
VOLUME 2-EPC AGREEMENT

**Design, Engineering, Procurement & Construction of Inter State Bus
Terminal Cum Multilevel Car Parking Cum Commercial Complex at
Katra
on Turnkey Basis
(the “Project”)**

Table of Contents

RECITALS	10
ARTICLE 1	12
DEFINITIONS AND INTERPRETATION	12
1.1 Definitions	12
1.2 Interpretation	21
1.3 Measurements and arithmetic conventions	24
1.4 Priority of Documents and errors/discrepancies	24
SCOPE OF THE PROJECT	25
2.1 Scope of the Project	25
ARTICLE 2A	26
APPOINTMENT OF CONTRACTOR AND KDA’S RIGHTS AND OBLIGATIONS	26
2.1A Appointment of Contractor	26
2.2A Rights of KDA	26
2.3A KDA’s Obligations	26
ARTICLE 3	27
PROJECT ENGINEER	27
3.1 Appointment of Project Engineer	27
3.2 Powers and Duties of the Project Engineer	27
3.3 Delegation by the Project Engineer	28
3.4 Instructions	28
3.5 Remuneration	29
3.6 Replacement of the Engineer	29
3.7 Determination	29
CONTRACTOR’S OBLIGATIONS	29
4.1 Contractor’s Obligations	29
4.2 Performance Security	30
4.3 Payment of Taxes and Compliance with Applicable Laws	31
4.4 Drawings	31
4.5 Construction Works/Works	32
4.6 Inspection by Project Engineer	32
4.7 Employees and Labour	33

4.8 Environment and Safety Requirements.....	34
4.9 Obligations relating to sub-contracts and any other agreements.....	35
4.10 Employment of foreign nationals	36
4.11 Employment and Removal of Contractor's personnel.....	36
4.12 Advertisement on Project Site	36
4.13 Contractor's Care of the Works	37
4.14 Electricity, Water and Gas	37
4.15 Unforeseeable Difficulties	37
4.16 Other Obligations.....	37
ARTICLE 5	38
RIGHT OF WAY	38
5.1 The Site	38
5.2 Procurement of the Site.....	39
5.3 Site to be free from Encumbrances.....	40
5.4 Protection of Site from encroachments.....	40
5.5 Special/temporary right of way	40
5.6 Access to the KDA and Project Engineer	40
5.7 Geological and archaeological finds	41
ARTICLE 6	41
UTILITIES, OBSTRUCTIONS AND TREES.....	41
6.1 Existing utilities.....	41
6.2 Shifting of utilities and removal of obstructions.....	41
6.3 New utilities.....	42
6.4 Felling of trees	42
ARTICLE 7	43
DESIGN AND CONSTRUCTION OF THE PROJECT	43
7.1 Obligations prior to commencement of Works	43
7.2 Design and Drawings.....	44
7.3 Construction of the Project.....	46
7.4 Maintenance during Construction Period.....	47
7.5 Extension of Time for Completion.....	47
ARTICLE 8	49
QUALITY ASSURANCE, MONITORING AND SUPERVISION	49

8.1 Quality of Materials and Workmanship	49
8.2 Quality control system	49
8.3 Methodology	50
8.4 Inspection and technical audit by KDA	50
8.5 External Audit.....	50
8.6 Audit.....	51
8.7 Monthly progress reports	51
8.8 Inspection	51
8.9 Samples.....	52
8.10 Tests	52
8.11 Examination of work before covering up	52
8.12 Rejection	53
8.13 Remedial Work.....	53
8.14 Delays during Construction.....	53
8.15 Quality control records and documents.....	54
8.16 Video recording	54
ARTICLE 9	54
VARIATIONS/CHANGE OF SCOPE.....	54
9.1 Variations/ Change of Scope	54
9.2 Procedure for Change of Scope	55
9.3 Payment for Change of Scope	56
9.4 Restrictions on Change of Scope.....	56
9.5 Power of KDA to undertake works.....	56
ARTICLE 10.....	57
PAYMENT OF CONTRACT PRICE AND COMPLETION CERTIFICATE	57
10.1 Contract Price	57
10.2 Mobilization Advance	58
10.3 Procedure for estimating stage wise payment for the Project	58
10.4 Stage wise Statement for Works	59
10.5 Stage wise Payment for Works	59
10.6 Payment of Damages	60
10.7 Time of Payment and Interest	60
10.8. Price Adjustment for the Works	61

10.9	Limit of Price Adjustment	61
10.10	Final Statement for Construction Works	61
10.11	Discharge	62
10.12	Final Payment Certificate	62
10.13	Change in law	63
10.14	Correction of Certificates	63
10.15	Completion Certificate	63
10.16	Rescheduling of Tests	64
10.17	Taking Over	64
10.18	Clearance of Site	65
ARTICLE 11		65
DEFECTS LIABILITY		65
11.1	Defects Liability Period	65
11.2	Cost of Remedying Defects	65
11.3	Contractor's failure to rectify Defects	66
11.4	Contractor to Search	66
ARTICLE 12		67
LIABILITY AND INDEMNITY		67
12.1	General indemnity	67
12.2	Indemnity by the Contractor	67
12.3	Notice and contest of claims	68
12.4	Defense of claims	68
12.5	No consequential claims	70
12.6	Survival on Termination	70
ARTICLE 13		70
INSURANCE		70
13.1	Insurance during Agreement Period	70
13.2	Notice to KDA	71
13.3	Evidence of Insurance Cover	72
13.4	Remedy for failure to insure	72
13.5	Waiver of subrogation	72
13.6	Contractor's waiver	72
13.7	Cross Liabilities	73

13.8	Accident or injury to Workmen	73
13.9	Insurance against Accident to Workmen	73
13.10	Insurance for Indirect Political Events.....	74
13.11	Responsibility for Amounts not recovered.....	74
13.12	Application of insurance proceeds	74
13.13	Compliance with Policy Conditions	74
ARTICLE 14.....		74
FORCE MAJEURE		74
14.1	Force Majeure	74
14.2	Non-Political Event	74
14.3	Indirect Political Event	75
14.4	Political Event	76
14.5	Duty to report Force Majeure Event	77
14.6	Effect of Force Majeure Event on the Agreement	78
14.7	Termination Notice for Force Majeure Event	78
14.8	Termination Payment for Force Majeure Event	79
14.9	Dispute resolution	80
14.10	Excuse from performance of obligations	80
ARTICLE 15		81
SUSPENSION OF CONSTRUCTION.....		81
15.1.	Suspension of Construction Work for Contractor's failure	81
15.2	Extension of Time on account of Suspension.....	81
15.3	KDA to act on behalf of Contractor	82
ARTICLE 16.....		82
TERMINATION.....		82
16.1	Termination for Contractor Default	82
16.2	Termination for KDA Default.....	85
16.3	Termination for KDA's convenience.....	86
16.4	Requirements after Termination	86
16.5	Termination Payment.....	87
16.6	Other rights and obligations of KDA	88
16.7	Survival of rights	88
ARTICLE 17.....		89

DISPUTE RESOLUTION	89
17.1 Amicable Resolution	89
17.2 Arbitration	89
17.3 Adjudication by Regulatory Authority or Commission.....	90
ARTICLE 18.....	90
REPRESENTATIONS AND WARRANTIES, DISCLOSURE.....	90
18.1 Representations and Warranties of the Contractor	90
18.2 Representations and Warranties of KDA	94
18.3 Disclosure	95
ARTICLE 19.....	95
MISCELLANEOUS.....	95
19.1 Assignment and Charges.....	95
19.2 Interest and Right of Set Off	95
19.3 Governing Law and Jurisdiction	96
19.4 Waiver of Immunity	96
19.5 Waiver	96
19.6 Survival.....	97
19.7 Amendments.....	97
19.8 Notices	97
19.9 Severability.....	98
19.10 No Partnership	99
19.11 Language	99
19.12 Third Parties	99
19.13 Exclusion of Implied Warranties etc.	99
19.14 Counterparts	99
19.15 Confidentiality	99
19.16 Copyright and Intellectual Property Rights	100
19.17 Liability for review of Documents and Drawings	100
19.18 Delayed payments.....	101
19.19 Entire Agreement	101
SCHEDULES.....	103
SCHEDULE – A	103
Annex - I	104

Annex - II.....	106
SCHEDULE - B.....	111
SCHEDULE – C	135
SCHEDULE - D	136
SCHEDULE – E	147
SCHEDULE - F.....	152
SCHEDULE - G	153
SCHEDULE - H	154
SCHEDULE - I.....	156
SCHEDULE - J.....	157
SCHEDULE – K.....	159
SCHEDULE – L.....	160
SCHEDULE – M	161
SCHEDULE - N	162
SCHEDULE - O	163

**ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT
ON TURNKEY BASIS**

Between

**Katra Development Authority,, Katra
(KDA/Authority)**

and

M/s(as Selected Bidder/Contractor)

for

Design, Engineering, Procurement & Construction of Inter State Bus
Terminal Cum Multilevel Car Parking Cum Commercial Complex at Katra
on Turnkey Basis (the “**Project**”)

This Engineering, Procurement and Construction Agreement on Turnkey
Basis (**Agreement/EPC Agreement**) is entered into on this the day
of, Two Thousand and at Katra,

BETWEEN

Katra Development Authority having its Head Office at Railway Rd,
Katra, Jammu and Kashmir 182320, (hereinafter referred to as the
KDA/Authority, through its Chief Executive Officer, which expression
shall, unless the context otherwise requires, include its administrators,
successors and assigns) of **ONE PART**;

AND

M/s, (CIN) having its Registered
Office at, a Company incorporated vide Certificate of
Incorporation No.: - issued by Registrar of Companies,
..... under the Indian Companies Act, and having its
corporate office at through its Mr.,
Director (.....), duly authorized in this behalf by way of a
Power of Attorney/Board Resolution dated: - 00.00.201..., hereinafter
referred to as the “**Contractor/EPC Contractor**” which expression shall,
unless the context otherwise requires, include its successors, permitted
assigns and substitutes) of the **OTHER PART**.

RECITALS
WHEREAS:

- A. KDA as part of the development of passenger amenities in the town of Katra and considering the religious significance of and number of religious tourists visiting the place because of shrine of Maa Durga situated therein, is of the view that there is a need for building world class bus terminal and allied infrastructure in the town.
- B. Parking is a major and emergent issue in the town. Considering its significance as referred above there is an urgent need of better bus parking facilities, commercial place for enhancing and streamlining commercial activities and car parking place to cater to existing parking demand. Due to commercialization and addition of new vehicles on roads, demand for parking spaces has been increasing from time to time. KDA is therefore keen to implement the Project as per the description as given in **Schedule B** on the site earmarked for the same **(the “Project Site/Site”)** as described in **Schedule A**. Brief details of the Project are as below

S. No.	Description of the Project	Site Area [in Hectares]	All Inclusive Contract Price [Rs. in Crores]
1	“Design, Engineering, Procurement & Construction of Inter State Bus Terminal Cum Multilevel Car Parking Cum Commercial Complex at Katra on Turnkey Basis.”	128650 sq. m. (12.865 hectares)

- C. KDA has carried out project development work in connection with the Works, including assessment of feasibility and preparation of Indicative Concept Plan provided to the Bidders at the RFQ cum RFP Stage;
- D. KDA, by prescribing technical and commercial terms and conditions, had invited competitive proposals/bids (**“Bids/Proposals”**) by its Request for Qualification cum Request for Proposal Document bearing No.: - Dated

00.00.0000 (the “**RFQ cum RFP**”) for Design, Engineering, Procurement & Construction of Inter State Bus Terminal Cum Multilevel Car Parking Cum Commercial Complex at Katra on Turnkey Basis.

E. After evaluation of the Bids received, KDA accepted the bid of **M/s** , (**the Selected Bidder**) and issued the Letter of Award No.: - Dated: - 00.00.0000 (hereinafter referred to as the “**LoA**”) to the Selected Bidder for Design, Engineering, Procurement & Construction of Inter State Bus Terminal Cum Multilevel Car Parking Cum Commercial Complex at Katra on Turnkey Basis (the “**Project**”) at the all inclusive contract price (the “**Contract Price**”) of Rs. Crore (Rupees Crore Only) requiring the Selected Bidder to inter alia:

- i. Provide KDA, Performance Security in the form of an irrevocable and unconditional bank guarantee from a Bank for a sum equivalent to Rs. 00.00 Crores (Rupees Crores Only) in the form set forth in **Schedule E** hereto, within 15 days of the issuance of LoA alongwith the undertaking for the extension of the same if required, in the format as provided in Annex to Schedule E;
- ii. Deliver to KDA a legal opinion from the legal counsel of the Selected Bidder with respect to the authority of the Selected Bidder to enter into this Agreement and the enforceability of the provisions thereof, within 21 days of the date of issue of LoA;
- iii. execute this Agreement within 30 (thirty) days of the date of issue of LoA;

F. The Contractor has acknowledged the said Letter of Award vide its letter No.: - dated: - 00.00.0000 to KDA and has fulfilled the requirements specified in Recital (E) above as described below: -

I) Performance Security: -

- a. Submitted to KDA a Performance Security in the form of an irrevocable and unconditional Bank Guarantee bearing No.: - Dated: - 00.00.0000 with validity upto 00.00.0000 issued by having one of its branches at for a sum equivalent to Rs. 00.00 Crores (Rupees Crores Only);

-
- b. Further vide their communication dated: - 00.00.0000, M/s, has submitted an UNDERTAKING to the effect of agreeing to extend the validity of the Performance Security as and when required to keep it alive and legally enforceable at all the time during its tenure as required under the EPC Agreement. A copy of the said undertaking is annexed hereto as **Schedule E'**.

II) Legal Opinion from the legal counsel w.r.t. the authority to enter into EPC Agreement.

NOW THEREFORE in consideration of the foregoing, KDA hereby covenants to pay the Contractor, in consideration of undertaking the Project as per the terms herein, the Contract Price or such other sum as may become due and payable under the provisions of the Agreement at the times and in the manner prescribed in the Agreement and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires or are defined in the RFQ cum RFP, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Agreement” means this Agreement, its Recitals, the Schedules hereto and includes any amendments hereto made in accordance with the provisions hereof.

“Applicable Laws” shall mean any statute, law, regulation, ordinance, rule, judgment, rule of common law, clearance, order, decree, by-law, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing by any government authority having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter.

“Applicable Permits” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws by the Contractor in connection with the construction of the Project during the subsistence of this Agreement;

“Appointed Date” means the date on which the Agreement is signed by both the Parties;

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“Authority/KDA” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Bank” shall mean any of SBI and its Associates, Nationalized Bank and any Indian Scheduled Commercial Bank.

“Base Date” means the date 28 days prior to the latest date for submission of the Bid/Proposal;

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“Bid/Proposal” means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the RFQ cum RFP in accordance with the provisions thereof;

“Change in Law” means the occurrence of any of the following after the Base Date:

- (a) the enactment of any new law as may be applicable in the State of Jammu & Kashmir and that has a bearing on the Project;

-
- (b) the repeal, modification or re-enactment of any existing law as may be applicable in the State of Jammu & Kashmir and that has a bearing on the Project;
 - (c) the commencement of any law as may be applicable in the State of Jammu & Kashmir and that has a bearing on the Project, which has not entered into effect until the date of Bid;
 - (d) a change in the interpretation or application of any law as may be applicable in the State of Jammu & Kashmir and that has a bearing on the Project, by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
 - (e) any change in the rates of any of the Taxes or royalties on Materials that have a direct effect on the Project;

“Change of Scope” shall have the meaning set forth in Article 9;

“Change of Scope Notice” shall have the meaning set forth in Sub-clause 9.2.1;

“Change of Scope Order” shall have the meaning set forth in Sub-clause 9.2.4;

“Commencement Date” shall mean the date on which all the following conditions have been fulfilled:

- a. KDA has delivered physical possession of the Site to the Contractor, free from encumbrance;
- b. KDA has paid the Mobilization Advance to the Contractor, subject to fulfillment by the Contractor of the pre conditions for the same as prescribed in Article 10;

“Completion Certificate” shall mean the certificate issued by Project Engineer certifying, inter alia, that the Contractor has completed the Works for the Project as per the provisions of this Agreement.

“Construction Period” means the period commencing on the Commencement Date till the Project Completion Date.

“Contract Price” means the fixed lumpsum of Rs. Crore (Rupees Crore Only) payable to the Contractor in accordance with **Schedule F**.

“Contractor” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Contractor Default” shall have the meaning set forth in Clause 16.1.1;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Contractor requires any reasonable action by the Contractor that must be approved by KDA or the Project Engineer hereunder, the applicable Cure Period shall be extended by the period taken by KDA or the Project Engineer to accord their approval;

“Damages” shall have the meaning set forth in Sub-clause 1.2.1 (t);

“Defect” shall mean any part of the Works which is not in accordance with the Agreement;

“Design” means the planning, surveys and investigations, and preparation of design, calculations and drawings for the Project done in accordance with Clause 7.1;

“Design Quality Manager” shall have the meaning set forth in Sub-Clause 7.1.5;

“Defects Liability Period” means a period of 5 years commencing from the Project Completion Date.

“Dispute” shall have the meaning set forth in Sub-clause 17.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 17;

“Drawings” shall mean all of the plans, manuals, drawings, designs, calculations, samples, models and documents pertaining to the Project in connection with the execution of the Works and shall include “as built” drawings of the Project.

“Document” or “Documentation” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project Site, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Article 6;

“EPC” means engineering, procurement and construction of the Project;

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Article 14;

“GOI” means the Government of India

“GoJ&K/Government/State Government” shall mean Government of State of Jammu and Kashmir

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Contractor in accordance with

this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government Instrumentality” means any department, division or sub-division of the GoI or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the GoI or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 12;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 12;

“Indirect Political Event” shall have the meaning set forth in Clause 14.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Article 13, and includes all insurances required to be taken out by the Contractor under Clauses 13.1, 13.9 and 13.10 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Interim Payment Certificate” or **“IPC”** means the interim payment certificate issued by the Project Engineer for payment to the Contractor in respect of Contractor’s claims for payment raised in accordance with the provisions of the Agreement;

“KDA Default” shall have the meaning set forth in Clause 16.2;

“KDA Representative” means such person or persons as may be authorized in writing by KDA to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of KDA under this Agreement;

“LOA” or “Letter of Award” means the letter of award referred to in Recital (E);

“Materials” means all the supplies, including consumables, used by the Contractor for incorporation in the Works of the Project;

“Material Adverse Effect” means a material adverse effect on (a) the ability of the Contractor to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“Mobilization Advance” shall mean the initial advance payable by KDA to the Contractor to the extent specified in Article 10;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually;

“Person” shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or government agency or any other legal entity.

“Performance Security” shall have the meaning set forth in Clause 4.2;

“Plant” means the apparatus, machinery and vehicles intended to form or forming part of the Works;

“Political Event” shall have the meaning set forth in Clause 14.4;

“Programme” shall have the meaning set forth in Sub-clause 7.1.3;

“Project” means Design, Engineering, Procurement and Construction of Inter State Bus Terminal Cum Multilevel Parking Cum Commercial Complex at Katra on Turnkey Basis i.e. the Project, in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Assets” means all physical and other assets relating to (a) tangible assets such as civil works and equipments including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, drainage works, traffic signals, sign boards, electrical systems, communication systems, rest areas, relief centers, maintenance depots and administrative offices; and (b) Project Facilities situated on the Site;

“Project Completion Date” means the date on which the Completion Certificate is issued under the provisions of Article 10;

“Project Completion Schedule” means the progressive Project Milestones set forth in **Schedule H** for completion of the Project on or before the Scheduled Completion Date;

“Project Engineer” shall have the meaning set forth in Clause 3.1.1.

“Project Facilities” means all the amenities and facilities situated on the Site, as described in **Schedule-B**;

“Project Milestones” means the project milestones set forth in **Schedule H**;

“Quality Assurance Plan” or **“QAP”** shall have the meaning set forth in Clause 8.2.1;

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

“Request for Qualification cum Request Proposal” or “RFQ cum RFP” shall have the meaning set forth in Recital ‘D’;

“Right of Way” means the constructive possession of the Site free from encroachments and encumbrances, together with all the way leaves, easements, unrestricted access and other rights of way, howsoever described in relation to the Site, necessary for construction of the Project in accordance with this Agreement;

“Safety Consultant” shall have the meaning set forth in Sub-clause 4.8.2;

“Safety Requirements” shall have the meaning set forth in Sub-clause 4.8.1;

“Scope of the Project” shall have the meaning set forth in Clause 2.1;

“Site” shall have the meaning set forth in Clause 5.1;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in **Schedule-B**, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Contractor to, and expressly approved by KDA;

“Stage wise Statement” shall have the meaning set forth in Clause 10.4;

“State” means the State of Jammu & Kashmir and **“State Government”** means the government of that State;

“Subcontractor” means any person or persons to whom a part of the Works has been subcontracted and the permitted legal successors in title to such person, but not an assignee to such person;

“Suspension” shall have the meaning set forth in Article 15;

“Taking over Certificate” shall have the meaning set forth in Clause 10.17.1;

“Taxes” means any Indian tax including excise duties, customs duties, goods and services tax, sales tax, local taxes, cess, as may be applicable, and any impost or surcharge of like nature (whether Central, State or local) on the goods, Material, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Termination” means the expiry or termination of this Agreement;

“Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“Termination Payment” means the amount payable by KDA to the Contractor upon Termination in accordance with Article 16;

“Turnkey Basis” shall mean “of or involving the provision of a complete product or service that is ready for immediate use”; OR “supplied or installed in a condition ready for immediate use, occupation, or operation”.

“Works/Construction Works” means all works and things necessary to complete the Project in accordance with this Agreement

“WPI” means the Wholesale Price Index for various commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- a. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- b. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- c. the words "include" and "including" are to be construed without limitation;
- d. any reference to day, month or year shall mean a reference to a calendar day, 30 days or 365 days respectively;
- e. the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement. In case of any discrepancy between the Schedule and the body of the Agreement, the latter shall prevail.
- f. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- g. references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- h. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only

if it is in writing under the hands of duly authorized representative of such Party in this behalf and not otherwise;

- i. any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates.
- j. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder.
- k. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- l. references to “construction” or “building” include, unless the context otherwise requires, survey and investigation, design, developing, engineering, procurement, supply of Plant, Materials, Equipment, labour, delivery, transportation, installation, processing, fabrication, testing and commissioning of the Project including removing of Defects, if any, and other activities incidental to the construction and “construct” or “build” shall be construed accordingly;
- m. references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- n. “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- o. references to the “winding-up”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of

liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

- p. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub- clause shall not operate so as to increase liabilities or obligations of KDA hereunder or pursuant hereto in any manner whatsoever;
- q. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Project Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Project Engineer, as the case may be, in this behalf and not otherwise;
- r. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- s. references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- t. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”).
- u. time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to KDA shall be provided free of cost and in three copies, and if KDA is

required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof;

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done upto 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 Priority of Documents and errors/discrepancies

1.4.1 The Agreement contains the whole agreement and understanding between the Parties with regard to the matters dealt with in this Agreement and supersedes any prior agreement, understanding, arrangement or promises, whether written or oral, relating to the subject matter of this Agreement. The Parties expressly acknowledge that, in relation to the subject matter of this Agreement, each of them assumes no obligations of any kind whatsoever other than as expressly set forth in this Agreement or any agreement, document or instrument executed pursuant to this Agreement. The different sections of the Agreement are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the different sections of the Agreement shall be in accordance with the following sequence:

- (1) the Agreement including any addenda mutually agreed to by the Parties from time to time;
- (2) the Schedules; and
- (3) RFQ cum RFP.

