competent Public Services, which shall maintain the public order in the area of the Metro with their own means.

**35.9.3**      The Concessionaire may use private security in co-operation with local police authorities, without prejudice to article 35.9.2 hereof.

**35.10**      All notifications and correspondence between the parties shall be in the [ ] language. Attached technical texts may be drawn up in the English language.

**35.11**      The present Contract has been signed in [ ] and English and both texts have equal force and effect.

**35.12**      Provisions for people with reduced mobility capacity

For the service of people with special needs, the construction of cradles is foreseen inter alia in Annex 1, for the access of people with reduced mobility capacity.

Moreover, the construction of civil engineering works for the installation of lifts is also foreseen in all the stations, except for [ ], where the installation of cradles is foreseen for the access of people with reduced mobility capacity. The cost for the supply, installation and maintenance of the necessary electromechanical equipment of the lifts shall be borne by the

Concessionaire up to the amount of [AMOUNT AND CURRENCY]. Provided this cost exceeds the above amount, the difference shall be borne by the State. The selection of the contractor who will undertake the supply, installation and maintenance of this electromechanical equipment shall be carried out through a tender procedure by a committee formed by one representative of the State and one representative of the Concessionaire.

## **36. PERMITS - APPROVALS**

### **36.1 Permits**

**36.1.1** The Concessionaire shall submit to the competent Public Services the petitions required, in order for the Permits which are needed for the activities of the Concessionaire under this Contract or as a result thereof to be issued, as well as, the back-up documents which are provided for by the current provisions and a copy of the Official Government Gazette including the ratifying law of this Contract. The Public Services shall grant the required Permits within two (2) months from the submission of the relevant petitions and provided the back-up documents attached therein are complete.

**36.1.2** Shorter deadlines, which may be provided for in this Contract, shall remain in force. In such case the two months deadline provided above, shall be replaced by the shorter deadline provided for herein.

### **36.2 Approvals**

**36.2.1** In all cases where according to this Contract or as of this Contract, an approval is requested by the State, or by the competent Public Service from time to time, then :

**36.2.1.1** The State/Public Service shall approve the Documents submitted or send to the Concessionaire its substantiated objections / comments, with regard to the non compliance of the Concessionaire with its contractual obligations hereunder, within one (1) month from their submission for approval. In case of objections / comments from the State/Public Service according to the above, the Concessionaire shall upgrade respectively the Documents submitted for approval and shall submit them again, in which case the State / Public Service shall approve them within a month. In case of eventual pre-approval of land arrangement or approval of environmental terms, the above deadline shall be three (3) months.

**36.2.1.2** If the Concessionaire disagrees with these remarks of the State / Public Service, it shall consider the matter as a dispute which shall be resolved according to articles 38 and 39 herein.

**36.2.1.3** Longer or shorter deadlines, which may be provided for in this Contract, shall remain in force. In such case, the deadline provided in article 36.2.1.1, shall be replaced by the shorter or longer deadline provided for herein.

## **37. NOTIFICATIONS**

**37.1** All serving of documents, notifications, acknowledgements or communications to any contracting party according to the terms hereof, shall be considered as legally handed over if :

**37.1.1** delivered, against receipt (by hand or dispatched by post), or

**37.1.2** received, in case of a facsimile message, provided the original document with the same content as the facsimile message, is sent within three (3) days from the facsimile's day of dispatch, against receipt.

to or from the place these were addressed to, and to the following addresses:

**STATE** : [ADDRESS]

**CONCESSIONAIRE** : [ADDRESS]

or to any other address which the Parties may specify in writing for this purpose.

**37.2** Written notifications shall also include notifications by facsimile message.

**37.3** Notifications, serving of documents or other acknowledgements received during non working days or hours, shall be considered as received the Business Day following immediately after the day of receipt at the receipt place.

