



**Amaravati Development Corporation Limited**

**EPC (ENGINEERING PROCUREMENT AND CONSTRUCTION) AGREEMENT**

**For**

**Investigation, Detail Design and Construction of smart trunk infrastructure with Roads, Storm Water Drains, Water Supply Network , Sewerage Network, utility Ducts for Power & ICT, Reuse waterline, Pedestrian tracks, Cycle tracks, Avenue Plantation & Street Furniture etc. in N9, N4 and N14 Roads (Package IX) in Amaravati Capital City, Andhra Pradesh on EPC Basis. (Package - IX)**

**Bidding Documents**

**August 2017**

**Chairperson and Managing Director**

Amaravati Development Corporation Limited  
A GOAP Incorporation under MA & UD (CRDA.2)  
#20-4-15, Plot-1G, Anand Heights, Kedareswarapet,  
Vijayawada-520003(A.P)

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## ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS AGREEMENT is entered into on this the ..... day of ....., 20....

### **BETWEEN**

The **Amaravati Development Corporation Limited (ADCL)**, represented by its Chairperson and Managing Director, incorporated under Indian laws having its registered office at [Vijayawada] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of one part;

### **AND**

{-----} means the selected bidder incorporating under Indian laws having its registered office at ....., (hereinafter referred to as the “**Contractor**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part.

### **WHEREAS:**

- (A) A special purpose vehicle viz **Amaravati Development Corporation Limited**, is set up (the “**Authority**”) for **procurement and Construction of trunk infrastructure in AP New Capital City, Amaravati**.
- (B) Accordingly, the Authority has decided to undertake the **Investigation, Survey, Detailed Design, Construction, Testing and Commissioning of Infrastructure Works for Roads, Storm Water Drains, Water Supply, Sewerage, Power Ducts in N9, N4 and N14 Roads on EPC Basis in AP New Capital, Amaravati (Package - VIIIIX) (“Project”)**, through Engineering, Procurement & Construction (“EPC”) basis, in accordance with the terms and conditions to be set forth in an Agreement to be entered into.
- (C) Deleted.
- (D) The Authority had prescribed the qualification for technical and commercial terms and conditions, and invited bids (the “**Request for Qualification (RFQ) cum Request for Proposals (RFP)**”) from the bidders.
- (E) After evaluation of the bids received, the Authority had accepted the Bid of the selected bidder and issued its Letter of Acceptance No. .... Dated ..... (hereinafter called the “**LOA**”) to the selected bidder for “**Design, Construction, Testing, Commissioning and Operation & Maintenance of Infrastructure Works for Roads, Storm Water Drains, Water Supply, Sewerage, Power Ducts in N9, N4**”

**and N14 Roads (Package IX) Roads on EPC Basis in AP New Capital, Amaravati (Package - IX)"** , at the contract price specified hereinafter, requiring the selected bidder to inter alia:

(a) deliver to the Authority 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 10 (ten) days of the date of issue of LOA; and

(b) Execute this Agreement within 30 (Thirty) days of the date of issue of LOA.

(A) The Contractor has fulfilled the requirements specified in Recital (E) above;

NOW THEREFORE in consideration of the foregoing and the respective covenants and Agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, the Authority hereby covenants to pay the Contractor, in consideration of the obligations specified herein, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner specified by the Agreement and intending to be legally bound hereby, the Parties agree as follows:

# ARTICLE 1

## DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 28) shall, unless the context otherwise requires, 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.

### 1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- a) 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;
- b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) 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;
- e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
  - f) 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 Roads, including maintenance during the Construction Period, removing of defects, if any, and other activities incidental to the construction and “**construct**” or “**build**” shall be construed accordingly;
  - g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto during the Construction Period, and “**develop**” shall be construed accordingly;
  - h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
  - i) any reference to day shall mean a reference to a calendar day;
  - j) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Vijayawada are generally open for business;
  - k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
  - l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
  - m) 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; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

- n) the words importing singular shall include plural and vice versa;
- o) references to any gender shall include the other and the neutral gender;
- p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- q) “**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;
- r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” 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, reorganisation, dissolution, arrangement, protection or relief of debtors;
- s) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence 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 the Authority hereunder or pursuant hereto in any manner whatsoever;
- t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Authority’s Engineer shall be valid and effective only if it is in writing under the hand of a duly

authorised representative of such Party or the Authority's Engineer, as the case may be, in this behalf and not otherwise;

- u) 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;
- v) 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; and
- w) 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**"); and
- x) Time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended for the reasons specified in the Agreement, 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 the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with its comments and/or approval, it 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 to 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 agreements and errors/discrepancies**

1.4.1 This Agreement, and all other agreements and documents forming part of this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be in the following order:

- a) this Agreement; and
- b) All other agreements and documents forming part hereof or referred to herein; i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to 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

Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

Except where otherwise specifically stated, the Engineer-in-charge i.e., **Executive Engineer** will decide the contractual matters between the ADCL and the Contractor in the role representing ADCL.

## **1.5 Joint and several liability**

- 1.5.1 If the Contractor has formed a Joint Venture of two or more persons for implementing the Project:
- a) These persons shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Authority for the performance of the Agreement; and
  - b) The Contractor shall ensure that no change in the composition of the Joint Venture is effected without the prior consent of the Authority.
- 1.5.2 Without prejudice to the joint and several liability of all the members of the Joint Venture, the Lead Member shall represent all the members of the Joint Venture and shall at all times be liable and responsible for discharging the functions and obligations of the Contractor. The Contractor shall ensure that each member of the Joint Venture shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member. The Authority shall have the right to release payments solely to the Lead Member and shall

not in any manner be responsible or liable for the inter se allocation of payments among members of the Joint Venture.}¹

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¹ This Clause 1.5 may be omitted if the Contractor is not a Joint Venture. Even if the Contractor is a Joint Venture, the Authority may, at its discretion, delete this provision.

## **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) **Design, Construction, Testing, Commissioning and Operation & Maintenance of Infrastructure Works for Roads, Storm Water Drains, Water Supply, Sewerage, Power Ducts in E10, E14 and N16 Roads on EPC Basis in AP New Capital, Amaravati (Package - VIII)** on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- b) DELETED
- c) Performance and fulfilment 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 3**

### **SCOPE OF THE PROJECT**

#### **3.1 Obligations of the Contractor**

- 3.1.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the survey, investigation, design, engineering, procurement, construction of the Project Roads and Services/utilities and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 3.1.2 The Contractor shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 3.1.3 Subject to the provisions of Clauses 3.1.1 and 3.1.2, the Contractor shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 3.1.4 The Contractor shall remedy any and all loss or damage to the Project Roads and Services/utilities from the Appointed Date until the end of the Construction Period at the Contractor's cost, save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Authority.
- 3.1.5 The Contractor shall remedy any and all loss or damage to the Project Roads and Services/utilities during the Defects Liability Period at the Contractor's cost to the extent that such loss or damage shall have arisen out of the reasons specified in Clause 17.3.
- 3.1.6 DELETED
- 3.1.7 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:
- a) 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-F and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

- b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for Materials, methods, processes and systems used or incorporated into the Project Roads;
- c) 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;
- d) 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;
- e) 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;
- f) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- g) Ensure that the Contractor and its Sub-contractors comply with the safety and welfare measures for labour in accordance with the Applicable Laws and Good Industry Practice;
- h) Keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope Orders and other communications given under this Agreement. The Authority's Engineer and its authorised personnel shall have the right of access to all these documents at all reasonable times;
- i) cooperate with other contractors employed by the Authority and personnel of any public authority; and



- j) Not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Authority or of others.
- k) the Contractor shall prepare Project specific Health, safety and Environment plan based on guidelines provided in Schedule-R for implementation.
- l) Contractor and their sub-contractors shall comply with Project Management requirements as mentioned in Schedule-S.
- m) the Contractor shall conduct the aerial photography of the Project as mentioned in Schedule-T

3.1.8 The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

3.1.9 The Contractor shall check the design criteria and calculations (if any) included in the Bid Documents and satisfy itself regarding their accuracy and adequacy. Contractor shall meet the minimum design and sizing requirements specified in the Bid Documents - a design that does not meet such minimum requirement shall not be acceptable and will result in rejection of the bid as non-responsive. Further, if Contractor believes that the minimum design and sizing requirements are not adequate to meet the minimum performance requirements specified, then Contractor shall make whatever upward adjustments to the design and sizing it deems necessary to meet the performance requirements and include these in the Bid Price. Contractor assumes full responsibility for meeting the specified performance requirements and ensuring the adequacy of the Works for this purpose."

The design criteria provided in respective schedules of the same volume is basic design criteria and has to be met in totality. However, if the Contractor feels that, he requires additional work to meet the contractual conditions, the cost of same shall be deemed to be included in the Price and no extra cost shall

be paid over and above the quoted price.

3.1.10 The Contractor shall establish a design liaison office headed by a Senior Design Manager and supported by a team of Mechanical, Electrical, Civil, Process, Engineer/s and reasonable numbers of CAD draughtsman etc. at Aurangabad within 45 days from the Appointed Date to facilitate preparation and submission of designs, drawings, construction documents, etc., for review and approval by the Authority's Representative. The design liaison office shall preferably be located near the Authority's Engineer office to facilitate communications and frequent interactions with the Authority's Representative and the Authority. The Contractor shall maintain the design liaison office until such time as all necessary designs and construction documents have been completed, reviewed, and approved by the Authority's Representative. The cost of office and its running cost should have deemed to be included in the price bid.

The Contractor will be fully responsible for ensuring that its designs, drawings, and construction documents satisfy all requirements for constructing Works that are complete and fully functional in all respects and meet the Performance Guarantee requirements as well as Environmental requirements.

**In addition to the above** The Contractor shall establish a Site office headed by its Construction Manager/Project Manager at Site, for which land shall be provided by the Client. However, the cost of office equipment's including furniture etc. and its running cost should have deemed to be included in the price bid.

The set down area required by the Contractor for its construction equipment's and materials shall be provided by the Client with no cost to the Contractor.

### 3.1.11 **PROJECT OFFICE FOR THE AUTHORITY'S ENGINEER**

1. The Contractor shall provide, furnish, equip, insure, service, maintain and clean a detached office as detailed in sub clause 3.1.11.1 to this Specification for the exclusive use of the Authority's Engineer. The office plan and

located/ position shall be approved by the Authority's Engineer.

2. The office shall be ready for use and occupation and fully serviced within [28] days of the Appointment Date. The office shall be provided until a period of [28] days after the date of issue of the Taking-Over Certificate in respect of the whole of the Works or an earlier date if instructed by the Authority's Engineer. Following such date, the office shall be removed from the Site.
3. The Contractor shall arrange at his own expense for the provision and disconnection on completion of power, potable water, sewerage, drainage, telephone and internet (minimum speed should be 20 Mbps for leased line with fibre optic line and minimum speed should be 50 Mbps for broad band lines with fibre optic line) to the Authority's Engineer's office including making all payments to utility providers for connection and use. Where a septic tank is provided, the Contractor shall be responsible for its installation, regular maintenance like emptying and the like, and removal on completion.
4. The Contractor shall submit full details of the office building to the Authority's Engineer for approval prior to erection. The building shall be weatherproof, fire protected, heat-insulated, properly ventilated and secure. Windows shall give adequate light and ventilation [be protected with metal mosquito-proof gauze, have security bars] and have venetian, or other approved, blinds. Ceiling height shall be at least 2.4m above the floor level. All internal partition walls shall be sound insulated. Floors shall be PVC tile covered.
5. Floors in toilets and other wet areas shall have drains. The internal decoration shall be of good standard and to the satisfaction of the Authority's Engineer. The Contractor shall be responsible for raising the ground where necessary, grading and drainage in the vicinity of the building and providing suitable access and walkways.
6. Each room shall have at least four double gang 13 amp sockets and shall be adequately illuminated. Rooms used as offices or meeting rooms shall be air conditioned. The air conditioning shall be adequate to maintain a temperature

of not more than [23°C (dry bulb) at a relative humidity of 50% during the hottest season of the year]. The noise level of the air conditioning while operating shall be sufficiently low to allow normal voice level discussions to take place.