1.4.2 Subject to the provisions of Sub-clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

-
- a. between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - b. between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - c. between any two Schedules, the Schedule relevant to the issue shall prevail;
 - d. between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - e. between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - f. between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

Under this Agreement the scope of the Project (the “**Scope of the Project**”) shall mean and include:

- a. construction of the Project on the Site in conformity with the requirements as laid down in this Agreement together with provision of Project Facilities as specified in Schedule B; and in conformity with the Specifications and Standards set forth in Schedule B itself; The minimum development obligations of the Contractor as provided in Schedule B are to be adhered to by the Contractor. Any deficiency in the same shall be treated as a Contractor Default and shall be dealt with according to the terms of this Agreement.
- b. performance and fulfillment of all other obligations of the Contractor in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.

ARTICLE 2A

APPOINTMENT OF CONTRACTOR AND KDA'S RIGHTS AND OBLIGATIONS

2.1A Appointment of Contractor

KDA hereby appoints the Contractor with an exclusive right, power and authority to undertake the Project in conformity with the technical specifications and conditions as detailed in this Agreement.

2.2A Rights of KDA

In addition to any of the other rights under this Agreement, KDA shall have the following rights:

- a. to appoint Project Engineer within 30 days from the date hereof.
- b. to terminate this Agreement, at any time, after giving 60 days prior notice to the Contractor; and
- c. to exercise such other rights as specified in this Agreement.

2.3A KDA's Obligations

2.3.1A KDA shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder. In addition to any of the other obligations under this Agreement, KDA shall have the following obligations:

- a. to deliver or cause to be delivered possession of the Site to the Contractor, within 30 days from the date hereof;
- b. to pay Mobilization Advance to the Contractor;
- c. to make prompt payment of Contract Price as per the terms of this Agreement; and
- d. to comply with and perform other obligations specified in this Agreement.

2.3.2A KDA agrees to provide support to the Contractor and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- a. upon written request from the Contractor, provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water and

electricity at rates and on terms no less favorable to the Contractor than those generally available to commercial customers receiving substantially equivalent services;

- b. procure that no barriers are erected or placed on or about the Project Site by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
- c. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
- d. support, cooperate with and facilitate, to the extent as prescribed herein, the Contractor in the implementation of the Project in accordance with the provisions of this Agreement;

ARTICLE 3

PROJECT ENGINEER

3.1 Appointment of Project Engineer

3.1.1 KDA shall appoint either its own officer or a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule L, to be the engineer under this Agreement who shall provide an independent third party inspection services to the Project (the “**Project Engineer**”) for the Works.

3.1.2 The appointment of the Project Engineer shall be made no later than 30 (thirty) days from the date of this Agreement and shall be for the Construction Period of the Project and one year thereafter. KDA shall notify the appointment or replacement of the Project Engineer to the Contractor.

3.1.3 The Project Engineer’s staff shall include suitably qualified engineers and other professionals who are competent to assist the Project Engineer to carry out his duties.

3.2 Powers and Duties of the Project Engineer

3.2.1 The Project Engineer, in the representative capacity of KDA, shall have the power and authority to decide on contractual matters between the Parties, and perform the duties and exercise the authority in

accordance with the provisions of this Agreement, subject to obtaining prior written approval of KDA before taking any action.

3.2.2 The Project Engineer shall submit regular periodic reports (at least once every month) to KDA in respect of its duties and authority specified in this Clause 3.2. Provided that such periodic report shall be submitted by the Project Engineer within 7 (seven) days of the beginning of every month.

3.3 Delegation by the Project Engineer

3.3.1 The Project Engineer may, by order in writing, delegate any of his duties and responsibilities to suitably qualified assistants, or may revoke any such delegation, under intimation to KDA and the Contractor.

3.3.2 Any failure of the Project Engineer or his assistants appointed in pursuance of Sub clause 3.3.1, to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Project Engineer or his assistant to reject the work, Plant or Materials, not in accordance with the Agreement and the Specifications and Standards.

3.4 Instructions

3.4.1 The Project Engineer may issue to the Contractor (at any time) instructions for the remedying of any Defects. The Contractor shall take instructions only from the Project Engineer or from an assistant to whom the appropriate authority has been delegated under Clause 3.3.

3.4.2 Subject to and in accordance with this Clause 3.4 any instruction issued by the Project Engineer to the Contractor constituting a Change of Scope shall be in accordance with the provisions of Article 9.

3.4.3 The instructions issued by the Project Engineer or by his delegated assistant shall be in writing. However, if the Project Engineer or his delegated assistant issues any oral instructions to the Contractor, he shall confirm in writing the oral instructions within 2(two) working days of issuing them.

3.4.4 In case the Contractor does not receive the confirmation of the oral instruction within the time prescribed above, the Contractor shall seek the written confirmation of the oral instructions from the Project Engineer or the delegated assistant who issued the oral instructions. In case of failure of the Project Engineer or his delegated assistant to reply to the Contractor within 2 (two) days of the receipt of the communication from the Contractor, the Contractor shall not be bound to carry out the instruction.

3.4.5 The Contractor shall comply with the instructions given by the Project Engineer or his delegated assistant.

3.4.6 In case of any dispute on any of the instructions issued by the delegated assistant, the Contractor may refer the dispute to the Project Engineer, who shall then confirm, reverse or vary the instructions within 3(three) business days of the dispute being referred.

3.5 Remuneration

The remuneration, cost and expenses of the Project Engineer shall be paid by KDA.

3.6 Replacement of the Engineer

KDA may, in its discretion, replace the Project Engineer at any time, but only after appointment of another Project Engineer in accordance with Clause 3.1.

3.7 Determination

3.7.1 The Project Engineer shall consult with each Party in an endeavor to reach agreement wherever the Agreement provides for the determination of any matter by the Project Engineer. If such agreement is not achieved, the Project Engineer shall make a fair determination in accordance with the Agreement taking due regard of all relevant circumstances. The Project Engineer shall give notice to both the Parties of each agreement or determination, with supporting particulars. If the Contractor disputes any instruction, decision, or direction of the Project Engineer, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3.7.2 Each Party shall give effect to each agreement or determination made by the Project Engineer in accordance with the provisions of this Agreement.

ARTICLE 4

CONTRACTOR'S OBLIGATIONS

4.1 Contractor's Obligations

4.1 In executing the Works, the Contractor shall at all times be in compliance with all Applicable Laws, follow Good Industry Practice and strictly adhere to the provisions of this Agreement.

4.2 Performance Security

4.2.1 The Contractor shall, for due and punctual performance of its obligations under this Agreement procure and furnish a bank guarantee from a Bank acceptable to KDA, in the form as set forth in Schedule E, (**"Performance Security"**) for a sum of Rs. 00.00 Crores (Rupees Crores Only) as per the terms of the RFQ cum RFP.

4.2.2 Notwithstanding anything to the contrary stated above, the Contractor shall ensure that Performance Security is valid and enforceable until the Contractor has completed the Project and remedied any Defects during the Defects Liability Period in accordance with the Agreement. The terms of the Performance Security shall specify its expiry date and the Contractor shall extend the validity of the Performance Security until the Project has been completed and any Defects have been remedied.

Provided that if the Agreement is terminated due to any event other than a breach or default by the Contractor, the Performance Security if subsisting as of the Termination Date, shall, subject to KDA's right to receive amounts, if any, due from the Contractor under this Agreement, be duly discharged and released to the Contractor.

4.2.3 KDA shall not make a claim under the Performance Security, except for amounts to which KDA is entitled under the Agreement in the event of:

- a. failure by the Contractor to extend the validity of the Performance Security as described in Clause 4.2.2, in which event KDA may claim the full amount of the Performance Security,
- b. failure by the Contractor to pay KDA an amount due, as either agreed by the Contractor or determined under Sub-clause 13.4 or Article 17 (Dispute Resolution), within 42 days after the agreement, determination, date of coming into effect the amicable resolution or the Award, as the case may be.
- c. failure by the Contractor to remedy a default within 42 days after receiving the KDA's notice requiring the default to be remedied, or
- d. circumstances which entitle KDA to terminate the Agreement under Sub-clause 16.1 (Termination for Contractor Default), irrespective of whether notice of termination has been given or not.

4.2.4 KDA shall return the Performance Security within 42 days after the completion of the Defects Liability Period.

4.2.5 No claim shall be made against such security after the completion of the Defects Liability Period.

4.3 Payment of Taxes and Compliance with Applicable Laws

4.3.1 The Contractor shall comply with Applicable Law and pay all Taxes and fees required by Applicable Law.

4.3.2 The Contractor shall at its own costs and expenses obtain all permits, licenses or approvals, building permissions etc., required for execution of the whole or any part of the Works for otherwise fulfilling any of its obligations under this Agreement.

4.4 Drawings

4.4.1 Preparation of Drawings

(i) The Contractor shall prepare the Drawings, which are necessary for the execution of the Works, which shall be in accordance with the provisions of this Agreement.

(ii) All Drawings relating to the Works shall be subject to review by the Project Engineer as hereinafter provided in the succeeding sub-article 4.4.2.

4.4.2 Review of Drawings

(i) The Contractor shall promptly and in such sequence as is consistent with the provisions of this Agreement, submit required number of copies of the Drawings to the Project Engineer and KDA for their review and approval.

(ii) By forwarding the Drawings to the Project Engineer and KDA pursuant to the preceding sub-article (i), the Contractor shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the provisions of this Agreement including the Applicable Laws.

(iii) The Contractor shall be responsible for any errors in the Drawings at all times and shall correct/ rectify any defects or damage to the Works due to such error at its cost and expense.

4.5 Construction Works/Works

4.5.1 The Contractor shall carry out construction activities to complete the Works in accordance with the Drawings finalized as per provisions of Sub-clause 4.4.

4.5.2 The Works executed by the Contractor shall be wholly in accordance with the provisions of this Agreement.

4.5.3 For the purposes of determining that the Works are being undertaken in accordance with the provisions of this Agreement, the Contractor shall with due diligence carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the Project Engineer and the provisions of this Agreement. The Contractor shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

4.5.4 If the Tests are successful and the Project can be safely and reliably opened for operation, the Project Engineer shall issue the Completion Certificate as per the terms of this Agreement.

4.5.5 The Works shall be deemed to be complete and ready for operations only when the Completion Certificate has been issued by the Project Engineer in accordance with the provisions hereof.

4.6 Inspection by Project Engineer

4.6.1 During the execution of the Works, the Contractor shall provide access to the Project Engineer to inspect, examine and carry out Tests, and check the progress in the execution of the Works.

4.6.2 The Contractor shall submit such documents and reports as are reasonably required by the Project Engineer for issue of Completion Certificate.

4.6.3 The Contractor shall at its own cost make arrangements for adequate and timely supply of electricity, water, gas and other utilities required for execution of the Works and KDA shall in no way be responsible for the same.

4.6.4 At all the time during the Construction Period, the Contractor shall be responsible for keeping any unauthorized person off the Site;

4.6.5 The Contractor shall not subcontract the whole or substantially the whole of the Works without the prior permission in writing from KDA. Where the Contractor subcontracts any part of the Works, it shall not be

relieved from any liability or obligation under this Agreement and the Contractor shall be solely responsible for the acts, defaults and neglects of any Subcontractor, Subcontractor's agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor.

4.6.6 Any Subcontractor supplying plant/fixtures on the Site shall delegate responsible personnel for supervision of erection of such plant/fixtures supplied by it. If instead, personnel of the Contractor supervises the erection of those plant/fixtures, the Subcontractor shall certify that the Contractor's personnel are capable to do so.

4.7 Employees and Labour

4.7.1 The Contractor shall make its own arrangements for the engagement of the employees and labour required for execution of the Works.

4.7.2 The Contractor shall pay rates of wages, and observe conditions of labour and matters related thereto in accordance with Applicable Law.

4.7.3 The Contractor shall provide and maintain all necessary accommodation and welfare facilities for its (and its sub-contractors') staff and labour and shall not permit any of its employees or its sub-contractors, as the case may be, to maintain any temporary or permanent living quarters at the Site.

4.7.4 The Contractor shall employ adequate number of appropriately qualified, skilled and experienced persons to execute the Works. The Project Engineer may require the Contractor to remove any person employed on the Site for Works, who in the opinion of the Project Engineer:

- (i) indulges and/or persists in any misconduct,
- (ii) is incompetent or negligent in the performance of his duties,
- (iii) fails to conform with any provisions of the Agreement, or
- (iv) indulges and/or persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

4.7.5 The Contractor shall at all times take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and labour, and to preserve peace and protection of Persons and property in the neighborhood of the Site against such conduct.

4.8 Environment and Safety Requirements

4.8.1 The Contractor shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for implementing the Project. The Contractor shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project Site, and shall comply with the safety requirements set forth in Schedule-D (the “**Safety Requirements**”). The Contractor shall carry out the environment impact assessment both before and after the execution of the Works herein in consultation with the Pollution Control Board and submit the same to KDA for its review and comments and shall abide by its recommendations, if any, as may be communicated to the Contractor.

4.8.2 The Contractor shall, within a period of 30 days from the date of this Agreement, appoint an experienced and qualified safety consultant (the “**Safety Consultant**”), at its own cost and expenses, for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements. The Safety Consultant shall not be associated with the design and construction of the Project.

4.8.3 The Contractor shall be liable for any loss or damage caused by any negligence in Safety Requirements by the Contractor during the period of this Agreement.

4.8.4 The Contractor shall comply with all applicable safety regulations in its design, access arrangements and operations on the Site.

4.8.5 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations. The Contractor shall ensure that air emissions, surface discharges and effluent from the Site, as a result of its operations, shall not exceed the values prescribed by Applicable Laws.

4.8.6 Subject to the Applicable Laws and the Applicable Permits, the Contractor shall comply with the following:

- (a) the use of explosives by the Contractor shall be subject to the prior approval/authorization of the concerned Government Instrumentality;
- (b) the Contractor shall at all times take all such safety measures as may be required for the importation, handling, transportation, storage and use of explosives and shall, at all times when engaged in blasting

operations, post sufficient warning signages to the full satisfaction of the Project Engineer.

(c) the Contractor shall, by a notice in writing, 7 (seven) days prior to the blasting operation, notify all parties including Government Instrumentalities, private parties concerned or affected or likely to be concerned or affected by blasting operations for their prior approval; and

(d) the Contractor shall pay all license fees and charges which may be required for storage of explosives or in respect of any other matter related thereto.

4.8.7 Accident prevention officer

4.8.7.1 The Contractor shall appoint an accident prevention officer (the **"Accident Prevention Officer"**) at the Site for the Construction Period, responsible for maintaining the requisite safety standards at the Site and for protection against accidents.

4.8.7.2 The Accident Prevention Officer shall be a competent person and shall possess the requisite qualifications as may be required by the Project Engineer for this purpose.

4.8.7.3 The Accident Prevention Officer shall have the authority to issue instructions and take protective measures to prevent accidents. For the avoidance of doubt, the Contractor shall provide the Accident Prevention Officer with all assistance as may be required by him for effective and efficient discharge of his authority throughout the execution of the Works.

4.8.7.4 The Contractor shall within 24 (twenty four) hours notify the Project Engineer in writing about the occurrence of any accident at the Site. Provided that the notice shall contain in detail the reasons for such accident and loss or damage caused by it. It is further provided that the Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Project Engineer may reasonably require.

4.8.8 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Contractor as part of the Contract Price.

4.9 Obligations relating to sub-contracts and any other agreements

4.9.1 The Contractor shall obtain prior written approval of KDA for all sub-contracts.

4.9.2 It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement

notwithstanding anything contained in the agreements with its sub-contractors or any other agreement that may be entered into by the Contractor, and no default under any such agreement shall excuse the Contractor from its obligations or liability hereunder.

4.10 Employment of foreign nationals

The Contractor acknowledges, agrees and undertakes that employment of foreign personnel by the Contractor and/or its sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Contractor. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Contractor or any of its sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Contractor from the performance and discharge of its obligations and liabilities under this Agreement.

4.11 Employment and Removal of Contractor's personnel

4.11.1 The Contractor shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

4.11.2 The Project Engineer may direct the Contractor to remove any member of the Contractor's personnel at any time. Provided that, any such direction issued by the Project Engineer shall contain in detail the reasons for the removal of such person.

4.11.3 The Contractor shall on receiving such a direction from the Project Engineer order for the removal of such person or persons with immediate effect. It shall be the duty of the Contractor to ensure that such persons are evicted from the Site within 7 (seven) days of any such direction being issued in pursuance of Clause 4.11.2. The Contractor shall further ensure that such persons have no further connection with the Works under the Agreement.

4.12 Advertisement on Project Site

The Project Site or any part thereof shall not be used in any manner to advertise any commercial product or services. It is agreed that the Contractor may display citizen information boards with its contents and locations approved by the Project Engineer.

4.13 Contractor's Care of the Works

Subject to the insurance obligations of the Contractor, the Contractor shall bear full risk in and take full responsibility for the care of the Works and Materials, goods and equipment for incorporation therein from the Commencement Date until the Taking-Over Certificate is issued, except and to the extent that any loss of or damage to the same shall arise out of any default or neglect of KDA.

4.14 Electricity, Water and Gas

The Contractor shall be responsible for the provision of all power, water and other services that it may require from time to time.

4.15 Unforeseeable Difficulties

Except as otherwise stated in the Agreement:

- a. the Contractor accepts total responsibility for having foreseen all difficulties and costs of successfully completing the Works; and
- b. the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs.

4.16 Other Obligations

4.16.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall, at its own cost and expense, undertake the survey, investigation, design, engineering, procurement and construction of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

4.16.2 The Contractor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

4.16.3 The Contractor shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

4.16.4 The Contractor shall remedy any and all loss or damage to the Project or any of its constituents from the Commencement Date till the end of the Defects Liability Period at the Contractor's cost if such loss or damage is attributable to the Contractor's acts or omissions.

4.16.5 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

-
- i. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in Schedule C, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - ii. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for Materials, methods, processes and systems used or incorporated into the Project;
 - iii. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its sub-contractors in connection with the performance of its obligations under this Agreement;
 - iv. ensure and procure that its sub-contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Contractor's obligations under this Agreement;
 - v. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - vi. support, cooperate with and facilitate KDA in the implementation of the Project in accordance with the provisions of this Agreement;
 - vii. ensure that the Contractor and its sub-contractors comply with the safety and welfare measure for labour set forth in Schedule D; and
 - viii. The Contractor shall keep, on the Site, a copy of the Agreement, the Drawings and Documents relating to the Project, and Change of Scope Orders and other communications given under the Agreement. The Project Engineer and his authorized personnel shall have the right of access to all these documents at all reasonable times during the Construction Period.

ARTICLE 5

RIGHT OF WAY

5.1 The Site

5.1.1 The site of the Project (the “**Site**”) shall comprise the real estate described in Schedule A in respect of which the Right of Way shall be provided by KDA to the Contractor. KDA shall be responsible to the Contractor for acquiring and providing physical possession of the Site free from all encroachments and Encumbrances, and free access thereto for the execution of the Works.

5.1.2 KDA shall provide Right of Way to the Contractor within 30 (thirty) days of the Commencement Date. If the Right of Way of a part of the Site is not given within 14 days of the time as specified above but not exceeding ten percent of the Construction Period of the Project, for any reason other than Force Majeure or breach of this Agreement by the Contractor, KDA shall pay Damages to the Contractor @ Rs. 10,000 per day.

5.1.3 For the period of the delay in handing over the Right of Way beyond ten percent of Construction Period, the Contractor shall be entitled to the Damages in a sum calculated at the rate of one and a half times the Damages determined on the basis of the formula stated in Sub-clause 5.1.2 above.

5.1.4 In all cases covered by Sub-clauses 5.1.2 and 5.1.3, the Contractor shall be entitled to extension of Construction Period. The period of extension shall be equal to the period of delay in handing over the possession of the Site; provided that if delays involve time overlaps, the overlaps shall not be additive.

5.1.5 The Contractor shall allow access to and use of the Site and/or the Works for laying/installing telegraph lines, electric lines or for such other public purposes as KDA may require. Provided that if such access or use results in Material Adverse Effect, the Contractor shall use its best endeavor to ensure that the impact thereof upon the Works is minimized. In the event of any physical damage to the Site and/or the Works on account thereof, the Contractor shall provide all information and assistance as KDA may reasonably require for seeking compensation or damages from such user of the Site in accordance with applicable Laws.

5.1.6 It is expressly agreed that trees on the Site are the property of KDA.

5.2 Procurement of the Site

5.2.1 After the signing of the Agreement, the KDA Representative and the Contractor shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been given to the Contractor. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall be deemed to constitute a valid evidence of giving the

Right of Way to the Contractor during the Construction Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

5.2.2 On and after signing the memorandum referred to in Sub-clause 5.2.1, and until the issue of the Taking Over Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place.

5.3 Site to be free from Encumbrances

Subject to the provisions of Clause 5.2, the Site shall be made available by KDA to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to KDA on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Construction Period. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances.

5.4 Protection of Site from encroachments

During the Construction Period, the Contractor shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any sub-contractor or other person claiming through or under the Contractor to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to KDA and undertake its removal at its cost and expenses.

5.5 Special/temporary right of way

The Contractor shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Contractor shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

5.6 Access to the KDA and Project Engineer

5.6.1 The Right of Way given to the Contractor hereunder shall always be subject to the right of access of KDA and the Project Engineer and

their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

5.6.2 The Contractor shall ensure, subject to all relevant safety procedures, that KDA has un-restricted access to the Site during any emergency situation, as decided by the Project Engineer.

5.7 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the Agreement with the Contractor for the Works, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to KDA or the concerned Government Instrumentality. The Contractor shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform KDA forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Contractor hereunder shall be reimbursed by KDA. It is also agreed that KDA shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE 6

UTILITIES, OBSTRUCTIONS AND TREES

6.1 Existing utilities

Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the authority of the controlling body of that road, right of way or utility.

6.2 Shifting of utilities and removal of obstructions

6.2.1 The Contractor shall carry out the shifting of underground or over-ground utilities, and remove the obstructions listed in Schedule G to the specified locations within or outside the Site, after KDA has obtained clearances from the owners of utilities or the obstruction by the dates

stated in Schedule G. The Contractor shall not be responsible for the delays and consequential loss/damages in case KDA does not get clearances for shifting of underground or over-ground utilities or removal of obstructions in accordance with the dates stated in Schedule G. In such cases, the Project Engineer shall determine the extension of time and the amount payable to the Contractor.

6.2.2 The Contractor shall be responsible for shifting any underground utility not foreseen and included in Schedule G. The cost of such shifting shall be borne by KDA or by the entity owning such utility. However, KDA shall obtain, at its own cost, permission for shifting of such utilities. The Contractor shall be granted extension of time to be determined by the Project Engineer.

6.3 New utilities

6.3.1 The Contractor shall allow, subject to such conditions as KDA may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. For the avoidance of doubt, it is agreed that use of the Site under this Clause 6.3 shall not in any manner relieve the Contractor of its obligation to construct the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of KDA.

6.3.2 KDA may, by notice, require the Contractor to connect any adjoining road/utility to the Project, and the connecting portion thereof falling within the Site shall be constructed by the Contractor at KDA's cost in accordance with Article 7.