## **38. DISPUTE RESOLUTION - EXPERTISE**

### **38.1 Disputes Resolution**

Any disagreement, claim, or dispute (hereinafter "dispute") between the Parties or between any of the Parties and the Independent Engineer, or between the State and any of the third contracting parties, arising from or

related to present Contract, including any matter in relation to the existence of a breach, the interpretation or the termination of the Contract, if not amicably settled between the Parties, shall be resolved in accordance with the provisions of articles 38 and 39.

Recourse to the disputes resolution procedure of present article, shall not deprive the parties from the possibility to attempt at the same time to settle their dispute in a amicable way, without their settling efforts resulting to the suspension of the disputes resolution procedure, or of the deadlines of present article and article 39, unless the parties agree so.

### **38.2 Procedure before the Technical or Financial Panel**

**38.2.1** Any dispute arising out or related to any statement of opinion, decision, ascertainment or certificate or report or instruction of the Service or the Independent Engineer, and any dispute addressed to the Panel, shall be submitted by any of the Parties to the judgement of the appropriate Panel within the corresponding deadlines or whenever such a deadline has not been defined, within [thirty (30)] days from the day the party has been notified of the relevant statement of opinion, decision, ascertainment, judgement, certificate, evaluation or instruction of the Service or the Independent Engineer or from the time the dispute shall arise.

**38.2.2** Two Panels are formed with subject Contract, the Technical Panel and the Financial Panel, each one consisting of three (3) members.

**38.2.3** The Technical Panel decides upon any issue related to technical matters of the Works, including issues of design, construction, and possible defects of the Metro appearing after completion and may also decide on any monetary claims or matters related or resulting out of such a dispute. The Technical Panel is consisting of three members independent from the parties. Within two (2) months from the Effective Date, the State and the Concessionaire shall appoint one (1) person each, as a member of the Panel. The third member (being the Chairman), is appointed by common decision of the above two members of the Panel within two (2) months from their appointment. In case of disagreement between the members as to the appointment of the third member of the Technical Panel, subject member shall be appointed by the President of the [Supreme Court] of the State following the request of the State or of the Concessionaire.

The fee of the three members of the Technical Panel shall be defined by agreement between the State and the Concessionaire.

In case a member of the Technical Panel dies, resigns, or fails or denies to fulfil its duties, then the Party which appointed this member, if the member

has been appointed by the State or the Concessionaire, or the other two members in the case of the chairman, shall decide within [twenty (20)] days, the replacement of the relevant member and to this effect they shall notify in writing the other member and the other members of the Technical Panel or respectively the parties. In case of a dispute in appointing the new chairman, the provisions of article 38.2.3. shall apply.

**38.2.4** The Financial Panel decides upon all disputes referred to in article 38.2.1. which do not fall within the description given in the first clause of article 38.2.3.

The provision of article 38.2.3. shall be applied *mutatis mutandis* in relation to the formation of the Financial Panel, the fees of its members, the duration of their services and the replacement of its members in case of death, resignation, failure or denial to fulfil their duties.

**38.2.5** The above panels shall have full authority to revise, modify or ascertain any opinion, decision, judgement, certificate, evaluation or instruction of the Service or the Independent Engineer.

**38.2.6** Any recourse to the Panel shall include the following documents:

- a summary of the nature and history of the dispute, relevant actual events and issues which have to be judged.
- the measures requested to be taken by the party seeking recourse.
- copies of the correspondence, reports and other documents which the party seeking recourse wishes to call upon and upon which it bases its request.

**38.2.7** The Panel shall define itself the procedural rules either in a general way or ad hoc.

Without prejudice to the above general provisions, the Panel shall have the following authorities: The chairman of the Panel can decide whether it will follow a hearing procedure or ask for examination of witnesses or if the dispute shall be resolved solely on the basis of written evidence or both. The chairman is entitled to order the written submission of a witness testimony by signed statement, as well as the submission of any Document (or copies thereof) in the possession of any of the parties. The Chairman may request the presence of the Service's and the Concessionaire's or the Independent Engineer's representatives during the procedure and ask them questions or for written clarifications. The chairman of the Technical Panel may request sampling of materials or the performance of on-site tests by experts.