7. The Contractor shall supply, install and maintain fittings, furnishings and equipment (including computers and related information technology equipment) for the Engineer's offices and replenish consumables as necessary. The fittings, furnishings and equipment shall be approved by the Engineer before being brought to the Site.
8. The Contractor shall arrange regular cleaning of the Engineer's office to the satisfaction of the Engineer and shall provide cleaners, cleaning equipment and consumables at his own expense.
9. The Authority's Engineer's office, fittings, furnishings and equipment supplied by the Contractor will remain the property of the Contractor and will revert to him upon completion of the Contract.

#### 3.1.11.1 PROJECT OFFICE SPECIFICATIONS

1. **Introduction:** The following guidelines shall be considered as the main criteria for the safe design, construction, management and operation of the project site office. Where requirements of this guidance conflicts with client requirements, regulatory authority, or other specifications, the more stringent requirements will prevail.
2. **General requirements:** A layout plan based on the guidelines for the site office and the Contract shall be submitted by the Contractor for review and approval by the Authority Engineer prior to start construction works on the site office. All works shall be undertaken in line with the requirements of India HSE Legislation and relevant IS standards.  
  
All certifications, permits and/or licensing that may be required for the site offices shall be obtained by the Contractor and made available for review to the Authority Engineer.

Prior to occupation, the Contractor shall ensure that the site office has a valid occupational permit from the relevant authorities.

3. **Site layout and location of offices:** Site office and car park layout shall allow safe segregation of pedestrian and vehicular traffic, with unobstructed access for emergency vehicles. Adequate lighting is to be provided for the car park and pedestrian walkways.
4. **Facility Construction:** All materials used for the construction of the offices, shall conform to the requirements of the National Building Code and Local Fire regulations requirements. As a minimum, the materials used shall take into consideration the local climatic conditions and prevent dust, water and other elements from coming into the offices. The offices shall as a minimum have 30 minute fire rating.

The contractor shall ensure that as-built drawings for the construction of the site office, electricals, plumbing, firefighting and any other operations shall be submitted to the Authority Engineer prior to or at the time of occupation.

5. **Electrical safety:** The design, operation and maintenance of electrical systems for the site office shall meet the requirements of the National Building Code. As a minimum the Contractor shall ensure that RCD's (residual circuit breaker) are used for protection of the circuits and take care to ensure that joints are minimized in the electrical cables.

If generators are to be used then they must be adequate for the site load, serviced and maintained and shall meet the requirements of the Local Fire regulations for fire precautions and the Ministry of Environment for air emissions.

6. **Lighting:** Provisions shall be made for natural lighting through windows or through roof lights to be at least 10% of the office floor area. Ambient light levels in offices and surrounding areas including pathways, car park and emergency exits should conform to required lux levels. Lighting inside the site office shall be suitable for the works being undertaken in the site office

environment.

7. Ventilation: The site offices shall be sufficiently ventilated and provide air circulation that is free of impurities. Windows shall be designed such that at least 50 % of the window shall be openable and have insect mesh screens.
8. Temperature: The temperatures inside offices should be capable of being maintained within 20°C to 25°C. The temperature shall be such that they should provide comfort without the need of special clothing.
9. Noise Levels: Provisions shall be made for noise levels inside the office to be less than 50Dba. Where noise levels inside the office exceed 50Dba, provisions shall be made for sound proofing (as required).
10. Sanitary facilities: Sufficient, adequately ventilated, sanitary conveniences must be provided with 1 x Toilet cubicle, 2x urinals and 1 x hand wash basin per 10 occupants as a minimum. These facilities shall have a supply of clean hot and cold water for washing purposes, supply of soap and paper towels. Separate facilities shall be provided for men & women and they shall have doors that are lockable from the inside. The surfaces of internal walls and floors of these facilities shall have a surface which permits wet cleaning. One additional washroom directly accessible from the outside shall be provided for use by drivers/security staff. This washroom shall contain 1 urinals, 1 WCs and 1 wash basins. These facilities shall be adequately ventilated and aerated with proper exhaust. Care shall be taken to ensure that air from these facilities do not mix or enter any facilities that may be used to prepare, cook and consume food.
11. Drinking water and Kitchen facilities: A dedicated facility for preparing and eating food must be provided, with suitable storage to store food. The kitchen facility shall not be placed adjacent to the sanitary facilities. As a minimum it shall be equipped with double drainer sink unit with adequate plumbing, work surfaces and storage cupboards, kettle, microwave, refrigerator, hot plate, etc. The use of LPG shall be kept to a minimum and a hot plate shall be the

preferred choice of cook top. Adequate supply of wholesome potable drinking water must be available at all times.

12. Shower & changing facility: Separate changing rooms (male and female) shall be provided for personnel to change their clothing for work. These rooms shall include facilities for shower.

13. Access and doors: Access to the office compound must have an adequate security, an access control presence to control entry to the site.

Main access doors to the office facilities should have vision panels and access steps including the landing area must be constructed or coated with non-slip materials. Where there are two or more steps at entrances a handrail must be provided.

14. Pest Control: The site office shall have all necessary and effective measures to prevent rodents, insects and other pests inside and in the vicinity of the office.

This shall include a maintenance contract with a company specialized in prevention of rodents & pests.

15. Car Park Facilities: The site office shall have a covered car park that can accommodate 10 vehicles (Exclusively for Authority). The car park shall be well lit, in a hard-standing area, with appropriate surface drainage. The car park shall be adjacent to the site office separated at least by 10 meters and not more than 50 meters from the site office.

16. Space Requirements: The site offices shall either be in one block or separate blocks connected by covered walkways. The accommodation shall comprise the following separate rooms or zones:

| Room   | Area Consideration |
|--|--------------------|
| Reception/secretarial area                               | 20 m <sup>2</sup>  |
| Conference room (connecting to Project Manager's office) | 60 m <sup>2</sup>  |
| Project Manager's/Client Manager office                  | 30 m <sup>2</sup>  |

|  |                           |
|--|---------------------------|
| Resident Engineers' / client offices (2 No)  | each 20 m <sup>2</sup>    |
| Site engineers' and inspectors open configuration(10 No)                           |                           |
| Printing room  | 20 m <sup>2</sup>         |
| Filing and storage room with adequate racks for keeping all drawings and documents | 100 m <sup>2</sup>        |
| Toilet/washroom/kitchen zone   | minimum 80 m <sup>2</sup> |

17. Environmental Management : The office facilities shall be part of the contractors Environmental Management System (EMS) and managed accordingly. The site waste management plan should cover office facility environmental and waste issues such as:

Water waste

Food waste

Recycling of paper, cardboard and printer cartridges

Power saving

Noise suppression where required

Prevention of dust ingress from site

18. Maintenance and Cleaning: The office facilities shall have a routine maintenance and emergency repair protocols for the fire alarm system, air conditioning, water purification, emergency lighting, building electrical testing, drainage system, etc.

The contractor will be responsible for daily cleaning and maintenance of the field offices. The Contractor shall ensure that a cleaning regime will be in place to maintain acceptable levels of food hygiene standards and sanitation and cleanliness. The facilities should be routinely cleaned with suitable cleaning techniques appropriate for areas such as:

General office area and windows

Kitchen facilities

Toilets and changing rooms

General surroundings (car parks).



19. Fire safety: The office shall have a fire alarm system, conforming to local fire brigade requirements, installed, by an approved contractor and under a routine maintenance agreement. As a minimum the site office shall have - Fire detection in the form of smoke alarms and fire extinguishers. These shall be provided all across the site office including common areas and kitchen. The office shall have two designated exits as a minimum.
- A fire muster point must be located away from the building, with clear signage and cover for shade. There should be a minimum of two exits to facilitate the egress.
20. First Aid: A first aid kit shall be provided in the office. The contents of the first aid kit shall meet the requirements of the 'Red Cross Society'. The first aid kit and its contents shall be maintained regularly.
21. Work stations & Seating Arrangements: The offices shall have work stations and seating arrangements that are suitable to the work being undertaken in the offices. As a minimum '[Wipro](#)' and '[Featherlite](#)' shall be the preferred brand for work stations and chairs. The desks and seating arrangements shall meet the following requirements:
- Desk Dimensions: All desks provided shall have a clear working space of 1200mm (length) x 800mm (depth). Leg space under the desk shall be a minimum of 1000mm. If materials such as a desktop computer, laptop, pedestals, inverter or such are to be used additional space shall be considered.
- Seating chairs: All seating chairs provided shall as a minimum have Height, Seat, Backrest and Arms adjustability. They shall provide good lumbar support and have adequate tilt mechanism.
22. Emergency Arrangements: An emergency plan shall be developed for the site office in line with accepted best practice and local regulations and issued to the Authoritys Engineer for review and approval prior to occupation, including arrangement for Fire drills, periodic testing of equipment
23. Fuel Storage Safety: Fuel and oil storage tanks should be in bundled storage

areas that comply with environmental legislation (typically can contain 110% of maximum fuel tank capacity). They should be at least 6m safe distance from office facilities (more may be required for larger storage facilities).

24. Furniture Requirements for the site office: The following furniture shall be provided, as a minimum, in the Project Manager's office:

- 1 No executive desk
- No swivel chairs on castors
- 1 No bookcase
- 1 No bulletin board
- 1 No lockable cupboard
- 1 No 4-drawer lockable filing cabinets
- Hooks for hanging safety jackets and hats

The following furniture shall be provided, as a minimum, in each of the remaining offices provided for the Engineer's staff:

- 2 No desks
- No swivel chairs on castors for each desk in Resident Engineers' office and 2 No swivel chairs on castors for each desk in Site engineers' and inspectors' offices
- 2 No bookcases
- 2 No bulletin boards
- 2 No lockable cupboards
- 2 No 4-drawer lockable filing cabinets
- Hooks for hanging safety jackets and hats.

The following furniture shall be provided, as a minimum, in the reception/secretarial area:

- 1 No reception desk
- 1 No swivel chair on castors
- 2 No two-seater sofas

- 1 No coffee table
- 1 No bulletin board
- 1 No bookcase
- 1 No 4-drawer lockable filing cabinet.

The following furniture shall be provided, as a minimum, in the conference room:

- 1 No long conference table (min. 17 numbers seat capacity)
- 36 No swivel chairs
- White boards and bulletin boards of size, type and numbers to be approved by the Engineer.
- The following furniture shall be provided, as a minimum, in the meeting room:
  - 1 No long conference table
  - 12 No swivel chairs
  - White boards and bulletin boards of size, type and numbers to be approved by the Engineer.

The kitchen area shall be equipped with kettle/water boiler, cool drinking water dispenser, fridge, microwave oven, fire extinguisher, first aid kit, cups, plates and utensils, as necessary and in numbers adequate for the size of team occupying these facilities. The occupation of the site offices shall consider visitors to the office such as Clients, Investors and other stake holders.