6.3.3 KDA may by notice require the Contractor to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity to the Project, whereupon the connecting portion thereof that falls within the Site shall be constructed by the Contractor on payment of the cost thereof by KDA. The cost to be paid by KDA to the Contractor shall be determined by the Project Engineer.

6.4 Felling of trees

KDA shall obtain the Applicable Permits for felling of trees to be identified by KDA for this purpose if and only if such trees cause a Material Adverse Effect on the construction of the Project. The cost of such felling shall be borne by KDA, and in the event of any delay in felling thereof for reasons beyond the control of the Contractor, the Contractor shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall

be deemed to be owned by KDA and shall be disposed in such manner and subject to such conditions as KDA may in its sole discretion deem appropriate.

ARTICLE 7

DESIGN AND CONSTRUCTION OF THE PROJECT

7.1 Obligations prior to commencement of Works

7.1.1 Prior to commencement of Works, the Contractor shall:

- a. appoint its representative (the **“Project Manager”**) duly authorized to deal with KDA in respect of all matters under or arising out of or relating to this Agreement, for the Construction Period and one year thereafter;
- b. undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- c. make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

7.1.2 Appointment of the Project Engineer by KDA shall take place in accordance with the procedure as laid down in Article 3.

7.1.3 Within 14 days of the Commencement Date, the Contractor shall submit to KDA and the Project Engineer a programme (the **“Programme”**) for the Works, giving the following details:

Part I Contractor’s organization for the Project, the general methods and arrangements for design and construction, environmental management plan, quality assurance plan including Design Quality Plan (the **“DQP”**), safety of Contractor’s personnel and Equipment during construction.

Part II Programme for completion of all major stages and Project Milestones of the Works as specified in Project Completion Schedule set forth in Schedule H.

7.1.4 Design shall be developed in conformity with the Specifications and Standards set forth in Schedule B. In case any relaxation in design standards is required due to restricted Right of Way in certain reaches, especially in built up areas, the alternative design criteria for such reaches may be worked out for review of the Project Engineer.

7.1.5 The Contractor shall proof check the detailed designs, supported with calculations, drawings and certificate from the Contractor's **Design Quality Manager**, having suitable qualification and experience, in accordance with the provisions of this Sub-clause 7.1.5; and evolve a system approach so as to minimize the time required for final designs and construction drawings. Design Quality Manager shall be an independent person not associated with the preparation of the design or construction of the Project. The Design Quality Manager shall certify the fulfillment of design quality requirements.

7.1.6 The Contractor shall submit design, duly certified by Design Quality Manager, to KDA in three distinct stages as indicated below:

- | | |
|-----------|---------------------|
| Stage I | Preliminary Design; |
| Stage II | Final Design; and |
| Stage III | Working Drawings. |

7.2 Design and Drawings

7.2.1 In respect of the Contractor's obligations with respect to the design and drawings of the Project as set forth in Schedule-I, the following shall apply:

- a. The Contractor shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings, to the Project Engineer for review;
- b. The Contractor shall compute, and supply to the Project Engineer, the quantities of various items of works and stages stated in Sub-clause 10.3.1. The total estimated quantities will form the basis for estimating the stage wise payments for the Construction Works in accordance with Clause 10.3.
- c. By submitting the Drawings for review to the Project Engineer, the Contractor shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, the Specifications and Standards and the Applicable Laws;
- d. Within 15 (fifteen) days of the receipt of the Drawings, the Project Engineer shall review the same and convey its observations to the Contractor with particular reference to their

conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Contractor shall not be obliged to await the observations of the Project Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Works at its own discretion and risk;

- e. If the aforesaid observations of the Project Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Contractor and resubmitted to the Project Engineer for review. The Project Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- f. No review and/or observation of the Project Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Project Engineer or KDA be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they and the construction works shall be corrected at the Contractor's cost, notwithstanding any review under this Article 7;
- g. Without prejudice to the foregoing provisions of this Clause 7.2, the Contractor shall submit to KDA for review and comments its Drawings relating to alignment of the Project and KDA shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 7.2 shall apply *mutatis mutandis* to the review and comments hereunder;
- h. The Contractor shall be responsible for delays in submitting the Drawing as set forth in Schedule I caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in that regard from KDA.
- i. Within 90 (ninety) days of the Project Completion Date, the Contractor shall furnish to KDA and the Project Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film or compact discs form or in such other medium as may be acceptable to KDA, reflecting the Project as actually

designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

7.2.2 The Contractor's time and cost impacts of revisions arising from KDA's review of designs caused by the Contractor's non-compliance with the requirements of the Agreement shall be borne by the Contractor, unless there is a Change in the Scope of the Works.

7.2.3 The Works shall be executed in accordance with the Design reviewed by the Project Engineer in terms of the provisions of this Clause 7.2, and shall not be thereafter amended or altered without the prior written approval of KDA.

7.3 Construction of the Project

7.3.1 The Contractor shall set out and undertake construction of the Project as specified in Schedule-B in conformity with the Specifications and Standards set forth in Schedule-B. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The Contractor agrees and undertakes that the construction shall be completed within the Construction Period or any extension of time granted solely according to the provisions of the Agreement.

7.3.2 The Contractor shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-H. In the event that the Contractor fails to achieve any Project Milestone within a period of 30 (thirty) days from the date set forth for such Milestone in Schedule H, unless such failure has occurred due to Force Majeure or for reasons solely attributable to KDA, it shall pay Damages to KDA in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for delay of each day until such Milestone is achieved; provided that if the Construction Period for any or all Project Milestones is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule H shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule H has been amended as above; provided further that in the event Project is completed within the Construction Period, the Damages paid under this Sub-clause 7.3.2 shall be refunded by KDA to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Sub-clause 7.3.2 shall be

without prejudice to the rights of KDA under this Agreement including the right of Termination thereof.

7.3.3 The Parties hereby accept that delays cause loss to the public and the State economy for whose benefit the Project is meant, and that the loss is not susceptible to precise measurement. The Parties hereby agree that the rate of Damages agreed in this Clause 7.3 is a reasonable pre-determined amount, and that the Damages are not by way of penalty.

7.3.4 KDA shall notify the Contractor of its decision to impose Damages in pursuance with the provisions of this Clause 7.3. Provided that no deduction on account of Damages shall be effected by KDA without notifying the Contractor of its decision to impose the Damages. Further, the total amount of Damages under Sub-clause 7.3.2 shall not exceed ten percent of the Contract Price.

7.3.5 In the event that construction of the Project is not completed within 180 (one hundred and eighty) days after the Construction Period, unless the delay is on account of reasons solely attributable to KDA or due to Force Majeure, KDA shall be entitled to terminate this Agreement.

7.4 Maintenance during Construction Period

During the Construction Period, the Contractor shall properly maintain, at its cost, the Project Site and the assets thereon so that the traffic and commercial worthiness and safety thereof are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall timely undertake the necessary repair and maintenance works for this purpose.

7.5 Extension of Time for Completion

7.5.1 In the event the Contractor is entitled to any extension of time (the “EOT”) for Completion, if and to the extent that completion for the purposes of Clause 7.3 is or will be delayed by any of the following causes:

- a. Change of Scope (unless an adjustment to the Time for Completion has been agreed under Sub-clause 9.3 (Change of Scope);
- b. a cause of delay giving an entitlement to EOT under the Agreement; or
- c. any delay, impediment or prevention caused by or attributable to KDA, KDA’s personnel, or KDA’s other contractors on the Site;

the Contractor shall, no later than 28 days from the occurrence of such an event or circumstance, inform the Project Engineer by notice in writing

stating in reasonable detail the event or circumstances giving rise to the claim. Provided that, the period of 28 days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance.

7.5.2 In the event of the failure of the Contractor to submit to the Project Engineer the notice in accordance with the provisions of Sub-clause 7.5.1 within the time specified therein, the Contractor shall not be entitled to any EOT for Completion and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor as mentioned above, KDA shall be discharged from all liability in connection with the claim.

7.5.3 The Project Engineer shall, on the receipt of claim notice in accordance with the provisions of Sub-clause 7.5.1, examine the claim and make his determination of Extension of Time within 90 (ninety) days of the date of receipt of the claim notice. In the event the Project Engineer requires any clarifications to examine the claim, the Project Engineer shall seek the same within 14 (fourteen) days from the date of receiving the claim notice. The Contractor shall, on the receipt of the Project Engineer's communication requesting for clarification, furnish the same within 14 days to the Project Engineer. The Project Engineer shall, within a period of 60 (sixty) days from the receipt of Contractor's clarifications, in consultation with KDA and the Contractor, notify the Contractor and KDA in writing of his determination. In the event of the failure of the Project Engineer to make the determination and notify KDA and the Contractor as provided for above in this Sub-clause 7.5.3, within a period of 90 (ninety) days from the receipt of the notice for EOT in pursuance of this Clause 7.5, the Project Engineer shall be deemed to have extended the time for completion asked for in the Contractor's application.

Provided that when determining each extension of time under this Clause 7.5, the Project Engineer shall review previous determinations and may increase, but shall not decrease, the total EOT.

7.5.4 If the event or circumstance giving rise to the claim notice that has a continuing effect:

- a. this fully detailed claim shall be considered as interim;
- b. the Contractor shall, no later than 7 (seven) days after the close of each month, send further interim claims at monthly intervals, giving the accumulated delay and the extension of time claimed, and such further particulars as the Project Engineer may reasonably require; and

-
- c. the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance.
 - d. The Project Engineer shall examine the final claim in accordance with the provisions of Sub-clause 7.5.3 within a period of 90 days from the date of receipt of the final claim.

ARTICLE 8

QUALITY ASSURANCE, MONITORING AND SUPERVISION

8.1 Quality of Materials and Workmanship

The Contractor shall ensure that the Project Assets and workmanship are in accordance with the requirements specified in the Agreement, Specifications and Standards and Good Industry Practice.

8.2 Quality control system

8.2.1 The Contractor shall establish a suitable quality control mechanism to ensure compliance with the requirements of the Specifications and Standards in accordance with the provisions of this Agreement (the **“Quality Assurance Plan”** or **“QAP”**).

8.2.2 The Contractor shall, within 21 days of the Appointed Date, submit to the Project Engineer for approval, the proposed Quality Assurance Plan which shall include the following:

- a. organization, duties and responsibilities, procedures, inspections, documentation;
- b. quality control mechanism including sampling and testing of Materials, Plant, Project Assets, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for Site activities, proformas for testing and calibration; and
- c. internal quality audit system.

8.2.3 The Contractor shall provide and procure all reasonable assistance, documents, apparatus and instruments, fuel, consumables, water, electricity, labour, Material, samples, and qualified personnel as are necessary for examining and testing the Project Assets and workmanship in accordance with the Quality Assurance Plan.

8.2.4 The cost of supplying samples and testing of Project Assets and workmanship for the tests provided for in the Quality Assurance Plan or in the Agreement shall be borne by the Contractor.

8.2.5 It is hereby expressly agreed by the Parties that the Contractor shall on the directions issued by the Project Engineer carry out such tests including those not provided for in the Agreement that are in accordance with the Good Industry Practice to assess the quality of the Project Assets or workmanship. The Contractor shall bear the cost of the tests and samples if the quality of the Project Assets or workmanship is not in compliance with the Specifications and Standards. In any other case, the cost of test shall be determined by the Project Engineer and shall be payable by KDA.

8.3 Methodology

The Contractor shall, at least 14 days prior to the commencement of the Work in accordance with the Programme or any part thereof, submit to the Project Engineer for approval the methodology proposed to be adopted for executing the Work, giving details of the method of working, equipment to be deployed (capacity and number), traffic management and measures for ensuring quality of construction and safety.

8.4 Inspection and technical audit by KDA

KDA or any representative authorized by KDA in this behalf shall have the right to inspect and review the progress of the construction of Project and issue appropriate directions to the Project Engineer for taking necessary action in the event the Works are not in accordance with the Programme, provisions of this Agreement, the Specifications and Standards, the Quality Assurance Plan and/or the Good Industry Practice. KDA or any representative authorized by KDA in this behalf shall also have the right to assess the quality and quantity of the Materials brought to the Site for incorporation in the construction of the Project and the workmanship of the Works executed. Provided that, KDA shall give at least 7 (seven) days prior notice to the Project Engineer and the Contractor of its intention to carry out such tests and that such tests shall be carried out in the presence of the representatives of the Project Engineer and the Contractor.

8.5 External Audit

Any time during the Works, KDA shall be entitled to appoint an external auditor (technical) to conduct audit of the Contractor's quality system and the Works and notify to the Contractor and the Project Engineer of any deficiencies or Defects in the construction of the Project. The Contractor shall provide any such external auditor appointed by KDA, all assistance as may be required by him in the conduct of his audit. Notwithstanding anything stated in this Clause 8.5, the external audit

shall not affect any of the Contractor's or the Project Engineer's obligations as specified in the Agreement.

8.6 Audit

KDA shall have the right to inspect the accounts and the records relating to the performance of the Contractor and require the accounts to be duly certified by any auditor, appointed by KDA for this purpose. Contractor shall provide all the records and/or information that the auditor may need for the purpose of carrying out such audit.

8.7 Monthly progress reports

During the Construction Period, the Contractor shall, no later than 7 (seven) days after the close of each month, furnish to KDA and the Project Engineer a monthly report on the progress of the Works and shall promptly give such other relevant information as may be required by the Project Engineer.

8.8 Inspection

8.8.1 The Project Engineer and his authorized agents shall at all reasonable times:

- (a) have full access to all parts of the Site and to all places from which natural Materials are being obtained; and
- (b) during production, manufacture and construction (at the Site and, to the extent specified in the Agreement elsewhere), be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of setting up of the Project.

8.8.2 The Contractor shall give the Project Engineer and his authorized agents full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipments. No such activity shall relieve the Contractor from any of its obligations or responsibilities under this Agreement.

8.8.3 The Contractor shall bear the cost of carrying out tests in accordance with the provisions of the Agreement.

8.8.4 The Project Engineer shall submit a monthly inspection report (the "**Inspection Report**") to KDA and the Contractor bringing out the results of inspections and the remedial actions taken by the Contractor in respect of Defects. The Contractor shall rectify and remedy the Defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Project Engineer shall not relieve

or absolve the Contractor of its obligations and liabilities under the Agreement in any manner whatsoever.

8.9 Samples

The Contractor shall submit the following samples of Materials and relevant information to the Project Engineer for pre-construction review in accordance with the procedure for review of design and drawings:

- (a) manufacturer's test reports and standard samples of Materials; and
- (b) samples

Each sample shall be labeled as to origin and intended use in the Project and submitted at the Contractor's cost.

8.10 Tests

8.10.1 For determining that the Construction Works conform to the Specifications and Standards, the Project Engineer shall require the Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Project Engineer from time to time, in accordance with Good Industry Practice for quality assurance.

8.10.2 In the event that results of any tests conducted under this Clause 8.10 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the Project Engineer in this behalf. The Project Engineer shall require the Contractor to carry out or cause to be carried out tests to determine that such remedial measures have brought the Works into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, the cost of such tests and remedial measures in pursuance thereof shall be solely borne by the Contractor.

8.11 Examination of work before covering up

In respect of the Works which Project Engineer is entitled to examine, inspect, measure and/or test before it is covered up or put out of view or any part of the work is placed thereon, the Contractor shall give notice to the Project Engineer whenever any such work is ready and before it is covered up. The Project Engineer shall then either carry out the examination, inspection, measurement or testing without

unreasonable delay, or promptly give notice to the Contractor that the Project Engineer does not require to do so.

8.12 Rejection

8.12.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Materials, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the Project Engineer may reject the Plant, Materials, Design or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of the Agreement.

8.12.2 If the Project Engineer requires the Plant, Materials, Design or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause KDA to incur any additional costs, such cost shall be paid by the Contractor to KDA within 15 (fifteen) days of such request being made.

8.13 Remedial Work

8.13.1 Notwithstanding any previous test or certification, KDA/Project Engineer may instruct the Contractor to:

- a. remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of this Agreement;
- b. remove and re-execute any other work which is not in accordance with the provisions of this Agreement and the Specification and Standards; and
- c. execute any work which is urgently required for the safety of the Project, whether because of an accident, unforeseeable event or otherwise.

8.13.2 If the Contractor fails to comply with the instructions issued under Sub-clause 8.13.1 or fails to correct a Defect within the time specified in the KDA's notice, KDA may assess the cost of having the Defect removed and carry out the said repair work. The cost so incurred by the KDA for the repair work shall be recoverable as debt due from the Contractor by KDA, and may be deducted by KDA from any monies due to be paid to the Contractor.

8.14 Delays during Construction

Without prejudice to the provisions of Clause 7.3, in the event the Contractor does not achieve any of the Project Milestones or the Project Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the Project is not likely to

be achieved by the end of the Construction Period, it shall notify the same to the Contractor, and the Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the Project Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

8.15 Quality control records and documents

The Contractor shall hand over to the Project Engineer all its quality control records and documents for the Works before the Completion Certificate pursuant to Clause 10.15 is issued to the Contractor.

8.16 Video recording

During the Construction Period, the Contractor shall provide to KDA for every calendar quarter, a video recording, which will be compiled into a maximum of 3 (three) hour compact disc or digital video disc, as the case may be, covering the status and progress of Works in that quarter. The video recording shall be provided to KDA no later than 15 (fifteen) days after the close of each quarter after the Commencement Date.

ARTICLE 9

VARIATIONS/CHANGE OF SCOPE

9.1 Variations/ Change of Scope

9.1.1 KDA may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications/alterations to the Works ("**Change of Scope**") before the issue of the Completion Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Article 9.

9.1.2 Change of Scope may include:

- (a) change in specifications of any item of Works;
 - (b) omission of any work from the Scope of the Project; and /
- or

-
- (c) any additional work, Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on Completion.

9.1.3 If the Contractor determines at any time that a Change of Scope will, if adopted, (i) accelerate completion, (ii) reduce the cost to KDA of executing, maintaining or operating the Project, (iii) improve the efficiency or value to KDA of the completed Project, or (iv) otherwise be of benefit to KDA, it shall prepare a proposal with relevant details at its own cost. The Contractor shall submit such proposal, supported with the relevant details and the amount of reduction in the Contract Price to KDA to consider such Change of Scope. KDA shall, within 15 (fifteen) days of receipt of such proposal, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 9 or inform the Contractor in writing of its reasons for not accepting such Change of Scope.

9.1.4 The Contractor shall not make any alteration and/or modification in the Design and scope of the Project considered final under Sub-clause 7.2.3 until and unless the Project Engineer has issued a Change of Scope Order.

9.2 Procedure for Change of Scope

9.2.1 In the event of the Project Engineer determining that a Change of Scope is necessary, it shall issue to the Contractor a notice specifying in reasonable detail the works and services contemplated thereunder (the **"Change of Scope Notice"**).

9.2.2 Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence, provide to KDA such information as is necessary, together with preliminary documentation in support of:

- a. the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- b. the options for implementing the proposed Change of Scope and the effect, if any, each such option would have including the following details:
 - (i) break down of the quantities, unit rates and cost for different items of work.
 - (ii) proposed design for the Change of Scope.

-
- (iii) proposed modifications, if any, to the Construction Period of the Project.

9.2.3 The Contractor's quotation for the Change of Scope shall be based on the prevailing market rates for the various items as per the accepted norms of the industry.

9.2.4 Upon reaching an agreement, KDA shall issue an order (the "**Change of Scope Order**") requiring the Contractor to proceed with the performance thereof. In the event that the Parties are unable to agree, KDA may, by issuing a Change of Scope Order, require the Contractor to proceed with the performance thereof.

9.2.5 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Contractor under this Article 9.

9.3 Payment for Change of Scope

Payment for Change of Scope shall be made in accordance with the provisions of Article 10.

9.4 Restrictions on Change of Scope

9.4.1 No Change of Scope shall be executed unless KDA has issued the Change of Scope Order.

9.4.2 The total value of all Change of Scope shall not exceed the 10% (ten per cent) (plus/minus) of the Contract Price for the Works.

9.4.3 Notwithstanding anything to the contrary in this Clause 9.4, no change made necessary because of any default of the Contractor in the performance of its obligations under the Agreement shall be deemed to be Change of Scope, and such Change of Scope shall not result in any adjustment of the Contract Price or the Construction Period.

9.5 Power of KDA to undertake works

9.5.1 Notwithstanding anything to the contrary contained in Clauses 9.1 and 9.4, KDA may, after giving notice to the Contractor and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding; provided that the Contractor shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to KDA, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor shall be entitled to exercise such option only if it has participated in the bidding process. It is also agreed that the Contractor

shall provide all assistance and cooperation to the person who undertakes the works or services hereunder.

9.5.2 The works undertaken in accordance with this Clause 9.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in the operation of the Project. The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 9.5.

ARTICLE 10

PAYMENT OF CONTRACT PRICE AND COMPLETION CERTIFICATE

10.1 Contract Price

10.1.1 KDA shall make payments to the Contractor for the construction of the Project during the period of the Agreement on the basis of the lump sum Contract Price stated in Schedule F, subject to adjustments in accordance with the provisions of the Agreement.

10.1.2 The Contract Price includes all duties, taxes, and fees that may be levied in accordance with the laws and regulations in force as on the Base Date on the Contractor's Equipment, Plant, Materials and supplies acquired for the purpose of the Agreement and on the services performed under the Agreement. Nothing in the Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India or specifically in the State, on profits made by it in respect of the Agreement. The Contract Price shall not be adjusted for any of the changes in costs as stated in this Sub-clause 10.1.2 except as stated in Sub-clause 10.8.

10.1.3 The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in the Agreement.

10.1.4 Unless otherwise stated in the Agreement, the Contract Price covers all the Contractor's obligations under the Agreement and all things necessary for the proper design, engineering, construction and the remedying of any Defects in the Project until the completion of the Defects Liability Period.

10.1.5 All payments under the Agreement shall be made in Indian Rupees.

10.2 Mobilization Advance

10.2.1 KDA shall make an advance payment (the **“Mobilization Advance”**), equal in amount to 10 (ten) percent of the Contract Price towards mobilization expenses and acquisition of the equipment for the Works.

10.2.2 The Contractor shall apply to the Project Engineer for the amount of the Mobilization Advance within 30 (thirty) days of the Appointed Date, enclosing with it an irrevocable and unconditional guarantee, for an amount equal to that of the Mobilization Advance, from the Bank to remain effective till the complete and full repayment of the said amount with interest thereon.

10.2.3 The Mobilization Advance shall be released to the Contractor within thirty days of the date of receipt of the Contractor's request in accordance with the provisions of Sub-clause 10.2.2 subject to Contractor also submitting evidences that the insurances described in Article 13 have been effected alongwith copies of the insurance policies.

10.2.4 The Contractor shall demonstrate the use of the Mobilization Advance by supplying copies of invoices or other documentary evidence to the Project Engineer within 90 (ninety) days of receiving the Mobilization Advance. The Project Engineer shall issue a certificate of the proper utilization of the Mobilization Advance. The unutilized amount of the Mobilization Advance shall be recovered from the next IPC issued by the Project Engineer.

10.2.5 The amount of Mobilization Advance shall be recovered in equated installments against each stage-wise payment made to the Contractor as per the terms of this Agreement, until it is fully repaid.

10.2.6 If the Mobilization Advance has not been fully repaid by the time specified in clause 10.2.5, or prior to termination under Clause 14.7 (Force Majeure) or Article 16 (Termination), (as the case may be), the whole of the balance then outstanding shall immediately become due and payable by the Contractor to KDA.