- 38.2.8** Without prejudice to article 38.2.7., the chairman of the Panel defines the date, time and place of the hearing procedure, as well as the procedural rules and calls the parties to attend to it.  
Each Party may attend the procedure of the Panel with or by its legal, technical and / or financial consultants.
- 38.2.9** All decisions of the Panel shall be taken and notified to the parties in accordance with article 38.2.10., within [twenty eight (28)] days from the date the documents of article 38.2.6 were submitted to the Panel. The deadline for the issue of the decision may be extended for another twenty-eight (28) days in special cases, with a particularly substantiated decision of the chairman.
- 38.2.10** Substantiation of each decision of the Panel shall be given in writing. Each decision shall refer to whether the decision has been taken unanimously by the members of the Panel. In case the decision is not unanimous, any different opinion shall be substantiated.
- 38.2.11** The fees and expenses of the members of each Panel, shall be equally divided between the Parties, for each recourse.
- 38.2.12** Any decision of the Panel shall be provisionally enforceable by the Parties until the date of issue of the final decision of the arbitration. The dispute consisting the object of the decision, shall be referred by any Party to arbitration in accordance with article 39, within [forty (40)] days from the notification of the Panel's relevant decision in accordance with article 38.2.9. If no Party refers the decision of the Panel to arbitration within the said period, the decision of the Panel shall become irrevocable and enforceable.
- 38.2.13** The Panel shall be automatically dissolved, two years after the substantial completion of the Works shall be certified with the Works Completion Certificate, unless otherwise agreed by the parties. New Panels shall be established by the parties according to the needs, in which case the provisions of article 38.2. shall be applicable as to the appointment, establishment and their operation, except for the duration of their appointment, which shall be decided by the Parties in each case.

## **39. ARBITRATION**

- 39.1** Any dispute arising out of present Contract or in relation thereto (with the exception of disputes which have not been referred to arbitration within forty (40) days from the serving of the Panel's relevant decision according

to article 38.2.12.), may be referred by any of the Parties to arbitration, where it shall be finally resolved (recourse to any other jurisdiction is excluded), in accordance with the arbitration rules in force from time to time of the [International Chamber of Commerce (ICC)].

The Arbitration Court is consisted by three (3) arbitrators appointed one (1) by the State, one (1) by the Concessionaire and the third by common agreement of the other arbitrators, within [forty (40)] days from the appointment of the second arbitrator or in case an agreement is not obtained within the same deadline from the rise of the dispute, in accordance with the above rules of arbitration of the [I.C.C].

**39.2** The arbitrators shall have full power to expand, revise, correct or confirm any decision, opinion, ascertainment, judgement, certification, evaluation or instruction of the Service or the Independent Engineer or any decision of any Panel.

Pending the arbitration decision, the obligations of both parties shall not be suspended, except if otherwise provided herein.

**39.3** The contracting parties shall not be restricted, before the arbitrators, to evidence or arguments which were brought forward before the Panel.

**39.4** Arbitration shall be held in [LOCATION]. The language of the arbitration shall be [LANGUAGE]. During arbitration procedure special consideration shall be given to the principles of good faith and leniency.

**39.5** The decision of the Arbitration Court shall be final and irrevocable, shall not be subject to any regular or extraordinary legal proceedings, and shall be enforceable on its own, without having to be declared enforceable by the Court. The contracting parties renounce and waive their rights to recourse to any legal proceedings or other means, to any Court or Court Authority, which could have jurisdiction or authority.

#### **40. LAW IN FORCE - INTERPRETATION**

**40.1** The present Contract is governed, interpreted, and executed in accordance with [COUNTRY] Law.

**40.2** In particular, the Contract is governed by the ratifying law which prevails over any other law of a general or specific power in force on the Effective Date, with the exception of laws which are enacted to ensure the application of international treaties. Additionally, for all matters which are not regulated herein, the legislation related to the execution of public works

shall be applied as in force from time to time, or the legislation in relation to public supplies, the legislation for the protection of environment, as well as [RELEVANT LEGISLATION].