The kitchen, washroom and toilet facilities shall be provided with an adequate supply of essential materials including soap, towels and toilet paper, as required by the Engineer.

#### Other Facilities to be provided

- 2 No combined 60 pages per minute black and white and 45 pages per minute full colour A4 and A3 multifunctional laser printer/scanner/copier, with document auto feeder, tandem paper

trays, paper bypass, 2- sided printing, high capacity internal memory, network enabled, Windows compatible

- 1 No laser colour A0 paper size multifunction plotter/scanner/copier, minimum plotting resolution 2400 x 1200 dpi, with roll feed and collection basket, high capacity internal memory, network enabled, Windows compatible
- 1 No black and white and colour combined A4 and A3 photocopier, with document feeder, duplex and reduction/zoom capability
- 1 No facsimile machine (if a landline is available)
- 1 No telephone in the reception/secretarial area, Project Manager's and each of Resident Engineer's offices (if a landline is available)
- 1 No LCD projector and screen and 1 No conference telephone with loudspeaker in the conference room and in the meeting room.
- All printers and the plotter shall be connected to the office computers via an internal network for print sharing.
- All computers shall be connected to the internet via high speed broadband with additional Wi-Fi connection available for visitors.
- All computers, printers, plotters and photocopier shall be connected to voltage regulators and UPS (uninterrupted power supply) units, the latter being able to bridge power cuts up to 15 minutes.
- Adequate Steel cabinets for storage of file and drawings separately in document control room.
- Adequate Drawing storage cabinets
- All stationery and office supplies as required by the PMNC/Client
- All the different area of the site office shall be connected with an intercom facility.

## **3.2 Obligations relating to sub-contracts and any other agreements**

3.2.1 The Contractor shall not sub-contract any Works in more than 30% (Thirty per

cent) of the total length of the Project and shall carry out Works directly under its own supervision and through its own personnel in at least 70% (Seventy per cent) of the total length of the Project Roads. Provided, however, that in respect of the Works carried out directly by the Contractor, it may enter into contracts for the supply and installation of Materials, Plant, equipment, road furniture, safety devices and labour, as the case may be, for such Works. The Parties further agree that all obligations and liabilities under this Agreement for the entire Project Roads shall at all times remain with the Contractor. {The Parties also agree that obligation of the Contractor to carry out Works directly in at least 50% (Fifty per cent) of the total length of the Project Roads shall be discharged solely by the Lead Member.}<sup>2</sup>

- 3.2.2 In the event any sub-contract for Works, or the aggregate of such sub-contracts with any Sub-contractor, exceeds 5% (five per cent) of the Contract Price, the Contractor shall communicate the name and particulars, including the relevant experience of the sub-contractor, to the Authority prior to entering into any such sub-contract. The Authority shall examine the particulars of the sub-contractor from the national security and public interest perspective and may require the Contractor, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, not to proceed with the sub-contract, and the Contractor shall comply therewith.
- 3.2.3 In the event any sub-contract referred to in Clause 3.2.2 relates to a sub-contractor who has, over the preceding 3 (three) years, not undertaken at least one work of a similar nature with a contract value exceeding 40% (forty per cent) of the value of the sub-contract to be awarded hereunder and received payments in respect thereof for an amount equal to at least such 40% (forty per cent), the Authority may, no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor, require the Contractor not to proceed with such sub-contract, and the Contractor shall comply therewith.

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<sup>2</sup> May be deleted if the Contractor is not a Joint Venture

3.2.4 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.

### **3.3 Employment of foreign nationals**

The Contractor acknowledges, agrees and undertakes that employment of foreign personnel by the Contractor and/or its Sub-contractors and their 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 or their 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.

### **3.4 Contractor's personnel**

3.4.1 The Contractor shall ensure that the personnel engaged by it or by its Sub-contractors in the performance of its obligations under this Agreement are at all times appropriately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice.

3.4.2 The Authority's Engineer may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Sub-contractor's personnel, provided that any such direction issued by the Authority's Engineer shall specify the reasons for the removal of such person.

3.4.3 The Contractor shall on receiving such a direction from the Authority's 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 10 (ten) days of any such direction being issued in pursuance of Clause 3.4.2. The Contractor shall further ensure that such persons have no further connection with the Works or Maintenance under this Agreement. The Contractor shall then appoint (or cause to be appointed) a replacement.

### **3.5 Advertisement on Project sites**

The Project sites or any part thereof shall not be used in any manner to advertise any commercial product or services.

### **3.6 Contractor's care of the Works**

The Contractor shall bear full risk in and take full responsibility for the care of the Works, and of the Materials, goods and equipment for incorporation therein, from the Appointed Date until the date of Provisional Certificate (with respect to the Works completed prior to the issuance of the Provisional Certificate) and/or Completion Certificate (with respect to the Works referred to in the Punch List), save and except to the extent that any such loss or damage shall have arisen from any default or neglect of the Authority.

### **3.7 Electricity, water and other services**

**3.7.1 For Construction Period:** The Contractor shall be responsible for provision of all power, water, and other services he may require for performance of the Construction period of Contract including hydro-testing pipes and tanks/ structures. This includes contacting the appropriate utility or service providers and applying for connections as necessary. The contractor shall, at his own risk and cost, provide all piping, fittings, and other equipment necessary for his use and for metering of the water and any treatment needed. The Contractor is to ensure that the quality of Water remains suitable for the purpose for which it is intended.

**3.7.2 For Trial Run and Commissioning:** The power and water shall be supplied free of cost by the Authority. Sewerage and other effluent shall be provided by Authority for trial run and commissioning of the sewerage and water networks. Be noted, if water, sewerage and /or other effluent can't be provided by Authority, for any reasons for trial run and commissioning of the sewerage networks, water shall be provided and payments shall be made after successful commissioning of the same. However, water shall be provided by Authority for trial run and commissioning of the recycled water networks. The amount against the same shall be withheld for a period of Five years from the issue of provisional completion certificate. However the on the request of the contractor, the same may be released against a Bank guarantee valid for three years for an amount equal to 110% of the withheld amount.

### **3.8 Unforeseeable difficulties**

Except as otherwise stated in the Agreement:

- a) The Contractor accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- b) As the Project Works are part of the ongoing works, the Contractor shall coordinate with the existing Contractors who are executing Road and other utility infrastructure
- c) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- d) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.



## **ARTICLE 4**

### **OBLIGATIONS OF THE AUTHORITY**

#### **4.1 Obligations of the Authority**

4.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

4.1.2 The Authority shall be responsible for the correctness of the Scope of the Project and Project Facilities required for the proposed contract.

4.1.3 The Authority shall provide to the Contractor:

- a) Upon receiving the Performance Security under Clause 7.1.1 and signing of the Contract Agreement under clause 27.8, the Authority shall provide all environmental clearances as required under Clause 4.2.

4.1.4 NOT USED

4.1.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree that the aggregate Damages payable under Clause 9.2 shall not exceed 1% (one per cent) of the Contract Price.

Both the Parties agree that payment of these Damages shall be full and final settlement of all claims of the Contractor and such compensation shall be the sole remedy against delays of the Authority and both Parties further agree this as final cure against delays of the Authority. However if the cost of the same is more than 1% (one per cent) of the Contract Price, the cost shall be to the head of the contractor.

4.1.6 The Authority 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, and subject to the Contractor complying with Applicable Laws, provide reasonable support to the

Contractor in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project;

- b) 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 favourable than those generally available to commercial customers receiving substantially equivalent services;
- c) procure that no barriers that would have a material adverse effect on the works are erected or placed on or about the Project Roads 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;
- d) 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;
- e) support, cooperate with and facilitate the Contractor in the implementation of the Project in accordance with the provisions of this Agreement; and
- f) Upon written request from the Contractor and subject to the provisions of Clause 3.3, provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Contractor or its Sub-contractors of their obligations under this Agreement and the agreements with the Sub-contractors.

## **4.2 Maintenance obligations prior to the Appointed Date [DELETED]**

## **4.3 Environmental Clearances**

The Authority represents and warrants that the environmental clearances required for Construction of the Project are being procured by the Authority. The Authority agrees

and undertakes that the environmental clearances shall be procured by the Authority no later than 60(sixty) days from the Date of Agreement. In the event of any delay beyond such 60(sixty) days, the Contractor shall be entitled to Time Extension for the period of such delay in accordance with the provision of Clause 10.5 of this Agreement.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES**

#### **5.1 Representations and warranties of the Contractor**

The Contractor represents and warrants to the Authority that:

- a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute 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 authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- 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 its

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 result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- 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 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 on its ability to perform its obligations under this Agreement;
- j) no representation or warranty by it contained herein or in any other document furnished by it to the Authority 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 not misleading;
- k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- l) all information provided by the {selected bidder/ members of the Joint Venture} in response to the Request for Proposals or otherwise, is to the best

of its knowledge and belief, true and accurate in all material respects; and  
m) Nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and any Sub-contractors, designers, consultants or agents of the Contractor.

## **5.2 Representations and warranties of the Authority**

The Authority represents and warrants to the Contractor that:

- a) 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 actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- c) it has the financial standing and capacity to perform its obligations under this Agreement;
- d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) 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 the Authority's ability to perform its obligations under this Agreement;
- f) it has complied with Applicable Laws in all material respects; and
- g) it has good and valid right to the Site and has the power and authority to grant the Right of Way in respect thereof to the Contractor;

## **5.3 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 6**

### **DISCLAIMER**

#### **6.1 Disclaimer**

- 6.1.1 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 Proposal, Scope of the Project, Specifications and Standards of design, construction and maintenance, Site, local conditions, physical qualities of ground, subsoil and geology, suitability and availability of access routes to the Site and all information provided by the Authority 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 4.1.2 and Clause 5.2, the Authority 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 the Authority in this regard.
- 6.1.2 The Contractor acknowledges and hereby accepts to have satisfied itself as to the correctness and sufficiency of the Contract Price.
- 6.1.3 The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1.1

above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date.

- 6.1.4 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 6.1.1 above shall not vitiate this Agreement, or render it voidable.
- 6.1.5 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 6.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error.
- 6.1.6 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor; and the Authority shall not be liable in any manner for such risks or the consequences thereof.



## ARTICLE 7

### PERFORMANCE SECURITY

#### 7.1 Performance Security

- 7.1.1 The Contractor shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority, within 10 (ten) days of the date of this Agreement, an irrevocable and unconditional guarantee from a Bank in the form set forth in Schedule-G (the “**Performance Security**”) for an amount equal to 5% (five per cent) of the Contract Price. The Performance Security shall be valid until 60 (sixty) days after the Defects Liability Period. Until such time the Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security, the Authority shall release the Bid Security to the Contractor.
- 7.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Performance Security in accordance with the provisions of Clause 7.1.1 and within the time specified therein or such extended period as may be provided by the Authority, in accordance with the provisions of Clause 7.1.3, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 7.1.3 In the event the Contractor fails to provide the Performance Security within 10 (ten) days of this Agreement, it may seek extension of time for a period not exceeding 30 (thirty) days on payment of Damages for such extended period in a sum calculated at the rate of 0.01% (zero point zero one per cent) of the

Contract Price for each day until the Performance Security is provided. For avoidance of doubt the agreement shall be deemed to be terminated on expiry of additional 30 days time period and Bid Security shall be encashed by the Authority.