10.3 Procedure for estimating stage wise payment for the Project

10.3.1 Payments shall be made to the Contractor by KDA on the basis of percentage of Works completed in slabs of 10% each (**Slab**), such payment to be referred hereinafter as **“Stage wise Payment”**. Upon completion of each Slab of the Works (including

satisfactory completion of Tests) for which a Stage wise Payment is envisaged, the Contractor may seek issuance of Stage Completion Certificate by the Project Engineer. The Project Engineer shall promptly, and in any case within 7 days from the date of request therefor, after satisfying itself that the relevant stage has been completed, issue such certificate.

10.3.2 The Contractor shall base its claim for the Stage wise Payment for each component of the Works on the basis of actual quantity of work executed till the stage for which the Stage wise Payment has become due, supported with documents to the satisfaction of the Project Engineer.

10.4 Stage wise Statement for Works

The Contractor shall submit a stage wise statement (the “**Stage wise Statement**”), in 3 copies, by the 7th (seventh) day after completion of each Slab to the Project Engineer in the form set forth in Schedule N, showing the amount calculated in accordance with Sub-clause 10.3.1, to which the Contractor considers itself entitled. The Stage wise Statement shall be accompanied with the progress reports and any other supporting documents.

10.5 Stage wise Payment for Works

10.5.1 Within 7 days of receipt of the Stage wise Statement from the Contractor pursuant to Clause 10.4, the Project Engineer shall broadly determine the amount due to the Contractor and recommend the same to KDA for release to the Contractor 90 (ninety) percent of the amount so determined as part payment against the Stage wise Statement, pending issue of the Interim Payment Certificate (the “**IPC**”) by the Project Engineer. Within 7 business days of the receipt of recommendation of the Project Engineer, KDA shall make electronic payment directly to the Contractor’s designated bank account.

10.5.2 Within 21 days of the receipt of the Stage wise Statement referred to in Clause 10.4, the Project Engineer shall determine and shall deliver to KDA and the Contractor an Interim Payment Certificate (the “**IPC**”) certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement.

10.5.3 In cases where there is a difference of opinion as to the value of any component/stage, the Project Engineer’s view shall prevail.

10.5.4 Notwithstanding the terms of this Clause 10.5 or any other clause of the Agreement, no amount shall be certified by the Project Engineer

for payment until the Performance Security due in accordance with Clause 4.2 has been provided by the Contractor and has been verified and accepted by KDA.

10.5.5 Payment by KDA shall not be deemed to indicate KDA's acceptance, approval, consent or satisfaction with the work done.

10.6 Payment of Damages

10.6.1 The Contractor shall be entitled to claim Damages for delay in providing the Right of Way sixty days after the scheduled date of providing the Right of Way to the Contractor. The claim shall be made in the form set forth in Schedule N.

10.6.2 The Project Engineer shall issue the IPC within 28 days of the receipt of the claim under Sub-clause 10.6.1, after making adjustments according to the Agreement.

10.7 Time of Payment and Interest

10.7.1 KDA shall pay to the Contractor any amount due under any payment certificate issued by the Project Engineer in accordance with the provisions of this Article 10, or in accordance with any other clause of this Agreement, as may be applicable, as follows:

- (i) no later than 42 (forty two) days from the date of submission of the Stage wise Statement by the Contractor to the Project Engineer for certification in accordance with the provisions of Clauses 10.4 or 10.6 for an "IPC. Provided that, in the event the IPC is not issued by the Project Engineer within the aforesaid period of 42 (forty two) days, KDA shall pay the amount shown in the Contractor's Stage wise Statement and that any discrepancy shall be added to, or deducted from, the next payment certificate issued to the Contractor; and
- (ii) no later than 56 (fifty six) days from the date of submission of the Final Statement for Works along with the discharge submitted to the Project Engineer in accordance with the provisions of Clauses 10.10 and 10.11 for certification, in the case of the Final Payment Certificate.

10.7.2 In the event of the failure of KDA to make payment to the Contractor within the time period stated in Sub-clauses 10.5.1 and 10.7.1, KDA shall be liable to pay to the Contractor interest at the rate of 5 (five) percentage point above the Bank Rate upon all sums remaining

unpaid from the date on which the same should have been paid, calculated in accordance with the provisions of Sub-clause 10.7.1(i) and (ii).

10.8. Price Adjustment for the Works

10.8.1 The amounts payable to the Contractor for the design Works shall not be adjusted during the currency of the Agreement.

10.8.2 The amounts payable to the Contractor for the construction Works, subject to Sub-clause 10.8.1, shall be adjusted during the currency of the Agreement in the IPC issued by the Project Engineer for the increase or decrease in the index cost of labour, cement, steel, Plant, machinery and spares, bitumen, fuel and lubricants and other local material inputs to the construction Works, by the addition or subtraction of the amounts determined by the Project Engineer. Notwithstanding anything stated herein in this Agreement no increase in price escalation shall be allowed in overall beyond 10% of the Contract Price for the Project.

10.8.3 To the extent that full compensation for any increase or decrease in costs to the Contractor is not covered by the provisions of this or other clauses in the Agreement, the prices included in the Agreement shall be deemed to include amounts to cover the contingency of such other increase or decrease of costs.

10.9 Limit of Price Adjustment

In the event of the failure of the Contractor to complete the Project within Construction Period prescribed under Sub-clause 7.3.2, the adjustment of prices thereafter until the completion of the Project shall be made using either the indices or prices relating to prescribed Construction Period, or the current indices or prices, whichever is more favorable to KDA, provided that if an Extension of Time is granted under the Agreement, the above position shall apply to the adjustments made after expiry of such extension of time.

10.10 Final Statement for Construction Works

10.10.1 Not later than 60 days after the issue of the Completion Certificate, the Contractor shall submit to the Project Engineer for consideration six copies of a Draft Final Statement for Works, with supporting documents showing in detail, in the form prescribed by the Project Engineer after consultation with KDA:

- (a) the summary of Contractor's stage wise claims for Works in accordance with the Agreement as submitted in accordance with this Clause 10.10;

-
- (b) the amounts received from KDA against each claim; and
 - (c) any further sums which the Contractor considers due to it from KDA.

If the Project Engineer disagrees with or cannot verify any part of the Draft Final Statement, the Contractor shall submit such further information as the Project Engineer may reasonably require and shall make such changes in the Draft Final Statement as may be agreed between them. The Contractor shall then prepare and submit to the Project Engineer the final statement as agreed (hereinafter called “**Final Statement for Works of the Project**”). If following the discussions between the Project Engineer and the Contractor and any changes to the Draft Final Statement which may not be agreed between them, it becomes evident that a dispute exists, the Project Engineer shall deliver to KDA an IPC for those parts of the Draft Final Statement which are not in dispute. The dispute shall then be settled in accordance with Article 17 (Dispute Resolution).

10.10.2 If the Project Engineer does not prescribe the format referred to in Sub-clause 10.10.1 within 15 days of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

10.11 Discharge

Upon submission of the Final Statement for Works of the Project under Clause 10.10, the Contractor shall give to KDA, with a copy to the Project Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor in respect of the Agreement for the Works arising out of this Agreement. Provided that such discharge shall become effective only after payment due under the Final Payment Certificate issued pursuant to Clause 10.12 has been made.

10.12 Final Payment Certificate

10.12.1 Within 28 days after receipt of the Final Statement for Works under Clause 10.10, and the written discharge under Clause 10.11, the Project Engineer shall deliver to KDA (with a copy to the Contractor) a final payment certificate (the “**Final Payment Certificate**”) stating:

- (a) the amount which, in the opinion of the Project Engineer, is finally due under the Agreement or otherwise; and

-
- (b) after giving credit to KDA for all amounts previously paid by KDA and for all sums to which KDA is entitled, the balance, if any, due from KDA to the Contractor or from the Contractor to KDA as the case may be.

10.12.2 In accordance with Clause 10.7 (Time of Payment and Interest), KDA shall pay to the Contractor the amount which is finally due, less all amounts previously paid by KDA and any deductions for the amounts KDA considers itself to be entitled in accordance with the Agreement after providing the particulars to the Contractor.

10.13 Change in law

10.13.1 If as a result of Change in Law, the Contractor suffers any additional costs for the execution of this Agreement, save and except as expressly provided for in this Clause 10.13 or in accordance with the provisions of this Agreement, the Contractor shall, within 28 (twenty eight) days from the date it becomes reasonably aware of such addition in cost, notify KDA with a copy to the Project Engineer of such additional cost due to Change in Law.

10.13.2 If as a result of Change in Law, the Contractor benefits from any reduction in costs for the execution of this Agreement, save and except as expressly provided for in this Clause 10.13 or in accordance with the provisions of this Agreement, the Contractor shall, within 28 (twenty eight) days from the date it becomes reasonably aware of such reduction in cost, notify KDA with a copy to the Project Engineer of such reduction in cost due to Change in Law.

10.13.3 The Project Engineer shall, within 14 (fourteen) days from the date of receipt of the notice from the Contractor, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.

10.14 Correction of Certificates

The Project Engineer may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the Project Engineer. Further, if any work is not being carried out to the Project Engineer's satisfaction for which a notice has been issued to the Contractor, Project Engineer may omit the value of such work in any IPC.

10.15 Completion Certificate

10.15.1 At least 30 (thirty) days prior to the likely completion of the Project, or a section thereof, the Contractor shall notify the Project Engineer of its intent to subject the Project or a section thereof, to Tests. The date and time of each of the Tests shall be determined by the Project

Engineer in consultation with the Contractor, and notified to KDA who may designate its representative to witness the Tests. The Contractor shall provide such assistance as the Project Engineer may reasonably require for conducting the Tests. In the event of the Contractor and the Project Engineer failing to mutually agree on the dates for conducting the Tests, the Contractor shall fix the dates by giving not less than 10 (ten) days notice to the Project Engineer.

10.15.2 All Tests shall be conducted in accordance with Schedule J. The Project Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project or a section thereof, with Specifications and Standards and if it is reasonably anticipated or determined by the Project Engineer during the course of any Test that the performance of the Project or section or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Contractor to remedy and rectify the Defects or deficiencies. Upon completion of each Test, the Project Engineer shall provide to the Contractor and KDA copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Project Engineer may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project or section thereof with the Specifications and Standards.

10.15.3 Upon completion of Works and the Project Engineer determining the Tests to be successful, it shall forthwith issue to the Contractor and KDA a certificate substantially in the form set forth in Schedule K (the “**Completion Certificate**”). However, before the Completion Certificate is issued, the Contractor shall hand over to the Project Engineer all its quality control documents for the Works.

10.16 Rescheduling of Tests

If the Project Engineer certifies to KDA and the Contractor that it is unable to issue the Completion Certificate because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Contractor shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

10.17 Taking Over

10.17.1 KDA shall take over the Project, within 7 (seven) days of the Project Engineer issuing the Completion Certificate in accordance with the provisions of Clause 10.15.1. KDA shall also issue a taking over

certificate (the “**Taking Over Certificate**”) to the Contractor specifying the details of the Right of Way taken over from the Contractor.

10.17.2 KDA shall not, after the Project Completion Date, have any obligations whatsoever including continuance or regularization of employment, compensation for loss of employment with respect to any person in the employment of or engaged by the Contractor or its sub-contractor(s).

10.18 Clearance of Site

Upon receiving the Completion Certificate under this Article 10, the Contractor shall remove any remaining Contractor's Equipment, surplus Materials, wreckage, rubbish and temporary Works from the Site within a period of 30 (thirty) days. In the event of the failure of the Contractor to do so, it shall pay to KDA compensation at the rate of Rs. 1,00,000/- per day as agreed amount of pre-estimated compensation for delay in clearance of Site.

ARTICLE 11

DEFECTS LIABILITY

11.1 Defects Liability Period

11.1.1 The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project or any section thereof, as the case may be. The Defects Liability Period for the Project shall be 5 (five) years from the date of issue of the Completion Certificate.

11.1.2 The Contractor shall repair or rectify all Defects and deficiencies observed by the Project Engineer in the Project during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the Project Engineer in this behalf; provided that for any notice issued by the Project Engineer 30 (thirty) days before the expiration of the Defects Liability Period, the Contractor shall repair or rectify all Defects and deficiencies within 15 days of the expiration of the Defects Liability Period.

11.2 Cost of Remedying Defects

For the avoidance of doubt, any repair or rectification in accordance with the provisions of Clause 11.1 above, including any additional testing, shall be carried out by the Contractor at its own risk and cost, if and to the extent that such rectification or repair is attributable to:

-
- (a) the design of the Project;
 - (b) Plant, Materials or workmanship not being in accordance with the Agreement and the Specifications and Standards;
 - (c) failure by the Contractor to comply with any other obligation under the Agreement.

11.3 Contractor's failure to rectify Defects

In the event that the Contractor fails to repair or rectify such Defect or deficiency within the period specified in Clause 11.1, KDA shall be entitled to get the same repaired, rectified or remedied at the Contractor's risk and cost so as to make the Project conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with KDA and the Contractor, be determined by the Project Engineer. The cost so determined and an amount equal to twenty percent of the cost as Damages shall be recoverable by KDA from the Contractor and may be deducted by KDA from any monies due or to become due to the Contractor.

11.4 Contractor to Search

11.4.1 The Project Engineer may instruct the Contractor to examine, under the Project Engineer's directions, the cause of any Defect, or faults in the Project or part thereof before the expiry of the Defects Liability Period.

11.4.2 In the event such Defect or fault is attributable to the Contractor, the Contractor shall rectify such Defect or fault within the period specified by the Project Engineer, and shall bear the cost of the examination and rectification of such Defect or faults.

11.4.3 In the event such Defect or fault is not attributable to the Contractor, Project Engineer shall, after due consultation with KDA and the Contractor, determine the amount of the costs incurred by the Contractor for such examination. The Project Engineer shall notify the same to the Contractor, with a copy to KDA, and the said amount shall be added to the Contract Price. For the avoidance of doubt, the Contractor shall rectify such Defect or fault prior to the expiry of the Defects Liability Period.

11.4.4 If the defect or damage is such that it cannot be remedied expeditiously on the Site, the Contractor may, with the consent of the Project Engineer, wherever possible, remove from the Site for the purposes

of rectification, repair or remedy such part of the Works which is defective or damaged.

ARTICLE 12

LIABILITY AND INDEMNITY

12.1 General indemnity

12.1.1 The Contractor will indemnify, defend, save and hold harmless KDA and its officers, servants, agents, consultants, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**KDA’s Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or from any negligence under Agreement or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the KDA’s Indemnified Persons.

12.2 Indemnity by the Contractor

12.2.1 Without limiting the generality of Clause 12.1, the Contractor shall fully indemnify, hold harmless and defend KDA and the KDA’s Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a. failure of the Contractor to comply with Applicable Laws and Applicable Permits;
- b. payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Contractor’s sub-contractors, suppliers and representatives; or
- c. non-payment of amounts due as a result of Material or services provided to the Contractor or any of its sub-contractors which are payable by the Contractor or any of its sub-contractors.

12.2.2 Without limiting the generality of the provisions of this Article 12, the Contractor shall fully indemnify, hold harmless and defend KDA’s Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which KDA’s Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or

other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Contractor or by the Contractor's sub-contractors in performing the Contractor's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Contractor shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, KDA shall promptly make every reasonable effort to secure for KDA a license, at no cost to KDA, authorizing continued use of the infringing work. If the Contractor is unable to secure such license within a reasonable time, the Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

12.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 12 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

12.4 Defense of claims

12.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 12, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the

Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

12.4.2 If the Indemnifying Party has exercised its rights under Clause 12.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

12.4.3 If the Indemnifying Party exercises its rights under Clause 12.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- a. the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or
- b. the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- c. the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- d. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either that:
 - (i) there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if sub Sub-clauses (b), (c) or (d) of this Sub-clause 12.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

12.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 12, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

12.6 Survival on Termination

The provisions of this Article 12 shall survive Termination.

ARTICLE 13

INSURANCE

13.1 Insurance during Agreement Period

13.1.1 The Contractor shall effect and maintain at its own cost, during the Construction Period, the insurances specified in Schedule O and as per the requirements under the Applicable Laws.

13.1.2 KDA and the Contractor in accordance with their respective obligations as provided for in this Agreement shall be liable to bear the cost of any loss or damage that does not fall under the scope of this Article 13 or cannot be recovered from the insurers.

13.1.3 Subject to the exceptions specified in Sub-clause 13.1.4 below, the Contractor shall, save and except as provided for in the Agreement fully indemnify, hold harmless and defend KDA from and against any and all losses, damages, costs, charges and/or claims with respect to:

- (a) the death of or injury to any person; or
- (b) the loss of or damage to any property (other than the Works);

that may arise out of or in consequence of the execution and completion of the Works and the remedying of any Defects therein.

13.1.4 Notwithstanding anything stated above in Sub-clause 13.1.3, KDA shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to

- a. the permanent use or occupation of land at Site or any part thereof by KDA;
- b. the right of KDA to execute the Works, or any part thereof, on, over, under, in or through any land belonging to Site;
- c. the damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with the Agreement; and
- d. the death of or injury to persons or loss of or damage to property resulting from any act or neglect of KDA, its agents, consultants, servants or other contractors, not being employed by the Contractor,

Provided that, in the event of any injury or damage as a result of the contributory negligence of the Contractor, KDA shall be liable to indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims to the extent as may be proportionately determined to be the liability of KDA, its consultants, servants or agents or other contractors not associated with the Contractor in such injury or damage.

13.1.5 Without prejudice to the obligations of the Parties as specified under Sub clauses 13.1.3 and 13.1.4, the Contractor shall maintain or effect such third party insurances (including KDA' property) as specified in Schedule O.

13.2 Notice to KDA

No later than 14 (fourteen) days prior to the Commencement Date, the Contractor shall by notice furnish to KDA, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 13. Within 14 (fourteen) days of receipt of such notice, KDA may require the Contractor to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

13.3 Evidence of Insurance Cover

13.3.1 All insurances obtained by the Contractor in accordance with this Article 13 shall be maintained with insurers on terms consistent with Good Industry Practice. Prior to seven days before the Commencement Date, the Contractor shall furnish to KDA notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Contractor to KDA. The Contractor shall act in accordance with the directions of KDA. Provided that the Contractor shall produce to KDA the insurance policies in force and the receipts for payment of the current premiums.

13.3.2 The Contractor shall notify, with prior approval of the Project Engineer, insurers of changes in the nature, extent, or programme for the execution of the Works and ensure the adequacy of the insurances at all times in accordance with the terms of the Agreement.

13.4 Remedy for failure to insure

If the Contractor shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, KDA shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Contractor, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Contractor.

13.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Article 13 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, KDA, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

13.6 Contractor's waiver

The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, KDA and its assigns, undertakings and their subsidiaries, affiliates, employees,

successors, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Contractor pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

13.7 Cross Liabilities

Any such insurance maintained or affected in pursuance of this Article 13 shall include a cross liability clause such that the insurance shall apply to the Contractor and to KDA as separate insured.

13.8 Accident or injury to Workmen

Notwithstanding anything stated in this Agreement, it is hereby expressly agreed between the Parties that KDA shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or any of its Subcontractor(s), save and except as for the death or injury resulting from any act, omission or default of KDA, its agents or servants. The Contractor shall indemnify and keep indemnified KDA from and against all such claims, proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions or defaults for which KDA shall be liable.

13.9 Insurance against Accident to Workmen

The Contractor shall effect and maintain during Construction Period such insurances as may be required to insure the Contractor's personnel/any persons employed by it on the Project from and against any liability incurred in pursuance of this Clause 13.9. Provided that for the purposes of this Clause 13.9, the Contractor's personnel/any person employed by the Contractor shall include the Subcontractor and his personnel. It is further provided that, in respect of any persons employed by any Subcontractor, the Contractor's obligations to insure as aforesaid under this Clause 13.9 shall be satisfied if the Subcontractor shall have insured against the liability in respect of such persons in such manner that KDA is indemnified under the policy. The Contractor shall require such Subcontractor to produce to KDA, when required, such policy of insurance and the receipt for the payment of the current premium within 7 (seven) days of such demand being made by KDA.

13.10 Insurance for Indirect Political Events

The Contractor shall effect or maintain, at its own cost, insurance, as may be available, for any loss or damage as a result of the risks of Indirect Political Events..

13.11 Responsibility for Amounts not recovered

KDA and the Contractor in accordance with their respective obligations as provided for in this Agreement shall be liable to bear the cost of any loss or damage that does not fall under the scope of this Article 13 or cannot be recovered from the insurers.

13.12 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Contractor and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project.

13.13 Compliance with Policy Conditions

Each Party hereby expressly agrees to fully indemnify the other Party from and against all losses and claims arising from its failure to comply with conditions imposed by the insurance policies effected in accordance with the Agreement.

ARTICLE 14

FORCE MAJEURE

14.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 14.2, 14.3 and 14.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

14.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

-
- a. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
 - b. strikes or boycotts (other than those involving the Contractor, sub-contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 14 (fourteen) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 14.3;
 - c. any failure or delay of a sub-contractor/Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to KDA by or on behalf of such Contractor;
 - d. any judgment or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by KDA;
 - e. the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
 - f. any event or circumstances of a nature analogous to any of the foregoing.

14.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- a. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

-
- b. industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 14 (fourteen) days in an Accounting Year;
 - c. any civil commotion, boycott or political agitation which prevents construction of the Project by the Contractor for an aggregate period exceeding 14 (fourteen) days in an Accounting Year;
 - d. any failure or delay of Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to KDA by or on behalf of such Contractor;
 - e. any Indirect Political Event that causes a Non-Political Event; or
 - f. any event or circumstances of a nature analogous to any of the foregoing.

14.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- a. Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 10.13;
- b. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-Contractors;
- c. unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Contractor or any of the sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;

-
- d. any failure or delay of Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to KDA by or on behalf of Contractor; or
 - e. any event or circumstance of a nature analogous to any of the foregoing.

14.5 Duty to report Force Majeure Event

14.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- a. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 14 with evidence in support thereof;
- b. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- c. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d. any other information relevant to the Affected Party's claim.

14.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

14.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Sub-clause 14.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

14.6 Effect of Force Majeure Event on the Agreement

14.6.1 Upon the occurrence of any Force Majeure after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Agreement (the “**Force Majeure costs**”) shall be allocated and paid as follows:

- a. upon the occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure costs and neither Party shall be required to pay to the other Party any costs thereof;
- b. upon the occurrence of an Indirect Political Event, all Force Majeure costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Contractor, and to the extent Force Majeure costs exceed such Insurance Cover, (i) one half of such excess amount shall be reimbursed by KDA to the Contractor for the Force Majeure events; and
- c. upon the occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by KDA to the Contractor.

For the avoidance of doubt, Force Majeure Costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Contractor

14.6.2 Save and except as expressly provided in this Article 14, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

14.6.3 Upon the occurrence of any Force Majeure Event prior to the Commencement Date or during the Construction Period the period set forth in Clause 7.1.3 for the completion of the Project as the Construction Period shall be extended by a period equal in length to the duration of the Force Majeure Event.