- 40.3** Before publication of the ratifying law in the Official Government Gazette, the Contract signed shall evidence its contents, shall certify the approval of the result of the concluded tender by the [MINISTER] and shall certify the completion of the negotiations period with the Concessionaire.
- 40.4** All regulations governing the Project as well as the regulations and specifications which shall be used during performance of design, construction and operation of the Metro, consist by interpretation a unified entirety.
- 40.5** This Contract may only be amended or completed following the written agreement of the parties, under the procedure to be defined in the ratifying law.

**41. OBLIGATIONS OF THE JOINT VENTURE AND ITS MEMBERS TOWARDS THE STATE.**

**41.1** The obligations that the Concessionaire has under this Contract in relation to the construction, operation and maintenance of the Metro, are performed within the framework of both the Construction Contract and the Operation and Maintenance Contract.

**41.2 It is hereby clarified that :**

- a) The Constructor shall undertake, in accordance with the provisions of the Construction Contract, all the obligations of the Concessionaire included in the Concession Contract in relation to the design, the construction, the testing and commissioning of the Works. Consequently and as general rule governing the relations between the Parties and in accordance with the relevant provisions of the Construction Contract, the Constructor shall not have, under the Construction Contract, more rights and obligations towards the Concessionaire than the latter has towards the State under the Concession Contract.

Thus, the Constructor shall be entitled to additional payment, Positive Damages or any other amount or right of any nature, such as extension of construction deadline or of intermediate deadlines that the Concessionaire shall be entitled to, in accordance with any provision of the Concession Contract.



- b) The Administrator shall undertake, in accordance with the provisions of the Operation and Maintenance Contract, all the obligations of the Concessionaire included in the Concession Contract related to the operation and maintenance of the Metro.

Consequently and as general rule governing the relations between the Parties and in accordance with the relevant provisions of the Operation and Maintenance Contract, the Administrator shall not have, under the Operation and Maintenance Contract, more rights and obligations towards the Concessionaire than the latter has towards the State under the Concession Contract.

**41.3** The Joint Venture and its member companies [ ], acting hereby as guarantors, jointly and severally undertake towards the State that :

- a) they will raise and pay any amounts of the Equity necessary to be paid in accordance with the contract herein, which are not covered by the letters of guarantee of articles 17.1.1 and 17.1.2 herein,
- b) they will carry out all obligations and responsibilities undertaken by the Constructor towards the Concessionaire under the Construction Contract, as and when such obligations and responsibilities shall become due and executable in accordance with the provisions of the Construction Contract and the relevant guarantee arising therefrom,
- c) They will carry out or undertake jointly and severally liability for all obligations and responsibilities undertaken by the Administrator towards the Concessionaire under the Operation and Maintenance Contract, as and when such obligations and responsibilities shall become due and executable in accordance with the provisions of the Operation and Maintenance Contract and the relevant guarantee arising therefrom,
- d) they will ensure that the Average Monthly Technical Availability of the Metro for the time period after the first year of operation and throughout the Concession Period shall be equal to [ ], in accordance with the provisions of article 3.1.1. c herein.

**IN WITNESS THEREOF**, the State and the Concessionaire, signed the present Contract through their authorised representatives, on the date set out in the beginning of this Contract.

.....  
[NAME]  
For the State

.....  
[NAME]  
For the Concessionaire

.....  
[NAME]  
For [JOINT VENTURE PARTNER], for and on behalf of the Joint Venture

.....  
[NAME]  
For [JOINT VENTURE PARTNER], for and on behalf of the Joint Venture

.....  
[NAME]  
For [JOINT VENTURE PARTNER], as a member of the Joint Venture

.....  
[NAME]  
For [JOINT VENTURE PARTNER], as a member of the Joint Venture