## **7.2 Extension of Performance Security**

The Contractor may initially provide the Performance Security for a period of 1 (One) years; provided that it shall procure the extension of the validity of the Performance Security, as necessary, at least 2 (two) months prior to the date of expiry thereof. Upon the Contractor providing an extended Performance Security, the previous Performance Security shall be deemed to be released and the Authority shall return the same to the Contractor within a period of 7 (seven) business days from the date of submission of the extended Performance Security.

## **7.3 Appropriation of Performance Security**

7.3.1 Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Contractor's Default.

7.3.2 Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 23. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such

Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 23.

## **7.4 Release of Performance Security**

7.4.1 The Authority shall return the Performance Security to the Contractor within 60 (sixty) days of the later of the expiry of the Maintenance Period or the Defects Liability Period under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Authority shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period have been rectified.

## **7.5 Retention Money**

7.5.1 From every payment for Works due to the Contractor in accordance with the provisions of Clause 19.5, the Authority shall deduct 6% (six per cent) thereof as guarantee money for performance of the obligations of the Contractor during the Construction Period (the “**Retention Money**”) subject to the condition that the maximum amount of Retention Money shall not exceed 5% (five per cent) of the Contract Price.

7.5.2 Upon occurrence of a Contractor’s Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor’s Default.

7.5.3 The Contractor may, upon furnishing an irrevocable and unconditional bank guarantee substantially in the form provided at Annex-II of Schedule-G, require the Authority to refund the Retention Money deducted by the Authority under the provisions of Clause 7.5.1. Provided that the refund hereunder shall be made in tranches of not less than 1% (one per cent) of the Contract Price.

7.5.4 Within 15 (fifteen) days of the date of issue of the Completion Certificate, the

Authority shall discharge the bank guarantees furnished by the Contractor under the provisions of Clause 7.5.3 and refund the balance of Retention Money remaining with the Authority after adjusting the amounts appropriated under the provisions of Clause 7.5.2 and the amounts refunded under the provisions of Clause 7.5.3.

7.5.5 The Parties agree that in the event of Termination of this Agreement, the Retention Money and the bank guarantees specified in this Clause 7.5 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Clause 23.6.

## **ARTICLE 8**

### **RIGHT OF WAY**

#### **8.1 The Site**

The site of the Project Roads (the “**Site**”) shall comprise the site described in Schedule-A in respect of which the Right of Way shall be provided by the Authority to the Contractor. The Authority shall be responsible for:

- a) Acquiring and providing Right of Way on the Site in accordance with the alignment finalised by the Authority, free from all encroachments and encumbrances, and free access thereto for the execution of this Agreement; and
- b) Obtaining licences and permits for environment clearance for the Project works.

#### **8.2 Not Used**

#### **8.3 Not Used**

#### **8.4 Site to be free from Encumbrances**

Subject to the provisions of Clause 8.2, the Site shall be made available by the Authority to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Project Completion Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

#### **8.5 Protection of Site from encroachments**

On and after signing the memorandum and/or subsequent memorandum referred to in Clause 8.2.1, and until the issue of the Completion Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place. 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 Agreement to place or create any Encumbrance or security threat 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 the Authority and undertake its removal at its own cost and expenses.

## **8.6 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 Roads and the performance of its obligations under this Agreement.

## **8.7 Access to the Authority and the Authority's Engineer**

- 8.7.1 The Right of Way given to the Contractor hereunder shall always be subject to the right of access of the Authority and the Authority's Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.
- 8.7.2 The Contractor shall ensure, subject to all relevant safety procedures, that the Authority has un-restricted access to the Site during any emergency, as decided by the Authority's Engineer.

## **8.8 Geological and archaeological finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of this 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 the Authority 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 the Authority 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 the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

## **ARTICLE 9**

### **UTILITIES AND TREES**

#### **9.1 Existing utilities and roads**

Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing roads, right of way, level crossings, structures, or utilities on, under or above the Site are enabled by it to keep them 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.

#### **9.2 Shifting of obstructing utilities**

The Contractor shall, in accordance with Applicable Laws and with assistance of the Authority, cause shifting of any utility (including electric lines, water pipes and telephone cables) to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works in accordance with this Agreement. The actual cost of such shifting, as approved and communicated by the entity owning the utility, shall be paid by the Contractor and reimbursed by the Authority to the Contractor. In the event of any delay in such shifting by the entity owning the utility beyond a period of 180 (one hundred and eighty) days from the date of notice by the Contractor to the entity owning the utility and to the Authority, the Contractor shall be entitled to Damages in a sum calculated in accordance with the formula specified in Clause 8.3.1 for the period of delay, and to Time Extension in accordance with Clause 10.5 for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.

#### **9.3 New utilities**

9.3.1 The Contractor shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes,



electric cables or other public utilities. Where such access or use causes any financial loss to the Contractor, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 9.3 shall not in any manner relieve the Contractor of its obligation to construct and maintain the Project Roads in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Authority.

9.3.2 The Authority may, by notice, require the Contractor to connect any adjoining road to the Project, and the connecting portion thereof falling within the Site shall be constructed by the Contractor at the Authority's cost in accordance with Article 10.

9.3.3 Contractor's acknowledgement: The Contractor acknowledges that Related Works shall be performed and that it is of paramount importance that the design and execution of the Works are co-ordinated with any Related Works.

#### 9.3.3.1 Related Works' responsibilities

1. Accordingly, the Contractor shall at all times and otherwise in accordance with the reasonable requirements and directions of the Authority's Representative:
  - a. take all reasonable steps to co-ordinate and to integrate the design and execution of the Works, including the work of Subcontractors, with the activities of the Related Works Contractors; and
  - b. attend such co-ordination meetings called by the Authority's Representative to plan, review and determine co-ordinated activities for the management of interfaces between the Works and any Related Works; and
  - c. at all times refrain from carrying out any operation on the Site in a manner which is likely to cause damage or inconvenience to the execution of any Related Works; where such damage or inconvenience is the unavoidable consequence of operations properly to be carried out on the Site, the Contractor shall not carry out such operations without

first giving reasonable advance notice in writing thereof to the Authority's Representative (with a copy to those responsible for carrying out any Related Works reasonably likely to be affected thereby) with a view to reaching an agreed procedure to prevent or minimise any such damage or inconvenience. In particular, the Contractor shall at all times prevent the discharge of surface water across the Site except where the Authority's Representative gives its prior written consent for such discharge; and

- d. at all times co-operate with the Authority, the Authority's Representative and any Related Works Contractors so as to promote and foster a co-ordinated and integrated approach to the Works and any Related Works; and
- e. monitor the coordination and integration of the Works with any Related Works and advise the Authority's Representative in writing as and when it becomes apparent that the design or execution of the Works is likely to be the subject of delay and/or disruption and recommend reasonable proposals to reduce or prevent such delay and/or disruption.

9.3.4 In the event the Construction of any Works is affected by a new utility or Works undertaken in accordance with this Clause 9.3, the Contractor shall be entitled to a reasonable Time Extension as determined by the Authority's Engineer.

#### **9.4 Felling of trees**

The Authority shall assist the Contractor in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction or maintenance of the Project Roads. The cost of such felling shall be borne by the Authority and in the event of any delay in felling thereof for reasons beyond the control of the Contractor; it 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. The Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate. For the avoidance of doubt, the Parties agree that if any felling of trees hereunder is in a forest area, the Applicable Permit thereof shall be procured by the Authority within the time specified in the Agreement.

**ARTICLE 10**  
**DESIGN AND CONSTRUCTION OF THE PROJECT**  
**WORKS**

**10.1 Obligations prior to commencement of Works**

10.1.1 Within 20 (twenty) days of the Appointed Date, the Contractor shall:

- a) appoint its representative, duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- b) appoint a design director (the “**Design Director**”) who will head the Contractor’s design unit and shall be responsible for surveys, investigations, collection of data, and preparation of preliminary and detailed designs;
- c) undertake 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
- d) Make its own arrangements for quarrying of materials needed for the Project Roads under and in accordance with the Applicable Laws and Applicable Permits.

10.1.2 The Authority shall, within 15 (fifteen) days of the date of this Agreement, appoint an engineer (the “**Authority’s Engineer**”) to discharge the functions and duties specified in this Agreement, and shall notify to the Contractor the name, address and the date of appointment of the Authority’s Engineer forthwith.

10.1.3 Within 30 (thirty) days of the Appointed Date, the Contractor shall submit to the Authority and the Authority’s Engineer a programme (the “**Programme**”) for the Works, developed using networking techniques giving the following

details:

- I. **Part I:** Contractor's organisation for the Project, the general methods and arrangements for design and construction, environmental management plan, Quality Assurance Plan including design quality plan, traffic management and safety plan covering safety of users and workers during construction, Contractor's key personnel and equipment.
- II. **Part II:** Programme for completion of all stages of construction given in Schedule-H and Project Milestones of the Works as specified in Project Completion Schedule set forth in Schedule-J. The Programme shall include:
  - a. the order in which the Contractor intends to carry out the Works, including the anticipated timing of design and stages of Works;
  - b. the periods for reviews under Clause 10.2;
  - c. The sequence and timing of inspections and tests specified in this Agreement.

The Contractor shall submit a revised programme whenever the previous programme is inconsistent with the actual progress or with the Contractor's obligations.

- III. **Part III:** Monthly cash flow forecast.

10.1.4 The Contractor shall compute, on the basis of the Drawings prepared in accordance with Clause 10.2.4, and provide to the Authority's Engineer, the length, area and numbers, as the case may be, in respect of the various items of work specified in Schedule-H and comprising the Scope of the Project. The Parties expressly agree that these details shall form the basis for estimating the interim payments for the Works in accordance with the provisions of Clause 19.3. For the avoidance of doubt, the sum of payments to be computed in

respect of all the items of work shall not exceed the Contract Price, as may be adjusted in accordance with the provisions of this Agreement.

## 10.2 Design and Drawings

10.2.1 Design and Drawings shall be developed in conformity with the Specifications and Standards set forth in Schedule-D. In the event, the Contractor requires any relaxation in design standards due to restricted Right of Way in any section, the alternative design criteria for such Section shall be provided for review of the Employer's Engineer. The contractor within 60 days of LOA shall submit the drawing and document list for Employer Engineers Approval.

10.2.2 The Contractor shall appoint a proof check consultant (the "**Proof Consultant**") after proposing to the Employer a panel of three names of qualified and experienced firms from whom the Employer may choose one to be the Proof Consultant. Provided, however, that if the panel is not acceptable to the Employer and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Employer a revised panel of three names from the firms empaneled as proof consultants by the Employer along with their firms and personnel experience for obtaining the consent of the Employer. The Contractor shall also obtain the consent of the Employer for two key personnel of the Proof Consultant who shall have adequate experience and qualifications in Roads & Bridges, Drains, Culverts, Water Supply, Sewerage, Power systems respectively. The Employer shall, within 15 (fifteen) days of receiving a proposal from the Contractor hereunder, convey its decision, with reasons, to the Contractor, and if no such decision is conveyed within the said period, the Contractor may proceed with engaging of the Proof Consultant.

10.2.3 The Proof Consultant shall:

- a. evolve a systems approach with the Design Director so as to minimise the time required for final designs and construction

drawings; and

- b. Proof check the detailed calculations, drawings and designs, which have been approved by the Design Director.