14.7 Termination Notice for Force Majeure Event

14.7.1 If a Force Majeure Event subsists for a period of 60 (sixty) days or more within a continuous period of 120 (one hundred and twenty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 14, and upon issue of such Termination Notice, this Agreement shall, notwithstanding

anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

14.8 Termination Payment for Force Majeure Event

14.8.1 In the event of the Agreement being terminated under Clause 14.7 on account of a Non-Political Event, the Project Engineer shall issue a payment certificate which shall include:

- a. an amount equal to the value of the Works done less payments already made, less Mobilization Advance outstanding against the Contractor up to the date of the issue of the Termination Notice, less other recoveries due in terms of the Agreement, less taxes due to be deducted at source in accordance with Applicable Law; Provided that the value of Works done shall be estimated in accordance with the provisions of Article 10;
- b. the cost of Plant and Materials ordered for the Works which have been delivered to the Contractor. Provided that such Plant and Materials shall become the property of KDA when paid for by KDA and the Contractor shall place the same at KDA's disposal; and.
- c. the Contractor's costs of protecting and securing the Works.

14.8.2 If Termination is on account of an Indirect Political Event, the Project Engineer shall issue a payment certificate which shall include:

- a. the amount for the value of the Works done less payments already made, less Mobilization Advance outstanding against the Contractor up to the date of the issue of the Termination Notice, less other recoveries due in terms of the Agreement, less taxes due to be deducted at source in accordance with Applicable Law. Provided that the value of Works completed shall be estimated in accordance with the provisions of Article 10;

-
- b. the cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, Provided that such Plant and Materials shall become the property of KDA when paid for by KDA and the Contractor shall place the same at KDA's disposal;
 - c. the reasonable cost of removal of Equipment and the cost of removal of temporary Works;
 - d. repatriation of the Contractor's foreign personnel employed solely on the Works; and
 - e. the Contractor's costs of protecting and securing the Works.

14.8.3 If Termination is on account of a Political Event, KDA shall make a Termination Payment to the Contractor in an amount that would be payable under Sub-clause 16.2 as if it were a KDA Default.

14.9 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or making excuse on account of such Force Majeure Event.

14.10 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from the performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- a. the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b. the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

-
-
- c. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 15

SUSPENSION OF CONSTRUCTION

15.1. Suspension of Construction Work for Contractor's failure

15.1.1 In the event of the failure of the Contractor to duly and effectively perform any of its obligations or to perform proper execution of the Works in accordance with the provisions of this Agreement, upon recommendation of the Project Engineer to this effect, KDA may by notice require the Contractor to suspend forthwith the performance of any obligations under the Agreement or the whole or any part of the Works.

15.1.2 The Contractor shall, pursuant to the notice under Sub-clause 15.1.1, suspend the Works or any part thereof for such time and in such manner as may be specified by KDA and thereupon carry out remedial measures to secure the safety of the suspended Works. The Contractor may by notice require the Project Engineer to inspect such remedial measures forthwith and make a report to KDA recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Project Engineer, KDA shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary in the reasonable opinion of KDA, and the procedure set forth in this Clause 15.1 shall be repeated until the suspension hereunder is revoked.

15.1.3 All reasonable costs incurred for maintaining and protecting the Works or any part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Contractor; provided that if the suspension has occurred as a result of any breach of this Agreement by KDA, the Preservation Costs shall be borne by KDA.

15.2 Extension of Time on account of Suspension

If suspension of Works is for reasons not attributable to the Contractor, the Project Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Contractor is reasonably entitled, and shall notify KDA accordingly whereupon KDA shall extend such Project Completion Schedule dates in accordance with the recommendations of the Project Engineer. Notwithstanding

anything contained herein, such period of extension determined by the Project Engineer shall in no case exceed the period of Suspension for which the Works remain suspended.

15.3 KDA to act on behalf of Contractor

During the period of Suspension, KDA may at its own discretion, on behalf of the Contractor, undertake to fulfill any of its obligations for remedying and rectifying the cause of Suspension. Provided that any cost incurred by KDA in fulfilling the obligations of the Contractor for the remedying or rectifying the cause of Suspension shall be borne by the Contractor. KDA shall have the right to deduct any such expense incurred and another twenty percent thereof as Damages from any payment due or to be due to the Contractor under the provisions of this Agreement.

ARTICLE 16

TERMINATION

16.1 Termination for Contractor Default

16.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the “**Contractor Default**”), unless the default has occurred solely as a result of any breach of this Agreement by KDA or due to Force Majeure. The defaults referred to herein shall include:

- a. The Contractor fails to extend or provide Performance Security in accordance with the Agreement;
- b. the Contractor stops Works for 28 (twenty eight) days without reflecting the same in the current programme and such stoppage has not been authorized by the Project Engineer
- c. Scheduled Completion Date does not occur within the period specified in paragraph 5 of Schedule H;
- d. the Contractor fails to rectify any Defect, the non rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Project Engineer;

-
- e. the Contractor is in breach of the Safety Requirements;
 - f. the Contractor subcontracts the Works or any part thereof without the prior approval of the Project Engineer or assigns any part of the Works without the prior approval of KDA;
 - g. the Contractor creates any Encumbrance in breach of this Agreement;
 - h. the Contractor repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
 - i. the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Contractor or for the whole or material part of its assets that has a material bearing on the Works;
 - j. the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of KDA, a Material Adverse Effect;
 - k. a resolution for winding up of the Contractor is passed, or any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Contractor is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Contractor under this Agreement; and provided that:
 - (i) the amalgamated or reconstructed entity does not have the capability and experience necessary for the performance of its obligations under this Agreement; and
 - (ii) the amalgamated or reconstructed entity does not have the financial standing to perform its obligations

under this Agreement and does not have a credit worthiness at least as good as that of the Contractor as at the Appointed Date.

- l. any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
- m. the Contractor submits to KDA any statement, notice or other document, in written or electronic form, which has a material effect on KDA's rights, obligations or interests and which is false in material particulars;
- n. the Contractor has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- o. the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on KDA.
- p. failure of the Contractor to comply with the Project Engineer's notice issued under Article 15 to suspend the work;
- q. if it is discovered by KDA that the Contractor and its officers, employees, agents and advisers have:
 - (i) not acted in a bonafide manner during the bidding process and the execution of the Agreement; and/or
 - (ii) directly or indirectly or through an agent, engaged in corrupt, fraudulent, coercive, undesirable or restrictive practices in the bidding process or the execution of the Agreement.

For the purposes of this Sub-clause 16.1.1, the terms set forth are defined as follows:

- (a) "corrupt practice" means the offering, giving, receiving, directly or indirectly, of anything of value to influence the action of a public official in the bidding process, or the execution of the Agreement;
- (b) "fraudulent practice" means a misrepresentation or omission of facts in order to influence the bidding process, or to obtain payments from KDA for the execution of the Agreement;

-
- (c) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or in discharging their duties in the execution of the Agreement;
 - (d) “undesirable practice” means establishing contact with any person connected with or employed by KDA with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the bidding process or the monitoring, inspection or reporting the execution of the Agreement; and
 - (e) restrictive practice” means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restricting or manipulating a full and fair competition in the bidding process.

16.1.2 Without prejudice to any other rights or remedies which KDA may have under this Agreement, upon occurrence of a Contractor Default, KDA shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, KDA shall by a notice inform the Contractor of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Contractor to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

16.1.3 After termination of the Agreement for Contractor Default, KDA may complete the Works and/or arrange for any other entities to do so. KDA and these entities may then use any Materials, goods, Contractor’s documents and other design documents made by or on behalf of the Contractor.

16.2 Termination for KDA Default

16.2.1 In the event that any of the defaults specified below shall have occurred, and KDA fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, KDA shall be deemed to be in default of this Agreement (the “**KDA Default**”) unless the default has occurred as a result of any breach of this Agreement by the Contractor or due to Force Majeure. The defaults referred to herein shall include:

-
-
- a. KDA commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Contractor;
 - b. KDA has failed to make any payment to the Contractor within the period specified in this Agreement;
 - c. KDA repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
 - d. the Project Engineer fails, within 56 (fifty six) days after receiving a statement and supporting documents, to issue the relevant Interim Payment Certificate.

16.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of a KDA Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to KDA; provided that before issuing the Termination Notice, the Contractor shall by a notice inform KDA of its intention to issue the Termination Notice and grant 15 (fifteen) days to KDA to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

16.3 Termination for KDA's convenience

Notwithstanding anything stated herein-above, KDA may terminate the Agreement for convenience. The termination shall take effect 60 (sixty) days from the date of notice sent by registered post to the Contractor's address. KDA shall not terminate the Agreement under this Clause 16.3 in order to execute the balance of the Works itself and/or arrange for any other entities to do so.

16.4 Requirements after Termination

Upon Termination of the Agreement in accordance with the terms of this Article 16, the Contractor shall comply with and conform to the following Requirements:

- a. deliver to KDA all Plant and Materials which have become the property of KDA under this Article 16;
- b. deliver all relevant records, as may be required by the Project Engineer, reports, Intellectual Property and other licenses pertaining to the Works, Contractor's documents, and other design documents made by or for him and 'as

built' Drawings for which the Completion Certificate has been issued;

- c. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and
- d. vacate the Site within 28 (twenty eight) days.

16.5 Termination Payment

16.5.1 Upon Termination on account of a Contractor Default, KDA shall pay to the Contractor, by way of Termination Payment, an amount equal to the value of the Works done less payments already made, less Mobilization Advance received by the Contractor up to the date of the issue of the Termination Notice, less other recoveries due in terms of the Agreement, less taxes due to be deducted at source in accordance with Applicable Law and less:

- a. the 20 (twenty) percent of the balance of the cost of Works in the event that the progress achieved is less than seventy percent of the Works; or
- b. the 30 (thirty) percent of the balance of the cost of Works in the event that the progress achieved is seventy percent or more of the Works.

16.5.2 Upon Termination on account of a KDA Default under Clause 16.2 or KDA's Convenience under Clause 16.3, KDA shall pay to the Contractor, by way of Termination Payment, an amount equal to:

- a. the amount due and payable to the Contractor for the Works executed up to the date of the issue of the Termination Notice less Mobilization Advance received by the Contractor up to the date of the issue of the Termination Notice, less other recoveries due in terms of the Agreement and less taxes due to be deducted at source in accordance with Applicable Law;
- b. the cost of the Plant and Materials procured for the Works by the Contractor not having been incorporated in the Works and which shall become the property of KDA upon such Termination Payment; .
- c. the reasonable cost of removal of the Equipment and the cost of removal of temporary work;
- d. reasonable cost for repatriation of the Contractor's personnel employed solely on the Works; and

-
- e. 10 (ten) percent of the cost of the Works not completed.

16.5.3 Termination Payment shall become due and payable to the Contractor within 15 (fifteen) days of a demand being made by the Contractor to KDA with the necessary particulars, and in the event of any delay, KDA shall pay interest at a rate equal to 5 (five) percentage point above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the KDA of its payment obligations in respect thereof hereunder.

16.5.4 The Contractor expressly agrees that Termination Payment under this Article 16 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement for any reason whatsoever and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

16.6 Other rights and obligations of KDA

Upon Termination for any reason whatsoever, KDA shall:

- a. be deemed to have taken possession and control of the Project forthwith;
- b. take possession and control of all Materials, stores, implements, construction plants and equipment on or about the Site; and
- c. be entitled to restrain the Contractor and any person claiming through or under the Contractor from entering upon the Site or any part of the Project.

16.7 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or Agreement. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 17

DISPUTE RESOLUTION

17.1 Amicable Resolution

17.1.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-article 17.1.2 below.

17.1.2 Either Party may require such Dispute to be referred to the Commissioner/Secretary, Housing & Urban Development Department to GoJ&K and the Chief Executive Officer of the Contractor for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 17.2 below.

17.2 Arbitration

17.2.1 Subject to the provisions of Article 17.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996 (Arbitration Act). The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

17.2.2 The arbitral tribunal shall have the power to open up, review and revise any decision, opinion, instructions, determination, certificate or valuation of the Project Engineer.

17.2.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 17 shall be final and binding on the Parties as from the date it is made, and the Contractor and KDA agree and undertake to carry out such Award without delay.

17.2.4 The Contractor and KDA agree that an Award may be enforced against the Contractor and/or KDA, as the case may be, and their respective assets wherever situated.

17.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

17.2.6 KDA shall publish the complete arbitration Award on its website, within a period of 7 (seven) days from the receipt of a copy of the Award.

17.2.7 The place of arbitration shall ordinarily be Katra but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

17.2.8 The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

17.2.9 Pending the submission of and/or decision on a Dispute and until the arbitration award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

17.3 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Contractor and KDA, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 17.2, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 18

REPRESENTATIONS AND WARRANTIES, DISCLOSURE

18.1 Representations and Warranties of the Contractor

The Contractor represents and warrants to KDA that:

a. it is duly organized and validly existing under the laws of India and has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

b. it has taken all necessary corporate and/or other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement and that it has the necessary financial standing and capacity to undertake the Works;

c. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

d. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

e. the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

f. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

g. there are no actions, suits, proceedings or investigations pending or to the Contractor's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute Contractor's Default within the meaning of Article 16.1 or which individually or in the aggregate may result in Material Adverse Effect;

h. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under

this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

i. it has complied with all Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect;

j. no representation or warranty by it contained herein or in any other document furnished by it to KDA or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty;

k. no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Contractor to any person by way of fees, commission or otherwise to procure the right to execute the Works pursuant to this Agreement or for influencing or attempting to influence any officer or employee/consultants of KDA in connection therewith;

l. all information provided by the Contractor in response to the Request for Qualification cum Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

m. nothing contained in the Agreement shall create any contractual relationship or obligation between any Contractor's designers / design consultants and KDA;

n. Without prejudice to any express provision contained in this Agreement, the Contractor acknowledges that prior to the execution of this Agreement, the Contractor has after a complete and careful examination made an independent evaluation of the Site and the information provided by KDA, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Contractor in the course of performance of its obligations hereunder, such examination/ review having included but not limited to the following:

i. the form and nature of the Site, including the sub-surface conditions,

ii. the traffic conditions and circulation,

iii. the extent and nature of the obligations undertaken for execution of the Works, and the remedying of any defects, and

iv. the means of access to the Site

o. The Contractor also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that KDA shall not be liable for the same in any manner whatsoever to the Contractor.

p. The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Request for Proposals Scope of the Project, Specifications and Standards of design, Construction Requirements, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, suitability and availability of access routes to the Site and all information provided by KDA or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 18.2, KDA makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against KDA in this regard.

q. The Contractor acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.

r. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor and KDA shall not be liable in any manner for such risks or the consequences thereof.

s. The Contractor represents that it is sufficiently experienced and properly qualified to carry out the Works provided for herein, and that it is properly licensed, equipped, organized and financed to carry out the Works. The Contractor shall act as an independent contractor and is not to be considered an agent of the Authority in executing the Works. Further, the Contractor shall execute the Works in accordance with its own methods, using professional standards acceptable to the Authority/Project Engineer,

subject to the terms and conditions the EPC Agreement and in accordance with the Applicable Laws.

t. The Contractor understands and agrees that no action or inaction by the Authority/Project Engineer shall relieve the Contractor of any of its duties or obligations under the EPC Agreement nor shall such action or inaction constitute a waiver or release of the Contractor's potential for liability herein.

u. The Contractor agrees to be duty bound to provide qualified engineers and other skilled personnel and management, who shall supervise directly and control completely the Contractor's employees and Sub Contractors in the execution of the Works. The Contractor shall execute the Works in accordance with its own methods, using professional standards acceptable to the Authority, subject to the terms and conditions of this EPC Agreement and in accordance with the Applicable Laws.

v. The Contractor agrees to provide and employ in connection with the execution of the Works:

- i. Professional and technically competent key personnel;
- ii. Qualified supervising engineers and technical assistants who are adequately skilled and experienced for the direct supervision and control of the execution of the Works; and
- iii. Such skilled, semi skilled and/or unskilled labour as necessary and appropriate for the proper, professionally satisfactory and timely execution of the Works.

w. The Contractor shall at all time during the execution of the Works be responsible for maintaining harmonious labour relations so that the Works are performed professionally, efficiently and without any interruption at the Site.

18.2 Representations and Warranties of KDA

a. KDA represents and warrants to the Contractor that it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all necessary action to authorize the execution, delivery and performance of this Agreement;

b. it has the financial standing and capacity to perform its obligations under this Agreement;

c. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

d. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on KDA's ability to perform its obligations under this Agreement;

e. it has good and valid right and title to the Site

18.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

ARTICLE 19

MISCELLANEOUS

19.1 Assignment and Charges

This Agreement shall not be assigned by the Contractor to any person, save and except with the prior consent in writing of KDA, which consent KDA shall be entitled to decline without assigning any reason.

19.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at 10% per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off. Provided the stipulation regarding interest for delayed payments contained in this Article 19.2 shall neither be deemed nor construed to authorize any delay in payment of any

amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

19.3 Governing Law and Jurisdiction

This Agreement shall be governed by the laws as may be applicable in the State of Jammu & Kashmir. The competent Courts at Reasi shall have jurisdiction over all matters arising out of or relating to this Agreement.

19.4 Waiver of Immunity

Each Party unconditionally and irrevocably:

- a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- d. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

19.5 Waiver

19.5.1 Waiver, including partial or conditional, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
- b. shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and

c. shall not affect the validity or enforceability of this Agreement in any manner.

19.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

19.6 Survival

Termination of this Agreement (a) shall not relieve the Contractor or KDA of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

19.7 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

19.8 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to KDA

Chief Executive Officer,
Katra Development Authority

Railway Rd, Katra
Jammu & Kashmir

Ph. **+01991-232336**

Fax: +01991-232336

Email: - kdaceo23@gmail.com

If to the Contractor

M/s

Kind Attention: Mr.

Ph. No.

Fax No.;

Email: -

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

19.9 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided, failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

19.10 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.11 Language

All notices required to be given under this Agreement and all communications; documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

19.12 Third Parties

This Agreement is binding on and intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

19.13 Exclusion of Implied Warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.

19.14 Counterparts

This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

19.15 Confidentiality

The Parties shall treat the details of the Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of KDA.

19.16 Copyright and Intellectual Property Rights

19.16.1 As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing the Agreement) to give to KDA a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This license shall:

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

19.16.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) KDA for purposes other than those permitted under this Sub-Clause 19.16.

19.16.3 As between the Parties, KDA shall retain the copyright and other intellectual property rights in the Agreement and other documents made by (or on behalf of) KDA. The Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of the Agreement. They shall not, without KDA's consent in writing, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Agreement.

19.17 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by KDA or the Project Engineer of any Document or Drawing submitted by the Contractor nor any observation or inspection of the

construction of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

- (b) KDA shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

19.18 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 28 (twenty eight) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5 (five) percentage point above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

19.19 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Contractor arising from the Request for Proposal shall be deemed to form part of this Agreement and treated as such.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED SEALED AND DELIVERED

For and on behalf of KDA by

(.....)

Chief Executive Officer

In the presence of: -

1)

2)

SIGNED, SEALED AND DELIVERED

For and on behalf of CONTRACTOR by:

(.....)

Director (.....)

In the presence of: -

1)

2)

SCHEDULES

SCHEDULE – A

SITE DETAILS

1. Site Details

1.1 Site of the Project shall include the land, buildings, structures and road works as described in Annex-I of this Schedule A.

1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by KDA Representative and the Contractor, and such inventory shall form part of the memorandum referred to in Sub-clause 5.2 of the Agreement.

1.3 A Site plan with contour details of the Site is enclosed as Annex-II.

1.4 Soil Investigation Report forms part of Annex-III of this Schedule. The Contractor is required to carry out soil investigation by bore hole test in order to ensure the quality of soil for the commencement of the construction at the Site.

Annex - I
(to Schedule A)
Site Details

{As per the Concept Plan}

A. Site Description

The proposed site for Katra Bus Terminal is located in the southern direction of the Katra Municipality boundary. The site is a distance of approximately 1.5 kms from the Shree Mata Vaishno devi Railway Station. The site is currently accessible by a sub-arterial unpaved road which meets both Reasi-Jammu Road and Katra Station Road. In future, this approach road is proposed to be developed as a 2 way 6 lane road. Also a secondary approach road is proposed to come up near the southern side of the site which will reduce the distance from the railway station to half a kilometer. The site covers an area of approximately 1,28,650 sq.m. There is a natural drain which passes through the centre of the site leading to a contour gradation of approximately 15 meters.

B. Area Measurement

Annex - II
(to Schedule A)- Site Plan (As per the Approved Concept Plan)

Annex - III
(to Schedule A)

Soil Investigation Report

Government of Jammu & Kashmir
Office of the Research Officer - Jammu (HRS/MTL)
Designs, Inspection & Quality Control (DIQC) - Jammu (J&K)
Canal Road, Bhagwati Nagar – Jammu.

Description of Test: - Plate Load Test for determination of Safe Soil Bearing Capacity Test.

Reference: - Chief Executive Officer, Katra Development Authority – Katra vide his letter No. CEO/KDA/2017-18/898-905 Dated 17.01.2018.

Testing Charges: - Received **Rs 52,800/-** (Rs. Fifty Two Thousand and Eight Hundred only) on account of testing charges vide DD No.018887 Dated 03.02.2018. (for 04 Nos. Plate Load Tests), in accordance with letter No. CEO/KDA/2017-18/995 Dated 03.02.2018.

Report:- As desired by Chief Executive Officer, Katra Development Authority – Katra vide his letter no. and dated cited above, Fourth **Plate Load Test** was conducted at Location No. 2 for construction of Bus Stand Project. The site was identified by the concerned department, where they have excavated trench of **10 feet depth** for conducting of safe Soil Bearing Capacity test. The **moisture content 19.05%** was determined after conducting the test. At **8 tons**, the whole plate sunk. The test data is as under:-

S. No	Regd. No.	Date of Test	Depth of Test Pit	Size of Test Plate used	Classification of soil strata	Safe Soil Bearing Capacity (adopting Factor of Safety as 3)	
						kg/cm ²	t/m ²
1.	1008/17-18	10.02.2018	10'- 0"	45 cm x 45 cm	Sand = 11.0% & Silt & Clay = 89.0%	0.6	6.0

Load Intensity (in kg/cm ²)	Cumulative Settlement (in cms.)
0.25	0.09
0.49	0.19
0.74	0.33
0.99	0.44
1.23	0.56
1.49	0.70
1.98	0.97
2.47	1.35
2.96	1.73
3.46	2.19

UCM
Analyst
Soil Section
MTL - Jammu

1000
Scientific Asstt.
Soil Section
MTL - Jammu

1000
Jr. Research Asstt.
Soil Section
MTL - Jammu

1000
14/02/2018
Research Officer
Hydraulic Research Station
Material Testing Laboratory
JAMMU

No: - RO/HRS-MTL/JMU/TR/2018/1520-21

Dated: - 14.02.2018

Copy to the: -

1. Chief Engineer, Design, Inspection & Quality Control Deptt., (J&K) - Jammu for kind information.
2. Chief Executive Officer, Katra Development Authority – Katra.
3. Office File.

Government of Jammu & Kashmir
Office of the Research Officer - Jammu (HRS/MTL)
Designs, Inspection & Quality Control (DIQC) - Jammu (J&K)
Canal Road, Bhagwati Nagar – Jammu.

Description of Test: - Plate Load Test for determination of Safe Soil Bearing Capacity Test.

Reference: - Chief Executive Officer, Katra Development Authority – Katra vide his letter No. CEO/KDA/2017-18/898-905 Dated 17.01.2018.

Testing Charges: - Received **Rs 52,800/-** (Rs. Fifty Two Thousand and Eight Hundred only) on account of testing charges vide DD No.018887 Dated 03.02.2018. (for 04 Nos. Plate Load Tests), in accordance with letter No. CEO/KDA/2017-18/995 Dated 03.02.2018.

Report:- As desired by Chief Executive Officer, Katra Development Authority – Katra vide his letter no. and dated cited above, Second **Plate Load Test** was conducted at Location No. 3 for construction of Bus Stand Project. The site was identified by the concerned department, where they have excavated trench of **10 feet depth** for conducting of safe Soil Bearing Capacity test. The **moisture content 21.95%** was determined after conducting the test. At **7 tons**, the whole plate sunk. The test data is as under:-

S. No	Regd. No.	Date of Test	Depth of Test Pit	Size of Test Plate used	Classification of soil strata	Safe Soil Bearing Capacity (adopting Factor of Safety as 3)	
						kg/cm ²	t/m ²
1.	1006/17-18	08.02.2018	10'- 0"	45 cm x 45 cm	Sand = 34.0% & Silt & Clay = 66.0%	0.367	3.67

Load Intensity (in kg/cm ²)	Cumulative Settlement (in cms.)
0.25	0.13
0.49	0.29
0.74	0.44
0.99	0.63
1.23	0.83
1.49	1.11
1.98	1.44
2.47	1.81
2.96	2.28

U. O. S.
 Analyst
 Soil Section
 MTL - Jammu

U. O. S.
 Scientific Asstt.
 Soil Section
 MTL - Jammu

U. O. S.
 Jr. Research Asstt.
 Soil Section
 MTL - Jammu

U. O. S.
 14/02/2018
 Research Officer
 Hydraulic Research Station
 Material Testing Laboratory
 JAMMU

No: - RO/HRS-MTL/JMU/TR/2018/1524-25

Dated: - 14.02.2018

Copy to the: -

1. Chief Engineer, Design, Inspection & Quality Control Deptt., (J&K) - Jammu for kind information.
- ✓ 2. Chief Executive Officer, Katra Development Authority – Katra.
3. Office File.

Government of Jammu & Kashmir
Office of the Research Officer - Jammu (HRS/MTL)
Designs, Inspection & Quality Control (DIQC) - Jammu (J&K)
Canal Road, Bhagwati Nagar - Jammu.

Description of Test: - Plate Load Test for determination of Safe Soil Bearing Capacity Test.

Reference: - Chief Executive Officer, Katra Development Authority - Katra vide his letter No. CEO/KDA/2017-18/898-905 Dated 17.01.2018.

Testing Charges: - Received **Rs 52,800/-** (Rs. Fifty Two Thousand and Eight Hundred only) on account of testing charges vide DD No.018887 Dated 03.02.2018. (for 04 Nos. Plate Load Tests), in accordance with letter No. CEO/KDA/2017-18/995 Dated 03.02.2018.

Report:- As desired by Chief Executive Officer, Katra Development Authority - Katra vide his letter no. and dated cited above, Third **Plate Load Test** was conducted at Location No. 4 for construction of Bus Stand Project. The site was identified by the concerned department, where they have excavated trench of **10 feet depth** for conducting of safe Soil Bearing Capacity test. The **moisture content 6.38%** was determined after conducting the test. At **13 tons**, the whole frame got lifted. The test data is as under:-

S. No	Regd. No.	Date of Test	Depth of Test Pit	Size of Test Plate used	Classification of soil strata	Safe Soil Bearing Capacity (adopting Factor of Safety as 3)	
						kg/cm ²	t/m ²
1.	1007/17-18	09.02.2018	10' - 0"	30 cm x 30 cm	Gravels = 70.39% Sand = 21.89% & Silt & Clay = 7.72%	1.133	11.33

Load Intensity (in kg/cm ²)	Cumulative Settlement (in cms.)
1.1	0.04
2.2	0.09
3.3	0.15
4.4	0.26
5.5	0.37
6.7	0.48
7.8	0.66
8.9	0.84
10.0	1.05
11.1	1.26
12.2	1.40
13.3	1.52

U. G. K.
 Analyst
 Soil Section
 MTL - Jammu

[Signature]
 Scientific Asstt.
 Soil Section
 MTL - Jammu

[Signature]
 Jr. Research Asstt.
 Soil Section
 MTL - Jammu

[Signature]
 14/02/2018
 Research Officer
 Hydraulic Research Station
 Material Testing Laboratory
 JAMMU

No: - RO/HRS-MTL/JMU/TR/2018/1522-23

Dated: - 14.02.2018

Copy to the:-

1. Chief Engineer, Design, Inspection & Quality Control Deptt., (J&K) - Jammu for kind information.
2. Chief Executive Officer, Katra Development Authority - Katra.
3. Office File.

Government of Jammu & Kashmir
Office of the Research Officer - Jammu (HRS/MTL)
Designs, Inspection & Quality Control (DIQC) - Jammu (J&K)
Canal Road, Bhagwati Nagar – Jammu.

Description of Test: - Plate Load Test for determination of Safe Soil Bearing Capacity Test.

Reference: - Chief Executive Officer, Katra Development Authority – Katra vide his letter No. CEO/KDA/2017-18/898-905 Dated 17.01.2018.

Testing Charges: - Received **Rs 52,800/-** (Rs. Fifty Two Thousand and Eight Hundred only) on account of testing charges vide DD No.018887 Dated 03.02.2018. (for 04 Nos. Plate Load Tests), in accordance with letter No.CEO/KDA/2017-18/995 Dated 03.02.2018.

Report:- As desired by Chief Executive Officer, Katra Development Authority – Katra vide his letter no. and dated cited above, first **Plate Load Test** was conducted at Location No. 1 for construction of Bus Stand Project. The site was identified by the concerned department, where they have excavated trench of **10 feet depth** for conducting of safe Soil Bearing Capacity test. The **moisture content 8.70%** was determined after conducting the test. At **13 tons**, the whole frame got lifted. The test data is as under:-

S. No	Regd. No.	Date of Test	Depth of Test Pit	Size of Test Plate used	Classification of soil strata	Safe Soil Bearing Capacity (adopting Factor of Safety as 3)	
						kg/cm ²	t/m ²
1.	1005/17-18	07.02.2018	10'- 0"	30 cm x 30 cm	Gravels = 68.04% Sand = 21.51% Silt & Clay=10.45%	1.20	12.0

Load Intensity (in kg/cm ²)	Cumulative Settlement (in cms.)
1.1	0.03
2.2	0.06
3.3	0.10
4.4	0.14
5.6	0.20
6.7	0.26
7.8	0.33
8.9	0.41
10.0	0.49
11.1	0.57
12.2	0.65
13.3	0.73

UCS
Analyst
Soil Section
MTL - Jammu

Scientific Asstt.
Soil Section
MTL - Jammu

Jr. Research Asstt.
Soil Section
MTL - Jammu

Jammu
14/02/2018
Assistant Officer
Hydraulic Research Station
& Material Testing Laboratory
JAMMU

No: - RO/HRS-MTL/JMU/TR/2018/1526-27

Dated: - 14.02.2018

Copy to the:-

1. Chief Engineer, Design, Inspection & Quality Control Deptt., (J&K) - Jammu for kind information.
- ✓ 2. Chief Executive Officer, Katra Development Authority – Katra.
3. Office File.

SCHEDULE - B

DEVELOPMENT OF THE PROJECT, CONSTRUCTIONS DETAILS, SPECIFICATIONS & STANDARDS (Minimum Development Obligations of the Contractor (To be Updated as per the Approved Concept Plans))

1.1 Scope of Work

The Contractor shall undertake Design, Engineering, Procurement & Construction of Inter State Bus Terminal cum Multilevel Parking cum Commercial Complex at Katra on Turnkey basis.

The Broad Scope of Work involves (a) Preparation of Architectural Designs and Plans; (b) Preparation of Structural Design and getting them vetted from an IIT; (c) Preparation of Bill of Quantity as per CPWD approved specifications and relevant IS Codes and specifications; (c) Preparation of Detailed Designs and Plan including Architectural Plan for Project Execution and all other related drawings concerned with execution of the Project; (d) Getting Approvals from KDA at each Stage; and (e) Supply, Installation, Construction & Commissioning of the Project on EPC cum Turnkey basis. The Bidder is required to emphasis on the usage of pre-engineered structured buildings for the development of Project facilities, wherever applicable. The Bidder has to procure the pre engineered structures based on load calculation as approved by KDA. The designs shall be proof checked by IIT.

1.2 Minimum Development Obligations of the Contractor

The total Project Site has an area of approximately **1,28,650 Sq. m.** The Site Area available for development of the Project is approximately **84,710 sq. m** after reducing the areas of four plots earmarked for the Yatri Niwas and Hotels as mentioned in the **Land Use Matrix** below. It is proposed to develop the Bus Terminal as a modern iconic structure with modern amenities along with multilevel parking and commercial complex, compliant with green building norm of GRIHA (Green Rating for Integrated Habitat Assessment)/IGBC (Indian Green Building Council)/ BEE (Bureau of Energy)/LEED (Leadership in Energy and Environmental Design)equivalent of at least Silver Rating of LEED. The iconic building is proposed to be a Lower Ground+3 structure. The total construction area of the proposed facilities is **1,65,800 sq. mtr.** apprxx as per the **Detailed Construction Area Statement** below, and is exclusive of the external development area (consisting of bus bays, utilities, ISBT internal road and approach road to hotels) which is approximately 47,810 sq. mtr.

➤ **The Land Use Matrix of the Project Site is as below:**

Land Use Matrix		
S.No	Nomenclature	Area (in sq.m)
1	ISBT	
1A	Commercial + Terminal	30400
1B	Bus Bay	8000
1C	MLCP	6500
1D	Utility	2480
1E	Internal Road Area	30720
	ISBT	78100
2	Hotel 1	6100
3	Hotel 2	6050
4	Budget Hotel 1	5800
5	Budget Hotel 2	6990
6	Approach Road to Hotel	6610
7	24 M Approach Road	19000
	Total	128650

➤ **The Detailed Construction Area Statement of the Project is as below:**

S.No	Nomenclature	Area (in sq.m)						Total Area (in sq.m)
		Lower Basement	Upper Basement	Lower Ground	Upper Ground	First Floor	Second Floor	
ISBT								
1	Retail Shops	0.00	0.00	1320.00	15400	10700.00	9420.00	36840.00
2	Departmental Stores	0.00	0.00	3200.00	0.00	0.00	1200.00	4400.00
3	Showrooms	0.00	0.00	500.00	3120	3670.00	4120.00	11410.00
4	Corridor	0.00	0.00	8400.00	6280	5300.00	6600.00	26580.00
5	Bank	0.00	0.00	250.00	0.00	0.00	0.00	250.00
6	Railway Ticket Counter	0.00	0.00	60.00	0.00	0.00	0.00	60.00
7	Air Ticket Counter	0.00	0.00	60.00	0.00	0.00	0.00	60.00
8	Backup Office	0.00	0.00	340.00	0.00	0.00	0.00	340.00
9	Management Front Office	0.00	0.00	170.00	0.00	0.00	0.00	170.00
10	Shrine Board Museum	0.00	0.00	600.00	0.00	0.00	0.00	600.00
11	Shrine Board Office	0.00	0.00	740.00	0.00	0.00	0.00	740.00
12	AC Waiting Hall	0.00	0.00	340.00	0.00	0.00	0.00	340.00
13	Maintenance Office	0.00	0.00	380.00	0.00	0.00	0.00	380.00
14	Driver Conductor Restroom	0.00	0.00	1240.00	0.00	0.00	0.00	1240.00
15	KDA Office	0.00	0.00	570.00	0.00	0.00	0.00	570.00
16	KDA Guest House	0.00	0.00	700.00	0.00	0.00	0.00	700.00
17	Post Office	0.00	0.00	40.00	0.00	0.00	0.00	40.00
18	Dispensary/Clinic	0.00	0.00	100.00	0.00	0.00	0.00	100.00
19	Restaurant	0.00	0.00	960.00	0.00	0.00	0.00	1510.00
20	Lift/Lobby/Staircase	0.00	0.00	360.00	700.00	500.00	500.00	2060.00
21	Washroom	0.00	0.00	190.00	190.00	190.00	190.00	760.00
22	Housekeeping + Store	0.00	0.00	0.00	0.00	0.00	1380.00	1380.00
23	Laundry + Services	0.00	0.00	0.00	0.00	0.00	270.00	270.00
24	Dormitory + Waiting	0.00	0.00	0.00	0.00	0.00	1180.00	1180.00
25	Waiting Hall	0.00	0.00	0.00	0.00	0.00	830.00	830.00
26	Shaft	0.00	0.00	220.00	590.00	590.00	590.00	2536.00
27	Food Courts	0.00	0.00	0.00	0.00	4100.00	0.00	4100.00
28	Food Kiosk	0.00	0.00	0.00	0.00	870.00	0.00	870.00
29	Parking & Services	20960.00	20740.00	0.00	0.00	0.00	0.00	41700.00
	Total	20960.00	20740.00	20740.00	26280.00	25920.00	26280.00	140920.00
MLCP								

1	Parking & Services	0.00	0.00	6430	6150.00	6150	6150	24880
	Total							24880
	Total Built-Up Area							165800.00

1.3 The Volumetric Constraints/Minimum Development Obligations of the Contractor are:

1. Bus Terminal Facilities- Idle Bus Parking for 63 Buses and alighting and Boarding 84 Buses, 82 Taxi Parking and 50 Autorickshaw Parking.
2. Multi-Level Car Park-Of Capacity of 696 ECS conventional system – Ramp based.
3. Car Parking- 810 ECS (Upper and Lower Basement)
4. 656 shops as part of the ISBT and Commercial
5. To develop the minimum areas as per the Detailed Construction Area Statement above as well as the external development area consisting of bus bays, utilities, ISBT internal road and approach road to hotels as mentioned above.
6. To demarcate and develop the plots on the Project Site earmarked for hotel and budget as per the Land Use Matrix above, provide construction of the main approach road to such plots and provide for all the underground facilities like sewage, electricity etc.

The Contractor shall provide at least the above mentioned development on the Project Site and no compromise on the above referred minimum development obligations shall be acceptable from the Contractor by the Authority.

1.4 Codes and Standards

Wherever references are made in the Agreement in particular codes and standards for the execution, testing and commissioning of the Works, the effective edition(s), revision(s), amendment(s) or updating of such codes and standards as of the date of the Agreement execution/ usage of such code/standard, whichever is latest, shall apply, unless otherwise expressly stated in writing by the Authority/Project Engineer.

In case of any conflict between any referenced codes and standards and those in the EPC Agreement, the Contractor shall advise the Authority/Project Engineer in writing and the Authority/Project Engineer has the discretion to determine which version shall prevail.

The broad specifications and guidelines to be adhered with while designing and constructing the various components of the Project are:

1.5 Broad Specifications Guidelines to be followed by the Contractor

The broad specifications and guidelines to be adhered with while designing and constructing the various components of the Project are:

BUS TERMINAL FACILITIES

The minimum Bus Terminal area to be developed shall be approximately 12,060 sq.mtr. which excludes the area of the bus bays (alighting, boarding and idle parking). The works shall include all the construction works to be carried out in the Bus Terminal for its development to cater to the future requirements.

- 1) The scope of works covers the detailed design for project execution, detailed engineering and preparation of all related drawings concerned with the execution of the Bus Terminal Facility.
- 2) Provision of passenger amenities like retail shops, parking areas for public, private and intermediate public transport, toilets, drinking water chambers, waiting halls, seating arrangements, dustbins etc.
- 3) Bus Terminal Facilities like bus bays (alighting, boarding and idle parking), circulation area, enquiry counters, information centers, booking and reservation ticket counters, etc.
- 4) Design and construct supporting infrastructure facilities related to Solid Waste Management, Rain Water Harvesting, Water Supply and Sanitary Installations, Communication System.

✓ Bus Terminal Components and Design Bus Terminal Facility

The key Bus Terminal Facility shall consist of the following:

1. Bus Terminal Facilities

The key bus terminal facilities proposed in the bus terminal are:

- (a) Bus Bays for Boarding & Alighting
- (b) Dormitory for Bus Drivers and Conductors
- (c) KDA Office and KDA Guest House
- (d) Shrine Board Office cum Museum
- (e) Idle Parking Bays

-
- (f) Bus Circulation Area & Approach Roads
 - (g) Ticketing Counters, Enquiry Counters, Reservation Office
 - (h) Tourist Information Centres
 - (i) KDA administration requirements like Traffic Officer's office.
 - (j) Entry & Exit to the Bus Terminal Facility
 - (k) Passenger Entry & Exit to the Bus Terminal Facility
 - (l) Interconnecting Subways & Pathways, Ramps between various components, if applicable.
 - (m) Building management System including public address system
 - (n) Toilets for staff
 - (o) Store Room

2. Passenger Amenities

The key passenger amenities proposed in the bus terminal are:

- (a) Passenger Concourse Area for Boarding & Alighting
- (b) Passenger Platform for Alighting & Boarding
- (c) Public Utilities (Toilets, Drinking Water Chambers etc.)
- (d) Waiting Halls
- (e) Cloak Room, Parcel Room and Post Office
- (f) Police Station
- (g) Air Ticket, Railway Ticket and Yatri Parchi Counter
- (h) Bank
- (i) Tourist Information Centre
- (j) Seating Arrangements, Information Signage's, Display Boards
- (k) Commercial Facilities for the Bus Terminal Facilities like kiosks, canteen, general store etc.
- (l) Approaches, entry and exit, drop-in and drop-off areas, pick-up zones for private vehicles, taxis and auto.

3. Common Areas & Facilities

The following are major supporting infrastructure requirements proposed in the bus terminal:

- (a) Water Supply and Sanitation Structures
- (b) Storm Water Drainage
- (c) Rain Water Harvesting Structures

(d) Solid Waste Management Systems

(e) Communication Systems

(f) Landscaped Area

✓ **Factors to be considered for Bus Terminal Design**

The factors to be considered in the Bus Terminal design by appreciating activity and facility inter-relationship are:

(a) Segregation of terminal and non-terminal traffic based on activity and activity concentration pattern.

(b) Segregation of vehicular and passenger traffic and movement to avoid conflict.

(c) Segregation of traffic by type, function and direction.

(d) Co-ordination of different activities in terms of functional and spatial interrelationships.

(e) Separate access for bus terminal and commercial facilities.

(f) Provision of good user and vehicular information.

(g) Provision of necessary and identified facilities to meet requirement of all user groups.

(h) Achieving minimum passenger and vehicular processing time.

(i) Achieving overall functional and space efficiency.

(j) Achieving smooth flow for all types of traffic to and from the terminal.

Contractor is encouraged to bring innovation while preparing the Detailed Plans for the same while taking into consideration the minimum development obligations.

✓ **Fixed Parameters of the Project**

The fixed parameters for the master plan are given in the subsequent sub-sections.

✓ **Terminal Facilities**

(a) The following table indicates the minimum bus terminal facility requirements. These are mandatory to be provided as part of the Bus Terminal Facility.

Table 1: Minimum Terminal Facility Requirements

Sl. No.	Components	Minimum Requirement
1.	Boarding cum Alighting Bays	84
2.	Idle Parking	63 Buses
3.	Enquiry offices, Reservation Offices & Ticketing Office along with enclosure for waiting space	Centralized enquiry office, reservation office and 8-10 ticketing counters provided with adequate furniture (Chairs, Tables and Cupboard of approved make). The offices shall have large window for public interface. There shall be enough waiting space in front of the office so as to enable the users to form proper queue and hence maintain orderliness. Railings to divide the queue may be provided in front of the public interface windows. The plan for the same shall be got approved from KDA
4.	Tourist Information Centre	Tourist Information Centre along with furniture and fixtures. The center shall have large window for public interface. There shall be enough waiting space in front of the office so as to enable the users to form proper queue and hence maintain orderliness. Railings to divide the queue may be provided in front of the public interface window.
5.	Display Boards, Digital Displays and Variable Message Sign Boards	Adequate no. of display boards in the bus terminal area with illumination at appropriate locations for information on bus routes, bus time table, fare lists, location of various passenger amenities in the terminal etc. Digital Displays and Variable Message Sign Boards in the bus terminal at appropriate locations

Sl. No.	Components	Minimum Requirement
		like entry and exit, waiting halls, enquiry counters, passenger concourse area for providing updated information to the users.
6.	Digital Display Clocks	Digital Display Clocks suspended from the ceiling by suitable holders in the passenger concourse area.
7.	Public Address System	An announcement booth shall be provided in the terminal. Public Address System shall be provided in the terminal.
8.	Security Guard Cabins	Security Guard Cabins are to be provided near the bus terminal entry and exit gates.
9.	Vacuum Cleaners, Floor Cleaners, Automatic Wipers or superior mechanized cleaning equipments.	These shall be provided in adequate number in the terminal for housekeeping activities for ensuring dust free environment
10.	Administration Office Space for (Bus Terminal Manager, Traffic Controller Office, Traffic Supervisor along with their respective support staff and other key personnels)	Provision for office spaces for adda- in charges of all Roadways operators and authorized private operators operating from the Bus Terminal.
11.	Store Room	The Store room shall be provided in the bus terminal premises.

✓ **Bus Entry / Exit to the Terminal**

- The bus circulation pattern in the bus terminal shall be such that there is no queuing of buses at the entry / exit gates in the terminal.
- The entry and exit for buses shall be separate from the other vehicles. Speed-breakers shall be provided near the entry and exit gates.
- In case, more than one entry and exit is provided on the roadside, a buffer of minimum 7 m shall be provided parallel to the same road.

✓ **Bus Terminal Parking Area**

- The Intermediate Public Transport (IPT) modes like the auto rickshaws and taxis are the expected modal change for the users apart from the intra city bus transport. The private modes of transport are two-wheelers, cars and cycles. There should be

provision for arrival, departure and parking of these categories of private and public transport.

- b. Designated parking area shall be allotted for the public and private vehicles along with the drop in and drop off facility.
- c. The entry and exit for the parking areas of IPT and private vehicles shall be segregated by use of railings or medians.

✓ **Service Time at Bays for Buses**

- a. The internal circulation pattern of the buses in the terminal shall be planned such that the minimum service time attained by buses at all times at alighting and boarding bays is at least 4 and 10 minutes respectively.

✓ **Pavement for Bus Terminal**

- a. The Contractor shall construct the bus circulation and the parking area along with the approaches/roads to various components in the bus terminal with rigid pavement.
- b. The pavement shall be designed as per the standards of IRC and the National Building Code.

✓ **Idle Parking for Buses**

- a. The idle parking bays are to be earmarked separately within the bus terminal. However there shall be enough circulation area, to ensure safe movement, turning and maneuverability of buses.
- b. The idle parking bay area shall be marked and designated with thermoplastic paint along with the provision of appropriate informatory signage's.

✓ **Traffic Signs and Signage**

The Contractor shall provide signage with customer focused approach. While designing, the following guidelines shall be adhered to:

- a. Adequate number of traffic signs (informatory, cautionary and warning) and signage's shall be provided in the bus terminal for convenience of crew and users.
- b. Insofar as possible, architectural elements, landscaping, and other design features shall identify entrances, exits, etc.
- c. Signs shall be located for maximum visibility at or before all decision points within the facilities.
- d. Signs shall be placed at frequent enough intervals so that the infrequent or new user can readily find his or her way without assistance.
- e. All signage's should comply with relevant standards and codes.