10.2.4 In respect of the Contractor's obligations with respect to the design and Drawings of the Project Roads 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, five copies and one set of soft copy in CD/ pen drive each of the design and Drawings, duly certified by the Proof Consultant, to the Employer's Engineer for review. Provided, that in respect of Roads, Drains , Water Supply, Sewerage, Power and ICT Ducts etc, the Employer's Engineer may require additional Drawings for its review in accordance with Good Industry Practice.
- b. by submitting the Drawings for review to the Authority's 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;
- c. Within 15 (fifteen) days of the receipt of the Drawings, the Authority's 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 Authority's Engineer on the Drawings submitted pursuant hereto beyond the said period of 15 (fifteen) days and may begin or continue Works at its own discretion and risk; Provided, however that in case of a Major Bridge or Structure, the

aforesaid period of 15 (fifteen) days may be extended up to 30 (thirty) days;

- d. If the aforesaid observations of the Authority's 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 in conformity with the provisions of this Agreement and resubmitted to the Authority's Engineer for review. The Authority's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings. In the event the Contractor fails to revise and resubmit such Drawings to the Authority's Engineer for review as aforesaid, the Authority's Engineer may withhold the payment for the affected works in accordance with the provisions of Clause 19.5.4. If the Contractor disputes any decision, direction or determination of the Authority's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;
- e. no review and/or observation of the Authority's 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 Authority's Engineer or the Authority 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 10;
- f. 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 the Authority; and



g. the Contractor warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the Authority against any damage, expense, liability, loss or claim, which the Authority might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty set out in this Clause.

10.2.5 Any cost or delay in construction arising from review by the Authority's Engineer shall be borne by the Contractor.

10.2.6 Works shall be executed in accordance with the Drawings provided by the Contractor in accordance with the provisions of this Clause 10.2 and the observations of the Authority's Engineer thereon as communicated pursuant to the provisions of Clause 10.2.4 (d). Such Drawings shall not be amended or altered without prior written notice to the Authority's Engineer. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.

10.2.7 Within 90 (ninety) days of the Project Completion Date, the Contractor shall furnish to the Employer and the Employer's Engineer a complete set of as built Drawings at scales 1:2500 horizontal and 1:200 vertical for road alignment and other appropriate scale for other items of work as approved by the Authority's Representative in 2 (two) hardcopies in A 2 size sheet on polyester film of quality to be approved by the Authority's Representative and in 5 (Five) hard copies and in soft copy form or in such other medium as may be acceptable to the Employer, reflecting the Project Works as actually designed, engineered and constructed, including an as built survey illustrating the layout of the Project Works and setback lines, if any, of the buildings and Structures forming part of Project Facilities.

## 10.3 Construction of the Project Works

- 10.3.1 The Contractor shall construct the Project works as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. 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 365<sup>th</sup> (Three hundred and sixty fifth) day from the Appointed Date shall be the scheduled completion date (the “**Scheduled Completion Date**”) and the Contractor agrees and undertakes that the construction shall be completed on or before the Scheduled Completion Date, including any extension thereof.
- 10.3.2 The Contractor shall construct the Project Roads in accordance with the Project Completion Schedule set forth in Schedule-J. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Completion Date within a period of 30 (thirty) days from the date set forth in Schedule-J, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority of a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Contract Price for delay of each day reckoned from the date specified in Schedule -J and until such Project Milestone is achieved or the Works are completed; provided that if the period for any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-J shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-J has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Completion Date including any Time Extension, applicable for that work or section, the Damages paid under this Clause 10.3.2 shall be refunded by the Authority to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 10.3.2 shall be without prejudice to the rights of the Authority under

this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected works as specified in Clause 10.5.2.

10.3.3 The Authority shall notify the Contractor of its decision to impose Damages in pursuance with the provisions of this Clause 10.3. Provided that no deduction on account of Damages shall be effected by the Authority without notifying the Contractor of its decision to impose the Damages, and taking into consideration the representation, if any, made by the Contractor within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under Clause 10.3.2 shall not exceed 10% (ten per cent) of the Contract Price.

#### **10.4 Maintenance during Construction Period [DELETED]**

#### **10.5 Extension of time for completion**

10.5.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Contractor shall be entitled to extension of time in the Project Completion Schedule (the “**Time Extension**”) to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:

- a) delay in providing the Right of Way, environmental clearances or approval of railway authorities, specified in Clause 4.1.4;
- b) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Article 13);
- c) occurrence of a Force Majeure Event;
- d) any delay, impediment or prevention caused by or attributable to the Authority, the Authority's personnel or the Authority's other contractors on the Site; and
- e) Any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

- 10.5.2 The Contractor shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 10.5.1, inform the Authority's Engineer by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business 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.
- Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Works which are not affected hereunder.
- 10.5.3 In the event of the failure of the Contractor to issue to the Authority's Engineer a notice in accordance with the provisions of Clause 10.5.2 within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right for any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this clause 10.5.3, the Authority shall be discharged from all liability in connection with the claim.
- 10.5.4 The Authority's Engineer shall, on receipt of the claim in accordance with the provisions of Clause 10.5.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority's Engineer requires any clarifications to examine the claim, the Authority's Engineer shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Contractor shall, on receipt of the communication of the Authority's Engineer requesting for clarification, furnish the same to the Authority's Engineer within 10 (ten) days thereof. The Authority's Engineer shall, within a period of 60 (sixty) days from the date of receipt of such clarifications, forward in writing to the

Contractor its determination of Time Extension.

Provided that when determining each extension of time under this Clause 10.5, the Authority's Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

10.5.5 If the event or circumstance giving rise to the notice has a continuing effect:

- a) a fully detailed claim shall be considered as interim;
- b) the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Authority's Engineer may reasonably require; and
- c) The Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Authority's Engineer shall examine the same in accordance with the provisions of Clause 10.5.4 within a period of 60 (sixty) days of the receipt thereof.

## **10.6 Incomplete Works**

In the event the Contractor fails to complete the Works in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the Authority in accordance with the provisions of Clause 10.3.2 for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to termination under Clause 23.1.

## **10.7 Maintenance Manual**

No later than 60 (sixty) days prior to the Project Completion Date, the Contractor shall, in consultation with the Authority's Engineer, evolve a maintenance manual (the

**“Maintenance Manual”**) for the regular and preventive maintenance of the Project Roads in conformity with the Specifications and Standards, safety requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority’s Engineer. The Authority’s Engineer shall review the Maintenance Manual within 15 (fifteen) days of its receipt and communicate its comments to the Contractor for necessary modifications, if any.

# **ARTICLE 11**

## **QUALITY ASSURANCE, MONITORING AND SUPERVISION**

### **11.1 Quality of Materials and workmanship**

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

### **11.2 Quality control system**

11.2.1 The Contractor shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the “**Quality Assurance Plan**” or “**QAP**”).

11.2.2 The Contractor shall, within 30 (thirty) days of the Appointed Date, submit to the Authority’s Engineer its Quality Assurance Plan which shall include the following:

- a) Organisation, duties and responsibilities, procedures, inspections and documentation;
- b) quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications for Road and Bridge Works issued by MORTH, relevant IRC specifications and Good Industry Practice; and
- c) Internal quality audit system.

The Authority’s Engineer shall convey its comments to the Contractor within a period of 21 (twenty-one) days of receipt of the QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required

for conforming with the provisions of this Clause 11.2.

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

11.2.4 The cost of testing of Construction, Materials and workmanship under this Article 11 shall be borne by the Contractor.

### **11.3 Methodology**

The Contractor shall, at least 15 (fifteen) days prior to the commencement of the construction, submit to the Authority's Engineer for review the methodology proposed to be adopted for executing the Works, giving details of equipment to be deployed, traffic management and measures for ensuring safety. The Authority's Engineer shall complete the review and convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.

### **11.4 Inspection and technical audit by the Authority**

The Authority or any representative authorised by the Authority in this behalf may inspect and review the progress and quality of the construction of Project Roads and issue appropriate directions to the Authority's Engineer and the Contractor for taking remedial action in the event the Works are not in accordance with the provisions of this Agreement.

### **11.5 External technical audit**

At any time during construction, the Authority may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Contractor and the Authority's Engineer for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder. Notwithstanding anything contained in this Clause



11.5, the external technical audit shall not affect any obligations of the Contractor or the Authority's Engineer under this Agreement.

### **11.6 Inspection of construction records**

The Authority shall have the right to inspect the records of the Contractor relating to the Works.

### **11.7 Monthly progress reports**

During the Construction Period, the Contractor shall, no later than 10 (ten) days after the close of each month, furnish to the Authority and the Authority's Engineer a monthly report on progress of the Works and shall promptly give such other relevant information as may be required by the Authority's Engineer.

### **11.8 Inspection**

11.8.1 The Authority's Engineer and its authorised representative 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 for use in the Works; and
- b) During production, manufacture and construction at the Site and at the place of production, be entitled to examine, inspect, measure and test the Materials and workmanship, and to check the progress of manufacture of Materials.

11.8.2 The Contractor shall give the Authority's Engineer and its authorised agents access, facilities and safety equipment for carrying out their obligations under this Agreement.

11.8.3 The Authority's Engineer shall submit a monthly inspection report (the "**Inspection Report**") to the Authority and the Contractor bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. For the avoidance of doubt, such inspection or submission of Inspection Report by the Authority's Engineer shall not relieve

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

### **11.9 Samples**

The Contractor shall submit the following samples of Materials and relevant information to the Authority's Engineer for pre-construction review:

- a) Manufacturer's test reports and standard samples of manufactured Materials; and
- b) samples of such other Materials as the Employer's Engineer may require, shall be got tested by State/Central Government approved laboratories.

### **11.10 Tests**

11.10.1 For determining that the Works conform to the Specifications and Standards, the Authority's 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 specified in this Agreement and in accordance with Good Industry Practice for quality assurance. The test checks by the Authority's Engineer shall comprise at least 20 (twenty) per cent of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.

11.10.2 In the event that results of any tests conducted under this Clause 11.10 establish any Defects or deficiencies in the Works, the Contractor shall carry out remedial measures and furnish a report to the Authority's Engineer in this behalf. The Authority's 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.

### **11.11 Examination of work before covering up**

In respect of the work which the Authority's 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 Authority's Engineer whenever any such work is ready and before it is covered up. The Authority's Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Contractor that the Authority's Engineer does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, the Contractor shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the Authority's Engineer to conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Contractor receives no response from the Authority's Engineer within a period of 3 (three) business days from the date on which the Contractor's notice hereunder is delivered to the Authority's Engineer, the Contractor shall be entitled to assume that the Authority's Engineer would not undertake the said inspection.

### **11.12 Rejection**

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 Authority's Engineer shall 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 this Agreement.

If the Authority's Engineer requires the Plant, Materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Authority to incur any additional costs, such cost shall be recoverable by the Authority from the Contractor; and may be deducted by the Authority from any monies due to be paid to the

Contractor.

### **11.13 Remedial work**

11.13.1 Notwithstanding any previous test or certification, the Authority's 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 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 Roads, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 21.6 shall apply.

11.13.2 If the Contractor fails to comply with the instructions issued by the Authority's Engineer under Clause 11.13.1, within the time specified in the Authority's Engineer notice or as mutually agreed, the Authority's Engineer may advise the Authority to have the work executed by another agency. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Authority from any monies due to be paid to the Contractor.

### **11.14 Delays during construction**

Without prejudice to the provisions of Clause 10.3.2, in the event the Contractor does not achieve any of the Project Milestones or the Authority's Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the Project Roads is not likely to be achieved by the end of the Scheduled Completion Date, it shall notify the same to the Contractor, and the Contractor shall, within 15

(fifteen) days of such notice, by a communication inform the Authority's 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.

### **11.15 Quality control records and Documents**

The Contractor shall hand over to the Authority's Engineer a copy of all its quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.2.

### **11.16 Video recording**

During the Construction Period, the Contractor shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 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 the Authority no later than 15 (fifteen) days after the close of each quarter after the Appointed Date.

### **11.17 Suspension of unsafe Construction Works**

11.17.1 Upon recommendation of the Authority's Engineer to this effect, the Authority may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Authority's Engineer, such work threatens the safety of the Users and pedestrians.

11.17.2 The Contractor shall, pursuant to the notice under Clause 11.17.1, suspend the Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works, the Users and pedestrians. The Contractor may by notice require the Authority's Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Authority's Engineer, the Authority 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 the Authority, and the procedure set forth in this Clause 11.17 shall be repeated until the suspension hereunder is revoked.

11.17.3 Subject to the provisions of Clause 21.6, all reasonable costs incurred for maintaining and protecting the Works or 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 the Authority, the Preservation Costs shall be borne by the Authority.

11.17.4 If suspension of Works is for reasons not attributable to the Contractor, the Authority’s Engineer shall determine any Time Extension to which the Contractor is reasonably entitled.

### **11.18 Third Party Inspection**

Material such as all type of pipes (of all sizes) R.C.C. / P.S.C. / M.S. /D.I. /CI./A.C./HDPE/PVC/GRP & other power equipments like transformers, switch gear,cables, panels etc. All type of valves (of all sizes), any other materials as per requirements which are supplied by the contractor under this contract are subject to third party inspection. The charges for third party inspection shall be 0.20% on the actual cost of materials, excluding Excise and freight of materials. The charges for such inspection shall be paid by the contractor. All the arrangements for inspection i.e. measuring tools, testing equipments and tools, labour required for handling materials during testing etc. shall be made available / arranged by the manufacturer /Vendor / contractor in their premises at their own costs. These cost shall be deemed included in contractor’s price bid and nothing extra shall be paid to the said account. If any particular testing facility is not available at the premises / location of Factory, then the test shall be arranged by the factory owner / Vendor at his own cost at other locations / test laboratory. All expenses in this regard shall also have to

be borne by the contractor/ manufacturer /vendor /contractor only.

If the material inspected fails during test on no fault of the inspecting agency, fees are payable to the inspecting agency for the said inspection and for any further re-inspection of the same material.

The name of the agency for third party inspection shall be informed to Employers Engineer.

If it is subsequently observed that there are defects in the quality of material, the contractor shall replace the material without any extra cost.

In addition to third party inspection, the Employers Engineer or his representative may conduct inspection intermittently.

Third Party Inspection Report: The third party inspection report merely in the certificate form stating that pipes/valves/specials or any other material inspected are found satisfactory will not be accepted, but it should be in the form of detailed report stating the parameters checked & observations made with comments of the Inspecting Officer in accordance with the respective Specifications/detailed item wise specifications / as per Tender notice.

### **11.19 Protection of Environment**

The Contractor shall ensure that during continuance of the contract, the Contractor and his Subcontractor(s) shall abide at all times by all existing enactments on environmental protection and rules made thereunder, regulations, latest notifications and bye-laws of the State or Central Government, or local authorities and any other law, bye-law, regulations that may be passed or notification that may be issued in this respect in future by the State or Central Government or the local authority. Salient features of some of the major laws that are applicable are given below:

**The Water (Prevention and Control of Pollution) Act, 1974**

This provides for the prevention and control of water pollution and the maintaining and restoring of wholesomeness of water. Pollution means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

#### **The Air (Prevention and Control of Pollution) Act, 1981**

This provides for prevention, control and abatement of air pollution. 'Air Pollution' means the presence in the atmosphere of any 'air pollutant', which means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

#### **The Environment (Protection) Act, 1986**

This provides for the protection and improvement of environment and for matters connected therewith, and the prevention of hazards to human beings, other living creatures, plants and property. 'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

#### **The Public Liability Insurance Act, 1991**

This provides for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling hazardous substances and for matters connected herewith or incidental thereto. Hazardous substance means any substance or preparation which is defined as



hazardous substance under the Environment (Protection) Act 1986, and exceeding such quantity as maybe specified by notification by the Central Government.

The Contractor shall take all reasonable steps to implement the environmental mitigation measures, Health, Safety and Environmental Management Plan, in accordance with objective, procedures, and other provisions set forth therein and shall not take any action which would prevent or interfere with such implementation. Further, he shall adhere to all environmental requirements of the contract.

**The reference to above mentioned Acts is only indicative.**

## **11.20 Labour**

The Contractor shall, make his own arrangements for the engagement of all staff and labour, local or other, and for their payment, housing, feeding and transport.

Labour importation and amenities to labour and Contractor's staff shall be to the Contractor's account. His quoted percentage shall include the expenditure towards importation of labour amenities to labour and staff.

The Contractor shall, if required by the Authority, deliver to the Authority a written in detail, in such form and at such intervals as the Authority may prescribe, showing the staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Contractor's Equipment as the Authority may require.

11.20.1 Transportation of Labour: The Contractor shall make his own arrangement for the daily transportation of the labour and staff from labour camps colonies to the work spot and no labour or staff of the Contractor shall stay at the work spot. No extra payment will be made to the Contractor for the above transportation of the labour and his quoted percentage to the work shall include the. Transportation charges of labour from colonies to workspot and

back.

The Contractor will at all times duly observe the provisions of employment of children Act XXVI of 1938 and any enactment or modification of the same and will not employ or permit any person to do any work for the purpose under the provisions of this contract in contravention of said Act.~ The Contractor here by agrees to indemnify the Employer from and against all claims, penalties which may he suffered by the department or any person employed by the department by any default on the part of the Contractor in the., observance and performance of the provisions of the employment of children Act. XXVI of 1938 or any enactment or modification of the same

As per Govt. Memo No.721/Gr. (1)/81-35, dt: 17.11.87. The Contractor shall obtain the insurance at his own cost to cover the risk on the works to indoor engaged by him during period of execution against fire and other usual risks and produce the same to the Executive Engineer concerned before commencement of works.

#### 11.20.2 Safety Measures:

- a) The Contractor shall take necessary precautions for safety of the workers and preserving their health while working in such jobs, which require special protection and precautions. The following are some of the measures listed but they are not exhaustive and Contractor shall add to and augment these precautions on his own initiative where necessary and shall comply with directions issued by the Executive Engineer or on his behalf from time to time and at all times.
- b) Providing protective foot wear to worker's situations like mixing and placing of mortar or concrete sand in quarries and places where the work is done under much wet conditions.
- c) Providing protective headwear to workers at places like underground excavations to protect them against rock falls.
- d) Providing masks to workers at granulates or at other locations where too much

fine dust is Boating about and sprinkling water at frequent intervals by water hoses on all stone crushing area and storage bins abate to dust.

- e) Getting the workers in such jobs periodically examined for chest trouble due to too much breathing in to fine dust.
- f) Taking such normal precautions like` fencing and lightening in excavation of trenches, not allowing rolls and metal parts of useless timber spread around, making danger areas for blasting providing whistles etc.
- g) Supply work men with proper belts, ropes etc., when working in precarious slopes etc.
- h) Avoiding named electrical wire etc., as they would electrocute the works.
- i) Taking necessary steps towards training the workers concerned on the machinery before they are allowed to handle them independently and taking all necessary precautions in around the areas where machines hoists and similar units are working.

11.20.3 Fair Wage Clause: The Contractor shall pay not less than fair wages to labourers engaged by him on the work.

Fair wages mean wages whether for time or piecework notified by the Government from time to time in the area in which the work is situated.

The Contractor shall notwithstanding the revisions of any contract to the contrary cause to be paid to the labour, in directly engaged on the work including any labour engaged by the sub-contractor in connection with the said work, as if the labourer's had been directly employed by him.

In respect of labour directly or indirectly employed in the works for the purpose of the Contractors part of the contract the Contractor shall comply with the rules and regulations on the maintenance of suitable records prescribed for this purpose from time to time by the Government. He shall maintain his accounts and vouchers on the payment of wages to the labourers to the satisfaction of the Executive Engineer.

The Authority shall have the right to call for such record as required to satisfy himself on the payment of fair wages to the labourers and shall have the right to deduct from the contract amount a suitable amount for making good the loss suffered by the worker or workers by reason of the "fair wages" clause to the workers.

The Contractor shall be primarily liable for all payments to be made and for the observance of the regulations framed by the Govt. from time to time without prejudice to his right to claim indemnity from his sub-contractors.

As per contract labour (Regulation and abolition) Act. 1970 the Contractor has to produce the license obtained from the licensing officers of the labour department along with the Bid or at the time of contract.

Any violation of the conditions above shall be deemed to be a breach of his contract.

Equal wages are to be paid for both men and women if the nature of work is same and similar.

The Contractor shall arrange for the recruitment of skilled and unskilled labour local and imported to the extent necessary to complete the work within the agreed period as directed by the Executive Engineer in writing.

#### 11.20.4 Compliance with Labour Regulations:

During continuance of the contract, the Contractor and his sub-contractors shall abide at all times by all existing labour enactments and rules made there under, regulations, notifications and bye laws of the State or Central Government or local authority and any other labour-law (including rules), regulations, bye laws that may be passed or notifications that may be issued under any labour law in future either by the State or the Central Government or the local authority and also applicable labour regulations, health and sanitary arrangements for workmen, insurance and other benefits. Salient

features of some of the major labour laws that are applicable to construction industry are given below. The Contractor shall keep the Department indemnified in case any action is taken against Department by the competent authority on account of contravention of any of the provisions of any Act or rules made there under, regulations or notifications including amendment. If the Department is caused to pay or reimburse, such amounts as may be necessary to cause or observe, or for non-observance of the provision stipulated in the notifications / bye laws / Acts/Rules/regulations including amendments, if any, on the part of the Contractor, the Authority shall have the right to deduct any money due to the Contractor including his amount of performance security. The Authority shall also have right to recover from the Contractor any sum required or estimated to be required for making good the loss or damage suffered by the Employer. The employees of the Contractor and the Sub-contractor in no case shall be treated as the Department at any point of time.

11.20.5 Salient features of some major labour laws applicable to establishment engaged in buildings and other construction work:

- a) Workmen compensation Act 1923: The Act provides for compensation in case if injury by accident arising out of and during the course of employment.
- b) Payment of Gratuity Act 1972: Gratuity is payable to an employee under the Act on satisfaction of certain conditions on separation if any employee has completed 5 years' service or more, or on death, the rate of 15 days' wages for every completed year of service. The Act is applicable to all establishments, employing 10 or more employees.
- c) Employees PF and Miscellaneous Provision Act 1952: The Act provides for monthly contributions by the Department plus workers @ 10% or 8.33% The

benefits payable under the Act are:

- a. Pension or family pension on retirement or death, as the case may be.
  - b. Deposit linked insurance on the death in harness of the worker
  - c. Payment of PF accumulation on retirement / death etc.
- d) Maternity Benefit Act 1951: The Act provides for leave and some other benefits to women employees in case of confinements or miscarriage etc.
- e) Contract Labour (Regulation & Abolition) Act 1970: The Act provides for certain welfare measures to be provided by the Contractor to contract labour and in case the Contractor fails to provide, the same are required to be provided by the Principal Department by Law. The Principal Department is required to take certificate of Registration and the Contractor is required to take license from the designated Officer. The Act is applicable to the establishments or Contractor of Principal Department if they employ 20 or more contract labour.
- f) Minimum wages Act 1948: The Department is supposed to pay not less than the Minimum wages fixed by appropriate Government as per employment construction of Buildings, Roads, Runways are scheduled employments.
- g) Payment of wages Act 1936: It lays down as to by what date the wages are to be paid, when it will be paid and what deductions can be made form the wages of the workers
- h) Equal Remuneration Act 1979: The Act provides for payment of equal wages for work of equal nature to Male or Female workers and for not making discrimination against Female employee in the matters of transfers, training and promotions etc.
- i) Payment of Bonus Act 1965: The Act is applicable to all establishments employing 20 or more employees. The Act provides for payment of annual bonus subject to a minimum of 8.33% of wages and maximum of 20% of wages to employees drawing Rs.3500/- per month or less. The bonus to be paid to employees getting Rs.2500/- per month or above and up to Rs. 3,500/- per month shall be worked out by taking wages as Rs. 2,500/- per monthly only.