- f. Signage shall also include items relating to regulatory enforcement (e.g. no smoking, no parking here, etc).
- g. Relate outbound passengers to the surrounding community with appropriate signage.
- h. Pavement markings shall be provided as per the requirement in the bus terminal area for convenience of crew and users.

✓ **Functional and Geometric Design Dimension Parameters**

The following table indicates the minimum dimensions related to functional and geometric design aspects of the bus terminal components.

Table 2: Minimum Functional and Geometric Dimensions

Sl. No.	Parameter	Minimum Requirement
1	Bus Bay dimension	3.5m x 10.0m clear space along with a stub arm of 1.2 m wide
2	Turning radius for bus movement	not less than 12.0m
3	Driveway width for bus	not less than 12.0m
4	Clear Distance between the boarding/alighting bay and idle bay for buses	not less than 15.0m
5	Width of the passenger platform, in case of bus bays on only one side of the passenger platform	not less than 9.0 m
6	Width of the passenger platform, in case, the bus bays are provided on both sides of the passenger platform	not less than 15.0 m.
7	Clear height of passenger concourse in the boarding area including boarding platforms	not less than 6.0m
8	Clear height of passenger	not less than 3.5m

Sl. No.	Parameter	Minimum Requirement
	concourse in the alighting area including alighting platforms	
9	Driveway width at the bus entry/exit gates	not less than 9.00 m
10	Minimum width of ramps for usage by passengers	not less than 3.75m
11	Minimum width of vehicular ramps leading to basement parking	not less than 4.50m
12	Minimum width of ramps for buses	not less than 9.00m
13	Minimum width for interconnecting subways, in case they are provided	not less than 10.00m

✓ **Minimum Passenger Amenities Requirements**

- a. The bus terminal shall consist of the various passenger amenities. These are to be in adequate number, located and designed for passenger convenience. The following passenger amenities are mandatory to be provided as part of the Bus Terminal Facility. All the passenger facilities shall be provided and maintained as per the best practices in modern bus terminals of similar traffic characteristics. The amenities shall include but not limited to the following:

1. Waiting Halls
2. WC for Ladies
3. WC for Gents
4. Urinal for Gents
5. Cloak Room
6. Parking Area
7. Drinking Water Chambers
8. Seating Arrangements

-
9. Dustbins
 10. Canteen / Cafeteria
 11. Kiosks (Not eateries or Dhabas and other General Shops)
 12. Ramps for handicapped and Disabled people
 13. Public Relations Office
 14. Parcel Room
 15. Wheel Chairs.

✓ **Passenger Amenities (on Commercial basis) within the Bus Terminal Facility**

- a. The Contractor shall develop passenger amenities (on commercial basis in the form of canteen / cafeteria) in the bus terminal in accordance with the volumetric constraints as provided herein for the commercial and finally fixed as per the approved plans. These passenger amenities shall be a part of the Bus Terminal Facility and shall be in compliance with the Applicable Laws and in accordance with the Technical Requirements in this behalf. The passenger amenities area development is to be done as per the technical specifications mentioned herein and good engineering practices.
- b. The range of passenger amenities (on commercial basis) that shall be developed by the Contractor shall include but not limited to the following:
 1. Restaurant/ Canteen
 2. Deluxe Waiting Halls
 3. Cloak Room
 4. Stationary / Book Shop / Newspaper Stand
 5. Chemists Shop
 6. Internet Café
 7. Phone/Fax Booths
 8. Bank ATM's
- c. The Contractor would ensure, by either planned allocation of space or control that any activity generated by commercial establishments, if any, should not hamper the bus terminal operations or people's movement in the passenger concourse area. The passenger amenities shall be well dispersed at appropriate locations in the bus terminal area.

✓ **Bus Terminal Parking Area**

- a. The parking area shall be integrated with the bus terminal such that there is easy accessibility for the passengers. The parking area shall be suitably segregated into lots for two-wheelers, cars, auto rickshaws and cycles.
- b. The parking area shall consist of drop in and drop off zones for the various private and IPT vehicles. In case of parking provision for intra-city buses, suitable bus bays shall be constructed near the alighting zone.
- c. All parking spaces shall be constructed with rigid pavement to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/lots shall have proper cross slope and drainage. They shall be marked with paint as per the applicable codes to demarcate parking and circulation space.

✓ **Common Area and Facilities**

• **Water Supply Structures**

The Contractor shall provide adequate number of Water Storage and Supply Structures in the form of Over Head Water Storage and Under Ground Water Storage Tanks. These tanks shall be of adequate capacity to meet the peak hour requirements of the bus terminal and shall be designed and built as per relevant standards. Apart from meeting the user requirements, water storage shall be maintained for meeting the contingency requirements in case of fire or similar incidents.

The water supply distribution network shall be laid exclusively for the Bus Terminal Facilities. Separate water supply meters shall be installed for usage by Bus Terminal and Commercial Complex.

The Contractor shall provide adequate number of Sanitation structures along with proper flushing and cleaning arrangement.

• **Rain Water Harvesting Structures**

The Contractor shall mandatorily provide rain water harvesting system in the bus terminal. This shall consist of a properly designed network which shall be cleaned and maintained at all times.

• **Solid Waste Management System**

The Contractor shall provide adequate support facility for storage of solid waste at the bus terminal. The facility shall be a proper enclosure and should not be aesthetically unpleasant. All the solid waste from the bus terminal shall be collected and stored in this facility, before being taken for disposal by relevant authorities.

- **Communication System**

The Contractor shall provide a state-of-art communication system which shall primarily consist of telecommunication and networking equipments. These shall form the basic infrastructure for implementing the Management Information System in the bus terminal.

Different departments/maintenance staff of the Contractor should be accessible on call at all times. Preferably walky-talkies and wireless local loop phones shall be provided.

- **Landscaping Area**

No area/pocket in the bus terminal is to be left barren. Adequate landscaping shall be done in the Project Site Area. This area has to be suitably provided for improving the aesthetics of the bus terminal. The pockets shall be properly illuminated and railings of suitable type shall be provided to boundary the area. Landscaped area shall be provided as a buffer between the passenger concourse area and the commercial development component.

- ✓ **Electricity Supply & Illumination Standards**

An electric sub-station shall be separately provided for the bus terminal facility, open areas, multilevel car parking as well as the commercial complex. Separate electric meters shall be installed for usage by of the Commercial Complex.

Apart from the electric supply, in case of emergencies, there shall be provision for Standby Diesel Generator Sets of suitable capacity which shall be provided for the bus terminal facility, open areas, multilevel car parking as well as the commercial complex in a non-polluting manner for providing electricity to the terminal during power breakdowns and power cuts. The bus terminal shall be adequately lit as per the minimum approximate illumination standards prescribed. During night time common areas and facilities should be sufficiently illuminated to ensure visibility and safety to users. High mast lighting shall be provided to lit up the bus terminal area.

Table 3: Minimum Illumination Standards

Sr. No.	Project Component	Minimum Approximate Illumination (Lux)
1	Passenger Circulation Area	150
2	Administrative Office	150
3	Corridors	70
4	Restaurant	70
5	Cloakroom	100
6	Toilets	100
7	Waiting Halls	150
8	Parking Areas	
	(a) Surface Parking	50
	(b) Basement Parking	70
	(c) Ramp	70
9	Roofs	20
10	External Lighting	20

MULTI LEVEL CAR PARK

The total built of the Car Parking Facility is proposed to be approximately 24,880 Sq.m. Conventional Ramp based parking is to be used for Bus Terminal site for all the levels. The Parking Facility shall consist of structures and components as described below, which would co-exist with the approved development control norms.

Parking Structure Design Specifications

This sections details the structural design specifications for various types of parking systems. This shall form integral part of the development obligations of the Contractor and the Contractor shall have to comply with these specifications.

Table 4: Design of Parking Structure

Fixed Design Parameter	Permissible
Minimum dimension and weight of a car (General category) to be considered	Length – 5.00 m Width – 2.15m Height – 2.0m Weight – 1800kg
Minimum dimension and weight of a car (SUV category) to be considered	Length – 5.20m Width – 2.20m Height – 2.20m Weight - 2500 Kg
Required arrangement for convenient parking by physically challenged drivers (2% of total ECS capacity) will have to be provided.	

Table 5: Covenants for the Proposed Parking

S. No.	Item Description	Covenant
1	Depth of construction below ground	Should not exceed three basement levels
2	Height of parking without elevators	Should not exceed three floors
3	Height of each basement floor	Should not exceed 4.5 m
4	Space for calculating one	Not less than 30m ² per ECS for

S. No.	Item Description	Covenant
	ECS within parking structure	ground floor covered parking and 32m ² per ECS for underground
5	Bay / slot dimension per car space	Not less than 5.0 m long and 2.5 m wide
	Air condition	Preferable but not mandatory. However, mechanical ventilation must be provided to permit a minimum of 15 air changes per hour for normal ventilation and 30 air changes per hour in case of fire or distress call.
6	Gradient of ramp	Not more than 1:8 with minimum transition space of 5 m at the start and termination of the ramp with gradient of 50% of the main ramp
7	Width of ramp	Minimum of 5.5 m width and only one way
8	Straight turning radius. Helical length turning radius Lot turning radius	Minimum 7.5 m Minimum 10 m Minimum 5.5 m
9	Carriageway of pavement for circulation space within parking facilities	Not less than 4.5 m, if one way, and not less than 6m if it is two ways flow

Minimum delay is caused to users of the parking facility and the maximum queue length at any of the entry area the facility shall not ideally exceed three cars, at any point of time, except under exceptional circumstances.

Entry and Exit Area Specifications

Location

Location of the Entry and Exit Areas and of the driveways along with their connection to the road system should be made properly.

Size

The Entry and Exit Areas must be sized to allow drivers to safely and comfortably drive in and out the vehicle. Turning radii and width of drive aisles and minimum clear width of Entry and Exit Area shall be designed according to the respective needs and leaving adequate space to the left

and right of the car for passengers to leave / enter the car and in accordance with Applicable Codes.

Components

- a) CCTV cameras shall be installed inside the Entry and Exit Areas to ensure 24x7 monitoring of the parking facility. Cameras shall be installed to record digital photos of the physical condition of the car entering and exiting the premises. The images are also helpful to locate cars for drivers with a lost ticket and to validate damage claims as well as to detect any suspicious activity in the parking area.
- b) All Entry and Exit Areas must comply with disability requirements.
- c) The driveways for inbound and outbound traffic shall be designed to provide sufficient queuing spaces; simple visual signage and guidance shall clearly direct approaching traffic off the street and into the Entry and Exit Areas. Respective commands via a visual message centre shall be applied inside the Terminals for the drivers in such manner that an easy use of the system is possible.
- d) Inbound / outbound traffic crossing shall be prevented.
- e) As Entry and Exit Areas are the exchange station of the Parking Structure, special attention shall be directed to ease the “drive-in” and positioning of the car by the drivers (preferably by means of physical aids)
- f) The Ticketing Station or access system shall be located outside the Entry and Exit Areas on the right side of the inbound traffic.
- g) If the system has installed radio frequency access system, the readers shall have enough range to detect approaching vehicles from at least 9 meter outside of the Entry and Exit Areas.

Fire Safety/ Fire Fighting

- a) Fire safety measures as recommended in applicable codes shall be implemented.
- b) Construct the ‘Parking Facilities’ structure with non-combustible construction materials with a specified fire resistance. In addition, those portions of the facility used for the transport and / or storage shall have a finish of non-absorbent, non-combustible material.
- c) Contractor shall make all provisions in the construction as per the Relevant Fire Safety Act as well as take all measures as per the rules and regulations including guidelines from Central Government, State Government and drafted by the ULB and any agency appointed by the government on the subject.

-
- d) Sprinkler systems should be provided in the parking bays as per fire safety act.

Ventilation

- a) Areas accessible to the public / drivers shall be equipped with sufficient ventilation.
- b) Depending on the design of the Entry and Exit Areas, a ventilation of emissions may be required in that area.

Lighting/Accessibility for Maintenance

- a) Lighting in areas accessible to the drivers / public shall be properly illuminated.

Energy Efficient Building

- a) The Contractor shall ensure energy efficient buildings/ infrastructure and energy management and shall follow Energy Conservation Building Code (ECBC) design norms while executing the Works.

COMMERCIAL COMPLEX

The Minimum Commercial area to be developed shall be approximately 83,100 Sq. mt. which is the FAR area of the commercial and is exclusive of the basements. The Commercial Complex shall be built as per prevailing Development Control Regulations at the site.

Guidelines for Commercial Facilities Development:

The guidelines for commercial facilities development are:

1. Minimum conflict points related to the connectivity between the commercial development and the bus terminal facilities.
2. Separate access for bus terminal and commercial facilities development.
3. The design of the building shall result in a permanent civic architecture that contributes to its context. The design shall not only be a recognizable element of the Bus Terminal, but also shall be clearly an integral part of the neighborhood and community. The external components must be aesthetic and shall display modern architecture and concepts.
4. Elevators and Escalators- The Minimum number of elevators shall be 8 sets of 2 each (equivalent to 16 lifts with a minimum capacity of carrying 16 passenger each). The minimum number of escalators required is 6.
5. Air-conditioning- The Passenger Waiting areas, Ticketing areas, Restaurant, Canteen, Food Court as well as the Commercial areas on the Ground and First Floor shall be centrally air conditioned.

CONSTRUCTION STANDARDS

The Contractor shall follow National Building Codes for Purposes of Building Design & Specifications. For purposes of Road Work, relevant specifications of IRC and MORTH guidelines shall be followed.

All the items of work shall be executed as per CPWD specifications / relevant IS Codes and specifications. The design of facilities for the handicapped and the disabled people, like the toilets, bathrooms, ramps shall be designed as per the respective IS Codes. **Fly ash as per directives of the Central / State Government to be used wherever applicable.**

APPROVALS

The Contractor shall be required to get the following approvals:

1. Final Design/Concept Plans approved from KDA. For this purpose, KDA shall appoint "Project Engineer" who shall be responsible for day to day monitoring of works by the Contractor.
2. Structural Designs Approval from IIT.
3. Detailed working drawings on the basis of which actual work is to be proceeded will be furnished by the Contractor to Project Engineer from time to time.
4. Getting approval of the Final Bill of Quantity from the Project Engineer. The decision of the Project Engineer shall be final in this respect.
5. Performance tests shall be carried out on all/any items of work as directed by the Project Engineer. Should any item fail to pass the tests, the Contractor shall be given opportunity to take corrective measures and have the same re-tested to the satisfaction of the Project Engineer, who may at his sole discretion order dismantling of the whole or part of the works done and order the Contractor to reconstruct the same. The cost of all these operations and materials shall be borne by the Contractor without any extra claim.

SPECIFICATIONS

OFFICE AREA	Flooring – Vitrified Tiles: Kajaria/Bell/Orient Walls – POP punning with acrylic emulsion paint: Asian/Berger Ceiling – Oil Bound Distemper: Asian/Berger Door/Window – Anodised/ Powder Coated Aluminium Door/Window
TOILETS	Flooring – Anti skid Ceramic Tiles: Kajaria/Bell/Orient Walls – Ceramic Tiles on Walls: Kajaria/Bell/Orient Ceiling – Oil Bound Distemper: Asian/Berger Internal Door – PVC Doors Peripheral Door/ Windows - Anodised/ Powder Coated Aluminium Door/Window Fixtures – Approved Quality: Parko/Mark Jaguar Counters – Granite/Marble
COMMON AREAS - Flooring	Staircases – Granite/ Marble Stone Fire Staircases – Kota Stone Lift/ Lobby - Granite/ Marble Stone
COMMON AREAS - Walls	Walls – POP punning with acrylic emulsion paint: Asian/Berger Ceiling – Oil Bound Distemper: Asian/Berger
ELECTRICAL & COMMUNICATION	Concealed Copper Wiring : Kalinga/Polycab/National/Plaza Modular Switches: CPL/North West
FIRE PROTECTION WORKS	Fire Fighting Systems as per applicable NBCC Norm (Part IV and Part III):Kirloskar/Jindal/AUDCO/DSS/GETECH/ASE



SCHEDULE – C
APPLICABLE PERMITS

1 Applicable Permits

The Contractor shall obtain, as required under the Applicable Laws, the following Applicable Permits:

- (a) Permission of the State Government for extraction of boulders from quarry;
- (b) Permission of Pollution Control Board for installation of crushers;
- (c) License for use of explosives;
- (d) Permission of the State Government for drawing water from river/reservoir;
- (e) License from inspector of factories or other competent Authority for setting up Batching Plant;
- (f) Clearance of Pollution Control Board for setting up Batching Plant;
- (g) Clearance of Pollution Control Board for Asphalt Plant;
- (h) Permission of State Government for borrow pit; and
- (i) Any other permits or clearances required under Applicable Laws for the Works.

SCHEDULE - D

SAFETY REQUIREMENTS AND WELFARE PROVISIONS FOR LABOUR

1 Guiding principles of Safety Requirements

1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Project Site, irrespective of the person(s) at fault.

1.2 Users of the Project include motorized vehicles as well as pedestrians, or those associated with accidents.

1.3 Safety Requirements apply to all phases of construction with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

1.4 Safety Requirements include measures associated with traffic management and regulation such as road signs, pavement marking, traffic control devices, roadside furniture, design elements, enforcement and emergency response.

2 Obligations of the Contractor for Safety Requirements

2.1 The Contractor shall abide by the following insofar as they relate to safety of all persons entitled to be on the Site:

- (a) Applicable Laws and Applicable Permits, as amended from time to time;
- (b) Manual for Safety in Road Design, issued by MORTH (Ministry of Road Transport and Highways);
- (c) relevant Standards/Guidelines relating to safety, road geometrics, culverts, parking facility, lifts, road signs, pavement marking and roadside furniture;
- (d) using reasonable efforts to keep the Site and Construction Works clear of unnecessary obstruction so as to avoid danger to the persons on the Site;
- (e) providing fencing, lighting, guarding and watching of the Works during construction of the Works;
- (f) providing any temporary works (including diversions, roadways, footways, signs, guards and fences) which may be necessary, because of

the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land and structures;

- (g) provisions of this Agreement; and
- (h) Good Industry Practice.

3 Appointment of Safety Auditor

For carrying out safety audit of the Project under and in accordance with this Schedule-D, KDA shall appoint from time to time, one or more qualified firms or organizations as its safety auditor (the “**Safety Auditor**”). The Safety Auditor shall employ a team comprising, without limitation, one road safety expert and one traffic planner to undertake safety audit of the Project.

4 Safety measures during Design Period

4.1 The Contractor shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of users of the Project (the “**Safety Drawings**”). Such design details shall include horizontal and vertical alignments; sightlines, layouts of intersections, interchanges, road cross-section, culverts, side drains, provision for parked vehicles, pedestrians, bus bays, and other incidental or consequential information. The Safety Consultant shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Project Engineer who shall record its comments, if any, and forward one copy each to KDA and the Contractor.

4.2 The design details shall be compiled, analyzed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Project. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to KDA, in five copies. One copy each of the Safety Report shall be forwarded by KDA to the Contractor and the Project Engineer forthwith.

4.3 The Contractor shall endeavor to incorporate the recommendations of the Safety Report in the design of the Project, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Specifications and Standards, and Good Industry Practice. If the Contractor does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to KDA forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-B, the Contractor shall

make a report thereon and seek the instructions of KDA for funding such works in accordance with the provisions of Article 9.

4.4 Without prejudice to the provisions of Paragraph 4.3, the Contractor and the Project Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to KDA, and no later than 15 (fifteen) days of receiving such comments, KDA shall review the same along with the Safety Report and by notice direct the Contractor to carry out any or all of the recommendations contained therein with such modifications as KDA may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 9.

5. Safety measures during Construction Period

5.1 A Safety Auditor shall be appointed by KDA, no later than 4 (four) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.

5.3 The Contractor shall make adequate arrangements during the Construction Period for the safety of workers and users of the Project facilities.

6 Safety Audit

6.1 Once in every Accounting Year, a safety audit shall be carried out by the Safety Auditor to be appointed by KDA. It shall review and analyze the annual report and accident data of the preceding year, and undertake an inspection of the Project. The Safety Auditor shall complete the safety audit within a period of 1 (one) month and submit a safety audit report (the “**Safety Audit Report**”) recommending specific improvements, if any, required to be made to the Project or any of its components. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.2, 4.3 and 4.4 of this Schedule-D.

7 Costs and expenses

7.1 Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be met in accordance with Sub clause 4.8, and in particular, the remuneration of the Safety Consultant, and costs incidental thereto, shall be met by the Contractor.

7.2 The expenditure on safety audit shall be met by KDA.

8. Safety & Welfare Provisions for labour to be employed by the Contractor

All necessary personal safety equipment as considered adequate by the Project Engineer shall be made available by the Contractor for use of persons employed on the Site and maintained in a condition suitable for immediate use; and the Contractor shall take adequate steps to ensure proper use of such equipment by those concerned. Detailed provisions are listed in Annex I,

9. Payments to labour

The Contractor shall keep on the Site the records, as required under the Applicable Laws, of engagement of labour, payment of wages, and any other monetary benefits.

Annex to (Schedule D)

Safety & Welfare Provisions for labour

1. Safety Provisions

(a) The Contractor shall comply with all the precautions as required for the safety of the workmen. All workmen at Site shall be provided with safety helmets and yellow/orange jackets. Workmen required on Site during night hours shall be provided with fluorescent yellow jackets with reflective lopes.

(b) Workers employed on mixing asphaltic materials, cement, lime mortars, concrete etc. shall be provided with protective footwear, protective goggles.

(c) Those engaged in handling any material, which is injurious to the eyes, shall be provided with protective goggles.

(d) Those engaged in welding works shall be provided with welder's protective eye-shield.

(e) Stone breakers shall be provided with protective goggles and protective clothing and seated at sufficiently safe intervals.

(f) Suitable scaffolds shall be provided for workmen for all work that cannot safely be done from the ground, or from solid construction except for such short period work as can be done safely from ladders. When a ladder is used, an extra labourer shall be engaged for holding the ladder and if the ladder is used for carrying materials as well, suitable foot-holds and hand-holds shall be provided on the ladder, which shall be given an inclination not steeper than 1/4 to 1.

(g) Scaffolding or staging more than 3.25 meters above the ground or floor, swung or suspended from an overhead support or erected with stationary support, shall have a guard rail properly attached, bolted, braced and otherwise secured at least 1 meter high above the floor or platform of such scaffolding or staging and extending along the entire length of the outside and ends thereof with only such openings as may be necessary for the delivery of materials. Such scaffolding or staging shall be so fastened as to prevent it from swaying from the support or structure.

(h) Working platforms, gangways, and stairways shall be so constructed that they do not sag unduly or unequally, and if the height of any platform or gangway or stairway is more than 3.25 meters above ground level or floor level, it shall have closely spaced boards, have adequate width and be suitably provided with guard rails as described in (g) above.

(i) Every opening in the floor of a structure or in a working platform shall be provided with suitable means to prevent fall of persons or materials by providing suitable fencing or railing with a minimum height of one meter.

(j) Safe means of access and egress shall be provided to all working platforms and other working places. Every ladder shall be securely fixed. No portable single ladder shall be over 9 meters in length. The width between side rails in a rung ladder shall in no case be less than 30 cm for ladders up to and including 3 meters in length. For longer ladders the width shall be increased at least 6 mm for each additional 30 cm of length. Spacing of steps shall be uniform and shall not exceed 30 cm.