The Act does not apply to certain establishments. The newly set-up establishments are exempted for five years in certain circumstances. Some of the State Governments have reduced the employment size from 20 to 10 for the purpose of applicability of this Act.

- j) Industrial Disputes Act 1947: The Act lays down the machinery and procedure for resolution of Industrial disputes, in what situations a strike or lock-out, becomes illegal and what are the requirements for laying off or retrenching the employees or closing down the establishment.
- k) Industrial Employment (Standing Orders) Act 1946: It is applicable to all establishments employing 100 or more workmen (employment size reduced by some of the State and Central Government to 50) The Act provides for laying down rules governing the conditions of employment by the Department on matters provided in the Act and get the same certified by the designated Authority
- l) Trade Unions Act 1926: The Act lays down the machinery and procedure for registration of trade unions of workmen and Departments. The Trade Unions registered under the act have been given certain immunities from civil and criminal liabilities.
- m) Child Labour (Prohibition & Regulation) Act 1986: The Act prohibits employment of children below 14 years of age in certain occupations and processes and provides for regulation of employment of children in all other occupations and processes, Employment Child. Labour is prohibited in Building and Construction Industry.
- n) Inter State Migrant workmen's (Regulation of Employment & Conditions of service) Act 1979: The Act applicable to an establishment, which employs 5 or more inter-state migrant workmen through an intermediary (who has recruited workmen in one state for employment in the establishment situated in another State). The inter State migrant workmen, in an establishment to which this Act becomes applicable, are required to be provided certain facilities such as

housing, medical aid, travelling expenses from home up to the establishment and back, etc

- o) The Building and Other Construction workers (regulation of Employment and conditions of service) Act 1996 and the cess Act of 1996: All the establishments who carry on any building or other construction work and employs 10 or more workers are covered under this Act. All such establishments are required to pay cess at the rate of 1% of the cost of construction and the same will be recovered from the running bills. The Agency is required to provide safety measures at the Building or construction work and other welfare measures, such as Canteens, First-aid facilities, Ambulance, Housing accommodations for workers near the work place etc.
- p) Factories Act 1948: The Act lays down the procedure for approval of plans before setting up a factory, health and safety provisions, welfare provisions, working hours, annual earned leave and rendering information regarding accidents or dangerous occurrences to designated authorities. It is applicable to premises employing 10 person or more with aid of power or 20 or more persons without the aid of power engaged in manufacturing process.

#### 11.20.6 Liabilities of the Contractor:

- a) Accident Relief and Workmen compensation: The Contractor should make all necessary arrangements for the safety of workmen on the occurrence of the accident, which results in the injury or death of any of the workmen employed by the Contractor, the Contractor shall within 24 hours of the happenings of the accident and such accidents should intimate in writing to the Authority the act of such accident. The Contractor shall indemnify Employer against all loss or damage sustained by the Government resulting directly or indirectly from his failure to give intimation in the manner aforesaid including the penalties or fines if any payable by Employer. as a consequence of Employer's failure to give notice under workmen's compensation Act or otherwise conform to the provisions of the said Act. In regard to such accident.



- b) In the event of an accident in respect of which compensation may become payable under the workmen's compensation Act VIII 23 whether by the Contractor, by the Employer it shall be lawful for the Authority to retain such sum of money which may in the opinion of the Authority be sufficient to meet such liability. The opinion of the Authority shall be final in regard to all matters arising under this clause.
- c) The Contractor shall at all times indemnify the Employer against all claims which may be made under the workmen's compensation act or any statutory modification thereafter or rules there under or otherwise consequent of any damage or compensation payable in consequent of any accident or injuries sustained or death of any workmen engaged in the performance of the business relating to the Contractor.

#### 11.20.7 Contractor's Staff, Representatives and Labour:

The Contractor shall, at all times, maintain on the works, staff of qualified Engineers, and Supervisors of sufficient experience of similar other jobs to assure that the quality of work turned out shall be as intended in the specifications. The Contractor shall also maintain at the works, a Work Manager or sufficient status, experience and office and duly authorize him to deal with all aspects of the day-today work. All communications to any commitments by the Work Manager shall be considered as binding on the Contractor.

The Contractor shall at all times submit details of skilled and unskilled labour and equipment employed to the Engineer-in-Charge in prescribed proforma as he may require to assess and ensure the proper progress of work.

If the Contractor does not employ the technical person agreed to on the work a fine of Rs. 25,000/- will be imposed. If he does not employ for 30 days, thereafter it becomes a fundamental breach of contract

The Contractor shall at all times, maintain on the work a staff of qualified

Engineers and Supervisors of sufficient experience of similar other jobs to ensure that the quality of work turned out shall be as intended in these specifications and they shall be present at the work spot during working hours and at the time of inspection by the Employer. All orders and direction given to such supervisory or other staff of the Contractor to be present on any specified inspection and the Contractor shall comply with such requisitions.

The Contractor shall supply to the Authority details of name, qualifications and experience in regard to all supervisory staff employed by the Contractor and notify the changes when made and satisfy the Authority regarding the quality and adequacy of staff thus employed.

The Authority will have the unquestionable right to ask for change in the Contractor's supervisory staff and to other removal from the work and connection herewith of any of such staff. The Contractor shall comply with such- order and effect replacement to the satisfaction of the Executive Engineer.

The Contractor shall not without written authorization permit entry on site of work of any person authorized agents, engaged in connection with work.

All vehicles used by the Contractor shall be clearly marked with Contractor's name.

11.20.8 Accommodation and food: The Contractor should arrange accommodation he needs, at his own cost. The Contractor shall make his own arrangements for supply of food grains, fuel and other provision to his staff and laborer's including controlled commodities.

11.20.9 Protection of adjoining premises: The Contractor shall protect adjoining sites against structural, decorative and other damages that could be caused by the execution of these works and make good at his cost any such damages.

11.20.10 Work during night or on Sundays and holidays: The works can be allowed to be carried out during night, Sundays or authorized holidays in order

to enable him to ,meet the schedule targets and the work shall require almost round the clock working keeping in view:

- i. The provisions of relevant labour laws being adhered to:
- ii. Adequate lighting, supervision and safety measures are established to the satisfaction of the Authority and
- iii. The construction programme given by the Contractor and agreed upon by the Authority envisages such night working or working during Sundays or authorized holidays.

## **ARTICLE 12**

### **COMPLETION CERTIFICATE**

#### **12.1 Tests on completion**

12.1.1 At least 30 (thirty) days prior to the likely completion of the Project Roads, or a Section thereof, the Contractor shall notify the Authority's Engineer of its intent to subject the Project Roads or a Section thereof, to Tests. The date and time of each of the Tests shall be determined by the Authority's Engineer in consultation with the Contractor, and notified to the Authority who may designate its representative to witness the Tests. The Contractor shall either conduct the Tests as directed by the Authority's Engineer or provide such assistance as the Authority's Engineer may reasonably require for conducting the Tests. In the event of the Contractor and the Authority's 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 Authority's Engineer.

12.1.2 All Tests shall be conducted in accordance with Schedule-K. The Authority's Engineer shall either conduct or observe, monitor and review the Tests conducted by the Contractor, as the case may be, and review the results of the Tests to determine compliance of the Project Roads or a Section thereof, with Specifications and Standards and if it is reasonably anticipated or determined by the Authority's Engineer during the course of any Test that the performance of the Project Roads 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 Defect or deficiencies. Upon completion of each Test, the Authority's Engineer shall provide to the Contractor and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Authority's 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 Roads or Section thereof with the Specifications and Standards.

## **12.2 Provisional Certificate**

12.2.1 Subject to the provisions of Clause 12.2.5, upon completion of all Works forming part of the Project Roads, save and except the Works for which Time Extension has been granted under Clause 10.5, the Authority's Engineer shall, at the request of the Contractor, issue a provisional certificate of completion substantially in the form set forth in Schedule-L (the "**Provisional Certificate**") if the Tests for and in respect of the completed Works are successful. The Provisional Certificate shall have appended thereto a list of outstanding items of work (the "**Punch List**") that need to be completed in accordance with the provisions of this Agreement. The Contractor undertakes to complete the minor outstanding items of works in respect of those Sections of the Project Roads for which the Provisional Certificate has been issued, within a period of 30 (thirty) days of the date of Provisional Certificate, and those parts of the Works in respect of which Time Extension has been granted, within the extended period thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all Works for which Time Extension has been granted and shall also include any minor outstanding items of work forming part of the completed Sections if such works do not materially affect the use of the completed Sections for their intended purpose. The Parties further agree that Provisional Certificate shall not be issued if the completed Works cannot be safely and reliably placed in service of the Users thereof.

12.2.2 Upon issue of Provisional Certificate, the provisions of Articles 14 and 17 shall apply to the completed parts of the Project Roads and the property and ownership of all such completed Works shall vest in the Authority.

12.2.3 If the Authority's Engineer determines that the Project Roads or any completed

part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Contractor and withhold issuance of the Provisional Certificate until the Defects or deficiencies are rectified by the Contractor and Tests are successful in accordance with this Article 12.

12.2.4 Notwithstanding anything to the contrary contained in Clause 12.2.3, the Authority may, at any time after receiving a report from the Authority's Engineer under that Clause, direct the Authority's Engineer to issue a Provisional Certificate under Clause 12.2.1 and such direction shall be complied forthwith.

12.2.5 No Provisional Certificate shall be issued under the provisions of this Clause 12.2 until the Contractor has submitted valid claims for payment of at least 80% (eighty per cent) of the amount arrived at after reducing the lump sum price specified in Clause 19.1.1 by the amount attributable to works which have been withdrawn under the provisions of Clause 8.3.3. For the avoidance of doubt and by way of illustration, the Parties agree that if the Contract Price specified in Clause 19.1.1 is Rs. 105 cr. (Rs. one hundred and five crore) and the works withdrawn under Clause 8.3.3 have a value of Rs. 5 cr. (Rs. five crore), a Provisional Certificate shall not be issued until valid claims for payment of an amount of Rs. 80 cr. (Rs. eighty crore) have been submitted by the Contractor in accordance with the provisions of this Agreement. It is further agreed that all price adjustments made in pursuance of Clause 19.10 shall not be reckoned for computation of the claims for payments referred to in this Clause 12.2.5.

### **12.3 Completion of remaining Works**

All items in the Punch List shall be completed by the Contractor in accordance with the provisions of this Agreement. For any delay in their completion other than for the reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Contractor in

accordance with the provisions of Clause 10.3.2 of this Agreement.