(k) Adequate precautions shall be taken to prevent danger from electrical equipment. No materials on the Site shall be so stacked or placed as to cause danger or inconvenience to any person or the public. The Contractor shall provide all necessary fencing and lights to protect the public from accidents and shall be bound to bear the expenses of defending every suit, action or other proceedings at law that may be brought by any person for injury sustained owing to neglect of the above precautions and to pay any damages and costs which may be awarded in any such suit, action or proceedings to any such person or which may with the consent of the Contractor be paid to compromise any claim by any such person.

(l) Excavation and Trenching: All trenches, 1.5 meters or more in depth, shall at all times be supplied with at least one ladder for each 20 meters in length or fraction thereof. Ladders shall be extended from the bottom of the trench to at least 1 meter above the surface of the ground.

The sides of a trench, which is 1.5 meters or more in depth shall be stepped back to provide a suitable slope, or be securely held by timber bracing so as to avoid the danger of side collapse. Excavated material shall not be placed within 1.5 meters of the edge of any trench or half the depth of the trench, whichever is more. Excavation shall be made from the top to the bottom. Under no circumstances shall undermining or undercutting be done.

(m) When workers are employed in sewers and manholes, which are in use, the Contractor shall ensure that manhole covers are open and manholes are ventilated at least for an hour before workers are allowed to go into them. Manholes so open shall be cordoned off with suitable railing and provide warning signals or boards to prevent accidents to the public.

(n) Demolition: Before any demolition work is commenced and also during the process of the work:

(i) All roads and open areas adjacent to the work site shall either be closed or suitably protected.

(ii) No electric cable or apparatus, which is liable to be a source of danger other than a cable or apparatus used by operators, shall remain electrically charged.

(iii) All practical steps shall be taken to prevent danger to persons employed by KDA from risk of fire or explosion, or flooding. No floor, roof or other part of a building shall be so overloaded with debris or materials as to render it unsafe.

(o) When work is performed near any place where there is risk of drowning all necessary equipment shall be provided and kept ready for use and all necessary steps shall be taken for prompt first aid treatment of all injuries likely to be sustained during the course of the work.

(p) Use of hoisting machines and tackle including their attachments, anchorage and supports shall conform to the following:

(i) These shall be of good mechanical construction, sound material and adequate strength and free from patent defects and shall be kept in good working order, be regularly inspected and properly maintained.

(ii) Every rope used in hoisting or lowering materials or as a means of suspension shall be of durable quality and adequate strength, and free from defects.

(iii) For every hoisting machine and every chain hook, shackle, swivel and pulley block used in hoisting, lowering or as means of

suspension, safe working load shall be ascertained by adequate means. Every hoisting machine and all gear referred to above shall be plainly marked with safe working load. In case of a hoisting machine or a variable safe working load, each safe working load and conditions under which it is applicable shall be clearly indicated. No part of any machine or any gear referred to in the paragraph above shall be loaded beyond safe working load except for the purpose of testing

(q) Motors, gearing, transmission, electric wiring and other dangerous parts of hoisting appliances shall be provided with efficient safeguards; hoisting appliances shall be provided with such means as will reduce the risk of accident during descent of load to the minimum. Adequate precautions shall be taken to reduce to the minimum risk of any part of a suspended load becoming accidentally displaced. When workers are employed on electrical installations which are already energized, insulating mats, working apparel such as gloves, sleeves and boots, as may be necessary, shall be provided. Workers shall not wear any rings, watches and carry keys or other material which are good conductors of electricity.

(r) All scaffolds, ladders and other safety devices mentioned or described herein shall be maintained in a safe condition and no scaffold, ladder or equipment shall be altered or removed while it is in use. Adequate washing facilities shall be provided at or near places of work.

(s) These safety provisions shall be brought to the notice of all concerned by displaying on a notice board at a prominent place at the work location. Persons responsible for ensuring compliance with the Safety Code shall be named therein by the Contractor.

(t) To ensure effective enforcement of the rules and regulations relating to safety precautions, arrangements made by the Contractor shall be open to inspection by the Project Engineer or his Representative.

(u) Notwithstanding anything contained in condition (a) to (t) above, the Contractor shall remain liable to comply with the provisions of all acts, rules, regulations and bylaws for the time being in force in India and applicable in this matter.

(v) The Contractor shall be responsible for observance, by its sub-contractors, of the foregoing provisions.

2. Labour Welfare

Provisions: (a) First Aid:

At every workplace, there shall be maintained in a readily accessible place first aid appliances including an adequate supply of sterilized dressings and sterilized cotton wool as prescribed in the Factory Rules of the State. The appliances shall be kept in good order and under the charge of a responsible person who shall be readily available during working hours.

(b) Accommodation for Labour:

The Contractor shall during the progress of the work provide, erect and maintain necessary temporary living accommodation and ancillary facilities for labour at its own expense to standards and scales approved by the Project Engineer.

(c) Drinking water:

At the workplace, there shall be provided and maintained at suitable places easily accessible to labour, a sufficient supply of water fit for drinking.

Where drinking water is obtained from an intermittent public water supply, the workplace shall be provided with storage tanks where drinking water shall be stored.

Every water supply storage shall be at a distance of not less than 15 meters from any latrine, drain or other source of pollution. Where water has to be drawn from an existing well, which is within such proximity of any latrine, drain or any other source of pollution, the well shall be properly chlorinated before water is drawn from it for drinking. All such wells shall be entirely closed in and be provided with a trap door, which shall be dust proof and waterproof.

A reliable pump shall be fitted to each covered well. The trap door shall be kept locked and opened only for cleaning or inspection, which shall be done at least once a month.

(d) Washing and bathing places:

Adequate washing and bathing places shall be provided separately for men and women workers. Such places shall be kept in clean and drained condition.

(e) Scale of accommodation in latrines and urinals:

There shall be provided within the precincts of every workplace, latrines and urinals in an accessible place, and the accommodation, separately for each for these, shall not be less than at the following scale:

	No. of Seats:
(a) Where number of persons does not exceed 50	2
(b) Where number of persons exceed 50 but does not exceed 100	3
(c) For additional persons per 100 or part thereof	3

In particular cases, the Project Engineer shall have the power to increase the requirement, wherever necessary.

(f) Latrines and urinals:

Except in workplaces provided with water-flushed latrines connected with a water borne sewage system, all latrines shall be provided with dry-earth system (receptacles) which shall be cleaned at least four times daily and at least twice during working hours and kept in a strictly sanitary condition. Receptacles shall be tarred inside and outside at least once a year.

If women are employed, separate latrines and urinals, screened from those for men and marked in the vernacular in conspicuous letters "For women only", shall be provided. Those for men shall be similarly marked "For men only". A poster showing the figure of a man and a woman shall also be exhibited at the entrance to latrines for each sex. There shall be adequate supply of water, close to latrines and urinals.

(g) Construction of latrines:

Inside walls shall be constructed of masonry or other non-absorbent material and shall be cement- washed inside and outside at least once a year. The dates of cement washing shall be noted in a register maintained for the purpose and kept available for inspection. Latrines shall have at least a thatched roof.

(h) Disposal of excreta:

Unless otherwise arranged for by the local sanitary authority, arrangement for proper disposal of excreta by incineration at the workplace shall be made by means of a suitable incinerator approved by the local medical health and municipal or cantonment authorities, as

may be applicable. Alternatively, excreta may be disposed of by putting a layer of night soils at the bottom of a pucca tank prepared for the purpose and covering it with a 15 cm layer of waste or refuse and then covering it with a layer of earth for a fortnight (when it will turn into manure).

The Contractor shall, at its own expense, carry out all instructions issued to it by the Project Engineer to effect proper disposal of soil and other conservancy work in respect of Contractor's work-purpose or employees on the Site. The Contractor shall be responsible for payment of any charges, which may be levied by municipal or cantonment authority for execution of such work on its behalf.

(i) Provisions of shelters during rest:

At workplace, there shall be provided, free of cost, four suitable sheds, two for meals and two others for rest, separately for use of men and women labour. The height of each shelter shall not be less than 3 meters from floor level to lowest part of roof. Sheds shall be kept clean and the space provided shall be on the basis of at least 0.5 sq.m. per head.

(j) Crèches:

At a place where women are ordinarily employed, there shall be provided at least one hut for use of children under the age of 6 years belonging to such women. Huts shall not be constructed to a standard lower than that of thatched roof, mud floor and wall with wooden planks spread over mud floor and covered with matting.

Huts shall be provided with suitable and sufficient openings, for light and ventilation. There shall be adequate provision of sweepers to keep the places clean. There shall be a maidservant in attendance. Use of huts shall be restricted to children, their attendants and mothers of children.

(k) Canteen:

A cooked food canteen on a moderate scale shall be provided for the benefit of workers wherever it is considered necessary.

(l) Structures

Planning, siting and erection of the above mentioned structures shall be approved by the Project Engineer or his Representative and the whole of such temporary accommodation shall at all times during the progress of the Works be kept tidy and in a clean and sanitary condition to the satisfaction of the Project Engineer or his Representative and at the Contractor's expense. The Contractor shall conform generally to sanitary

requirements of local medical, health and municipal or cantonment authorities, as may be applicable, and at all times adopt such precautions as may be necessary to prevent soil pollution of the Site.

On completion of the Works, the whole of such temporary structures shall be cleared away, all rubbish burnt, excreta or other disposal pits or trenches filled in and effectively sealed off and the whole of the Site left clean and tidy, at the Contractor's expense, to the entire satisfaction of the Project Engineer.

(m) Anti-malarial precautions:

The Contractor shall, at its own expense, conform to all anti malarial instructions given to it by the Project Engineer, including filling up any borrow pits which may have been dug by it.

(n) Awareness and education of HIV/AIDS

The Contractor shall provide/carryout HIV/AIDS awareness and training programme to its labour and management, at least twice per year during the Construction Period.

(o) Child labour prohibition

The Contractor shall not employ child labour for any works or in any manner under the Agreement for the execution of Works at any time. In the event that the Contractor uses child labour, KDA shall terminate the Contract.

(p) Amendments:

KDA may, from time to time, add to, or amend these Rules and issue such directions as may be considered necessary for the proper implementation of these Rules or for the purpose of removing any difficulty, which may arise in the administration thereof.

(q) Applicable Laws

Notwithstanding anything stated hereinabove in this Schedule, the Contractor shall be bound to follow and abide by all the applicable laws and directions issued from time to time by the concerned authority in regard to above and shall keep KDA, Project Engineer or any of their officers, representatives, assigns fully indemnified against any violation of such laws and/or directions.

SCHEDULE – E
PERFORMANCE SECURITY

Performa for Bank Guarantee for Performance Security

B.G. No.

Dated:

From:

[Name and Address of Bank/ Financial Institution]

To,

The Chief Executive Officer

Katra Development Authority,

Katra, J&K

Ph. +

Fax: +

1. In consideration of you, Katra Development Authority (KDA), having its office at, (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to exempt [a Company registered under provision of the Companies Act, 1956] and having its registered office at hereinafter referred to as the “Contractor” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), from the demand under the terms and conditions of the EPC Agreement dated, entered into between KDA and the Contractor for the Design, Engineering, Procurement & Construction of Inter State Bus Terminal Cum Multilevel Car Parking Cum Commercial Complex at Katra on Turnkey Basis (hereinafter referred to as “the EPC Agreement”), of performance security for the due fulfillment by the said Contractor of the terms and conditions as contained in the said EPC Agreement on production of a Bank Guarantee of Rs. (Rupees), we [Name of the Bank] having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Contractor, do hereby in terms of the EPC Agreement irrevocably, unconditionally and without reservation undertake to pay to KDA an amount not exceeding Rs., as performance security (hereinafter referred to as the

“Performance Security”), in the event of any loss or damage caused to or suffered or would be caused to or suffered by KDA by reason of any breach by the said Contractor of any of the terms or conditions contained in the said EPC Agreement and shall treat the said obligation as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Contractor if the Contractor shall fail to fulfill or comply with all or any of the terms and conditions contained in the said EPC Agreement.

2. Any such written demand made by the Authority stating that the Contractor is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the EPC Agreement shall be final, conclusive and binding on the Bank.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Contractor or any other person and irrespective of whether the claim of the Authority is disputed by the Contractor or not merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Contractor to fulfill and comply with the terms and conditions contained in the EPC Agreement including failure of the said Contractor to keep its Performance Security valid at all time as per the terms of the EPC Agreement for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. Crore (Rupees only)

4. This Guarantee shall be irrevocable and unconditional and we, lastly undertake not to revoke this guarantee during (indicate the name of bank)’s currency except with the previous consent of KDA in writing.

5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Contractor is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the EPC Agreement including, inter alia, the failure of the Contractor to keep its Performance Security valid at all time as per the terms of the EPC Agreement, and the decision of the Authority that the Contractor is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Contractor or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Contractor or the Bank or any absorption, merger or amalgamation of the Contractor or the Bank with any other person.

7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said EPC Agreement or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said EPC Agreement by the said Contractor or to postpone for any time and from time to time any of the powers exercisable by it against the said Contractor and either to enforce or forbear from enforcing any of the terms and conditions contained in the said EPC Agreement or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Contractor or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Contractor or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorized to receive the said notice of claim.

10. It shall not be necessary for the Authority to proceed against the said Contractor before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Contractor or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. Crore (Rupees only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof.

Signed and Delivered by Bank

By the hand of Mr./Ms, its and authorized official.

(Signature of the Authorized Signatory)
(Official Seal)

Annex to Schedule E

Undertaking for Extension of Performance Security

"I,, Director (.....), of M/s, do hereby on solemn affirmation state as under: -

1. That the Letter of Award For "Design, Engineering, Procurement and Construction of Inter State Bus Terminal cum Multi Level Car Parking cum Commercial Complex at Katra on Turnkey Basis" has been issued in our favour by The Katra Development Authority Vide their Letter No.: - Dated: -
2. That as per RFQ cum RFP, a Performance Security by way of Bank Guarantee Amounting to Rs. Crores (Rupees only) is required to be furnished by us with Validity Period of Seven Years i.e., upto 00.00.0000.
3. That our Bank, M/s has however expressed reservation to the effect that Performance Bank Guarantee can be issued for a Maximum Period of 5 (Five) Years and if the same

needs to be extended, can thereafter be done well before expiry of the said 5 (Five) Years Period.

4. That in order to execute an agreement with Katra Development Authority, We undertake to extend Validity of the Performance Bank Guarantee well before expiry of the same and the arrangement will be as under and it will be furnished in following manner: -

a. The Performance Bank Guarantee will be furnished in first instance for a Period of 5 (Five) Years;

b. In order to meet the requirement of Katra Development Authority, the Validity of the same shall be extended well before 23rd Month for another Two Years so as to make it Valid for a total of 7 (Seven) Years Period.

c. In the eventuality of our failing to extend the Validity of the Performance Bank Guarantee for a total of 7 (Seven) Years, the Drawing and Disbursement Officer (DDO) of Katra Development Authority will be within his right to retain an equivalent amount of Rs. Crores (Rupees only) out of the Payment that may become due/payable to us or take any appropriate action as may be necessary to secure the extension of the said Performance Bank Guarantee.”

d. That I am duly authorized to furnish this undertaking to the Katra Development Authority on behalf of M/s by way of Board Resolution dated, a copy of which is enclosed herewith.

Sign:

Name:

Designation:

SCHEDULE - F

CONTRACT PRICE

The Contract Price stated in the LOA is Rs. ***** which is a fixed lumpsum price.

SCHEDULE - G

SHIFTING OF UTILITIES AND OBSTRUCTIONS

[List the details of each utility/obstruction indicating location, ownership, the proposed new location, and the date of obtaining clearance from the owner]

SCHEDULE - H

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Contractor shall comply with the requirements set forth in this Schedule H for each of the Project Milestones and the scheduled construction date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Contractor shall notify KDA of such compliance along with necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the 180th (one hundred and eightieth) day from the Appointed Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Contractor shall have; commenced construction of the Project and expended not less than 10% (ten per cent) of the total Project cost;

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 365th (three hundred and sixty fifth) day from the Appointed Date (the “**Project Milestone- II**”).

3.2 Prior to the occurrence of the Project Milestone-II, the Contractor shall have completed construction of all culverts and expended not less than 35% (thirty five per cent) of the total Project cost;

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the 550th (five hundred and fiftieth) day from the Appointed Date (the “**Project Milestone-III**”).

4.2 Prior to the occurrence of Project Milestone-III, the Contractor shall have commenced construction of all Project Facilities and expended not less than 70% (seventy percent) of the total Project cost;

5 Scheduled Completion Date

5.1 The Scheduled Completion Date shall occur on the 730th (seven hundred and thirtieth) day from the Appointed Date.

5.2 On or before the Scheduled Completion Date, the Contractor shall have completed construction in accordance with this Agreement.

6 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE - I

DRAWINGS/ CONCEPT PLAN

1 Drawings

In compliance of the obligations set forth in Clause 7.2 of this Agreement, the Contractor shall furnish to the Project Engineer, free of cost, all Drawings listed in Annex-I of this Schedule I.

2 Additional drawings

If the Project Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Contractor to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Contractor shall promptly prepare and furnish such drawings to the Project Engineer, as if such drawings formed part of Annex-I of this Schedule I.

Annex- I to (Schedule-I)

List of Drawings

[Note: KDA to describe in this Annex, all the Drawings that the Contractor is required to furnish under Clause 7.2.

SCHEDULE - J

TESTS

1 Schedule for Tests

1.1 The Contractor shall, no later than 30 (thirty) days prior to the likely completion of construction, notify the Project Engineer and KDA of its intent to subject the Project to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Project Engineer and KDA detailed inventory and particulars of all works and equipment forming part of Construction Works.

1.2 The Contractor shall notify the Project Engineer of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Project Engineer shall, in consultation with the Contractor, determine the date and time for each Test and notify the same to KDA who may designate its representative to witness the Tests. The Project Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 10 and this Schedule J.

2 Tests

2.1 Visual and physical Test: The Project Engineer shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.2 Other Tests: The Project Engineer may require the Contractor to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

2.4 Environmental audit: The Project Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.5 Safety review: Safety audit of the Project shall have been undertaken by the Safety Consultant as set forth in Schedule-D, and on the basis of such audit, the Project Engineer shall determine conformity of the Project with the provisions of this Agreement.

3 Agency for conducting Tests

All Tests set forth in this Schedule J shall be conducted by the Project Engineer or such other agency or person as it may specify in consultation with KDA.

4 Completion Certificate

Upon successful completion of Tests, the Project Engineer shall issue the Completion Certificate in accordance with the provisions of Article 10.

SCHEDULE – K

COMPLETION CERTIFICATE

1 I, (Name of the Project Engineer), acting as Project Engineer, under and in accordance with the Agreement dated (the “**Agreement**”), for Design, Engineering, Procurement & Construction of Inter State Bus Terminal Cum Multilevel Car Parking Cum Commercial Complex at Katra on Turnkey Basis (the “**Project**”) through (Name of Contractor), hereby certify that the Tests in accordance with Article 10 and Schedule J of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in service of the users thereof.

2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, and the Project is hereby declared fit for entry into operation on this the day of 20.....

SIGNED, SEALED AND
DELIVERED For and on behalf
of the Project Engineer by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE – L

SELECTION OF PROJECT ENGINEER

1 Selection of Project Engineer

1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitution thereof shall apply, mutatis mutandis, for invitation of bids and evaluation thereof save as otherwise provided herein.

1.2 KDA shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Article 3 and thereupon shortlist 6-10 (six to ten) qualified firms in accordance with pre-determined procedure.

1.3 KDA shall invite the aforesaid firms shortlisted to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, KDA shall select the eligible firms on the basis of their technical scores of 70% (seventy) or more. The financial bids in respect of the firms so selected shall be opened and the order of priority as among these firms shall be determined on the basis of highest to lowest financial quote and firm quoting the lowest shall be selected for the purpose of selection as Project Engineer.

2 Appointment of government entity as Project Engineer

Notwithstanding anything to the contrary contained in this Schedule, KDA may in its discretion appoint a government-owned entity as the Project Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by KDA shall not be eligible for appointment as Project Engineer.

SCHEDULE – M

OFFICERS OF KDA

1. Officers of KDA

The following officers of KDA have been authorized to grant approval to the Project Engineer.

Serial No.	Nature of approval	Designation of the officer of KDA

SCHEDULE - N

FORMS FOR PAYMENTS TO THE CONTRACTOR

1. Stage wise Statement for Construction Works

The monthly statement for Construction Works shall state:

- (a) the estimated amount for Design for the relevant stage in accordance with Sub-clause 10.3.1;
- (b) the estimated amount for Other Works executed in accordance with Sub-clause 10.3.1;
- (c) the total of (a) and (b) above;
- (d) the amount after deducting from (c) above the amount certified for payment up to the previous month;
- (e) the value of any Change of Scope executed up to the end of the month in question valued at the rates stated in the Change of Scope Order issued under Sub-clause 9.2.4 less the amount certified for payment up to the previous month, detailed for each Change of Scope Order;
- (f) amounts reflecting adjustments in price under Sub-clauses 10.8 and 10.10;
- (g) any amount to be deducted as repayment of the Mobilization Advance under the provisions of Sub-clause 10.2 (Mobilization Advance); and
- (h) any amount to be deducted for all taxes in accordance with Sub-clause 10.10.

2. Contractor's Claim for Damages for delay in providing the Right of Way

KDA will prescribe the form.

[* * *]

SCHEDULE - O

INSURANCE

1. Insurance of Works and Contractor's Equipment during Construction Period

1.1 Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Completion Certificate, the following insurances during the Construction Period:

(i) insurance of Construction Works, Plant and Materials and an additional sum of 15 (fifteen) per cent of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Construction Works and of removing debris of whatsoever nature; and

(ii) insurance for the Contractor's Equipment and Documents brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

(iii) Any other insurance as may be applicable under the Applicable Laws;

(iv) The insurance under paragraph 1.1 (i), (ii) and (iii) above shall be in the joint names of the Contractor and KDA and shall cover KDA and the Contractor against all loss or damage from whatsoever cause arising.

2. Insurance for Contractor's Defect Liability Period

2.1 Thirty days before the issue of the Completion Certificate by KDA for the Project, the Contractor shall effect and maintain insurance cover for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and which arises from a cause occurring prior to the issue of the Completion Certificate and/or for loss or damages occasioned by the Contractor in the course of any operations carried out by it for the purpose of complying with its obligations under the Defects Liability Period. The Contractor shall also maintain other insurances for maximum sums as may be required under Applicable Laws and in accordance with Good Industry Practice.

2.2 The insurance under paragraph 2.1 shall be in the joint names of the Contractor and KDA and shall cover KDA and the Contractor for the entire Defect Liability Period.

3. Insurance against Injury to Persons and Damage to Property

3.1 The Contractor shall insure against its liability for any loss, damage, death or bodily injury which may occur to any property (except things insured under Paragraphs 1 and 2 of this Schedule) or to any person which may arise out of the Contractor's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount stated below with no limit on the number of occurrences.

3.2 The insurance shall be extended to cover liability for all loss and damage to KDA's property arising out of the Contractor's performance of the Agreement excluding:

(a) KDA's right to have the Construction Works executed on, over, under, in or through any land, and to occupy the land for the Construction Works; and

(b) damage which is an unavoidable result of the Contractor's obligations to execute the Construction Works.

4. Insurance for Indirect Political Event

The Contractor shall procure requisite insurance for Indirect Political Events.