## **12.4 Completion Certificate**

- 12.4.1 Upon completion of all Works, including the items specified in the Punch List, and the Authority's Engineer determining the Tests to be successful, it shall forthwith issue to the Contractor and the Authority a certificate substantially in the form set forth in Schedule-L (the "**Completion Certificate**").
- 12.4.2 Upon receiving the Completion Certificate, the Contractor shall remove its equipment, materials, debris and temporary works from the Site within a period of 30 (thirty) days thereof, failing which the Authority may remove or cause to be removed, such equipment, materials, debris and temporary works and recover from the Contractor an amount equal to 120% (one hundred and twenty per cent) of the actual cost of removal incurred by the Authority.
- 12.4.3 Without prejudice to the obligations of the Contractor specified in Articles 14 and 17, the property and ownership of all the completed Works forming part of the Project Roads shall vest in the Authority.
- 12.4.4 Without prejudice to the obligations of the Contractor specified in Articles 14 and 17, the property and ownership of all the completed Works forming part of the Project Works shall vest in the Authority.

## **12.5 Rescheduling of Tests**

If the Authority's Engineer certifies to the Authority and the Contractor that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, 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.

## **ARTICLE 13**

### **CHANGE OF SCOPE**

#### **13.1 Change of Scope**

13.1.1 The Authority 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 13.

13.1.2 Change of Scope shall mean:

- a) change in specifications of any item of Works;
- b) omission of any work from the Scope of the Project except under Clause 8.3.3; provided that, subject to Clause 13.5, the Authority shall not omit any work under this Clause in order to get it executed by any other authority; 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 of construction.

13.1.3 If the Contractor determines at any time that a Change of Scope will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Authority of executing, maintaining or operating the Project Roads, (iii) improve the efficiency or value to the Authority of the completed Project Roads, or (iv) otherwise be of benefit to the Authority, 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 the Authority to consider such Change of Scope. The Authority 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 13 or reject the proposal and inform the Contractor of its decision. For the avoidance of doubt, the Parties agree that the Contractor shall not undertake any Change of Scope without the express consent of the Authority, save and except any Works necessary for meeting any Emergency.

## **13.2 Procedure for Change of Scope**

13.2.1 In the event of the Authority determining that a Change of Scope is necessary, it may direct the Authority's Engineer to issue to the Contractor a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

13.2.2 Upon receipt of a Change of Scope Notice, the Contractor shall, with due diligence, provide to the Authority and the Authority's Engineer 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 on the costs and time thereof, 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; and
  - iii. Proposed modifications, if any, to the Project Completion Schedule of the Project Roads.

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Clause 13.4.2, the Contract Price shall be increased or

decreased, as the case may be, on account of Change of Scope.

13.2.3 The Contractor's quotation of costs for the Change of Scope shall be determined on the following principles:

- a) For works where Schedule of Rates (SOR) of concerned circle of State's Public Works Department are available shall be applicable for determination of costs. In case of non-availability of current SOR, the available Schedule of Rates shall be applied by updating the same based on WPI.
- b) For works not similar in nature to the Works being executed, the cost of work shall be derived on the basis of MORTH Standard Data Book and the applicable schedule of rates for the relevant circle, as published by the respective State Government, and such rates shall be indexed with reference to the WPI once every year, with the base being the month and year of the publication of the said schedule of rates; provided, however, that for any item not included in the schedule of rates, the prevailing market rates as determined by the Authority's Engineer shall apply, and for any item in respect of which MORTH Standard Data Book does not provide the requisite details, the Authority's Engineer shall determine the rate in accordance with Good Industry Practice.

13.2.4 Upon reaching an agreement, the Authority 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, the Authority may:

- a) issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the Authority till the matter is resolved in accordance with Article 26; or
- b) Process in accordance with Clause 13.5.

13.2.5 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 13.

### **13.3 Payment for Change of Scope**

Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.

### **13.4 Restrictions on Change of Scope**

13.4.1 No Change of Scope shall be executed unless the Authority has issued the Change of Scope Order save and except any Works necessary for meeting any Emergency.

13.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed 10 (ten) per cent of the Contract Price.

13.4.3 Notwithstanding anything to the contrary in this Article 13, no change made necessary because of any default of the Contractor in the performance of its obligations under this Agreement shall be deemed to be Change of Scope, and shall not result in any adjustment of the Contract Price or the Project Completion Schedule.

### **13.5 Power of the Authority to undertake works**

13.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Clause 13.2, the Authority 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 from amongst bidders who are pre-qualified for undertaking the additional work; 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 the Authority<sup>3</sup>, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor shall be

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<sup>3</sup> The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Contractor.

entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Contractor shall provide assistance and cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects and/ or maintenance of works carried out by other agencies.

- 13.5.2 The works undertaken in accordance with this Clause 13.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project Roads. 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 13.5.

**ARTICLE 14**  
**MAINTENANCE - Not Used**

**ARTICLE 15**  
**SUPERVISION AND MONITORING DURING**  
**MAINTENANCE - Not Used**

## **ARTICLE 16**

### **TRAFFIC REGULATION**

#### **16.1 Traffic regulation by the Contractor**

- 16.1.1 The Contractor shall take all the required measures and make arrangements for the safety of Users during the construction and maintenance of the Project Roads/ works or a Section thereof in accordance with the provisions of MORTH Specifications. It shall provide, erect and maintain all such barricades, signs, markings, flags, and lights as may be required by Good Industry Practice for the safety of the traffic passing through the Section under construction or maintenance.
- 16.1.2 All works shall be carried out in a manner creating least interference to traffic passing through the Project Roads or a Section thereof. In stretches where construction or maintenance works on the carriageway are taken up, the Contractor shall ensure that proper passage is provided for the traffic. Where it is not possible or safe to allow traffic on part width of the carriageway, a temporary diversion of proper specifications shall be constructed by the Contractor at its own cost. The Contractor shall take prior approval of the Authority's Engineer for any proposed arrangement for traffic regulation during Construction and Maintenance, which approval shall not be unreasonably withheld.

## **ARTICLE 17**

### **DEFECTS LIABILITY**

#### **17.1 Defects Liability Period**

17.1.1 The Contractor shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project works or any Section thereof, till the expiry of a period of 2 (two) years commencing from the date of Provisional Certificate (the “**Defects Liability Period**”). Provided that the Defects Liability Period shall in no case be less than 22 (Twenty Two) months from the date of Completion Certificate for and in respect of works for which Time Extension was granted. Provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence from the date of the Completion Certificate. For the avoidance of doubt, any repairs or restoration on account of usual wear or tear in the Project Roads or any Section thereof shall form a part of the Maintenance obligations of the Contractor as specified in Article 14.

#### **17.2 Remedying Defects**

Save and except as provided in Clause 14.1.2, the Contractor shall repair or rectify all Defects and deficiencies observed by the Authority’s Engineer during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the Authority’s Engineer in this behalf, or within such reasonable period as may be determined by the Authority’s Engineer at the request of the Contractor, in accordance with Good Industry Practice.

#### **17.3 Cost of remedying Defects**

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Clause 17.2, including any additional testing, shall be carried out by the Contractor at its own risk and cost, 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 this Agreement and the Specifications and Standards;
- c) improper maintenance during construction of the Project Roads by the Contractor; and/ or
- d) Failure by the Contractor to comply with any other obligation under this Agreement.

#### **17.4 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 17.2, the Authority shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the Project Roads conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Contractor, be determined by the Authority's Engineer. The cost so determined and an amount equal to 200% (Two Hundred Percent) of the cost as Damages shall be recoverable by the Authority from the Contractor and may be deducted by the Authority from any monies due to the Contractor.

#### **17.5 Contractor to search cause**

17.5.1 The Authority's Engineer may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.

17.5.2 In the event any Defect identified under Clause 17.5.1 is attributable to the Contractor, the Contractor shall rectify such Defect within the period specified by the Authority's Engineer, and shall bear the cost of the examination and rectification of such Defect.

17.5.3 In the event such Defect is not attributable to the Contractor, the Authority's Engineer shall, after due consultation with the Authority and the Contractor, determine the costs incurred by the Contractor on such examination and notify

the same to the Contractor, with a copy to the Authority, and the Contractor shall be entitled to payment of such costs by the Authority.

### **17.6 Extension of Defects Liability Period**

The Defects Liability Period shall be deemed to be extended till the identified Defects under Clause 17.2 have been remedied.

## **ARTICLE 18**

### **AUTHORITY'S ENGINEER**

#### **18.1 Appointment of the Authority's Engineer**

- 18.1.1 The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-N, to be the engineer under this Agreement (the "**Authority's Engineer**")
- 18.1.2 The appointment of the Authority's Engineer shall be made no later than 15 (fifteen) days from the date of this Agreement. The Authority shall notify the appointment or replacement of the Authority's Engineer to the Contractor.
- 18.1.3 The staff of the Authority's Engineer shall include suitably qualified engineers and other professionals who are competent to assist the Authority's Engineer to carry out its duties.

#### **18.2 Duties and authority of the Authority's Engineer**

- 18.2.1 . The Authority's Engineer shall perform the duties and exercise the authority in accordance with the provisions of this Agreement and substantially in accordance with the terms of reference "Terms of Reference" or "TOR" set forth in Annex 1 of Schedule N, but subject to obtaining prior written approval of the Authority before determining:
- a) any Time Extension;
  - b) any additional cost to be paid by the Authority to the Contractor;
  - c) the Termination Payment; or
  - d) Any other matter which is not specified in (a), (b) or (c) above and which creates an obligation or liability on either Party for a sum exceeding Rs. 5,000,000 (Rs. fifty lakh).
- 18.2.2 No decision or communication of the Authority's Engineer shall be effective or valid unless it is accompanied by an attested true copy of the approval of the

Authority for and in respect of any matter specified in Clause 18.2.1.

18.2.3 The Authority's Engineer shall submit regular periodic reports, at least once every month, to the Authority in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Authority's Engineer within 10 (ten) days of the beginning of every month. For the avoidance of doubt, the Authority's Engineer shall include in its report, compliance of the recommendations of the Safety Consultant.

### **18.3 Delegation by the Authority's Engineer**

18.3.1 The Authority's Engineer may, by order in writing, delegate any of his duties and responsibilities to suitably qualified and experienced personnel who are accountable to Authority's Engineer, or may revoke any such delegation, under intimation to the Authority and the Contractor. Provided, however, that the Authority's Engineer shall be responsible and liable for all actions and omissions of such personnel.

18.3.2 Any failure of the Authority's Engineer to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Authority to reject the work, Plant or Materials, which is not in accordance with the provisions of this Agreement and the Specifications and Standards.

18.3.3 Notwithstanding anything stated in Clause 18.3.1 above, the Authority's Engineer shall not delegate the authority to refer any matter for the Authority's prior approval wherever required in accordance with the provisions of Clause 18.2.

### **18.4 Instructions of the Authority's Engineer**

18.4.1 The Authority's Engineer may issue to the Contractor instructions for remedying any Defect. The Contractor shall take such instructions from the Authority's Engineer, or from an assistant to whom appropriate authority has

been delegated under Clause 18.3.

- 18.4.2 The instructions issued by the Authority's Engineer shall be in writing. However, if the Authority's Engineer issues any oral instructions to the Contractor, it shall confirm in writing the oral instructions within 2 (two) working days of issuing them.
- 18.4.3 In case the Contractor does not receive the confirmation of the oral instruction within the time specified in Clause 18.4.2, the Contractor shall seek the written confirmation of the oral instructions from the Authority's Engineer. The Contractor shall obtain acknowledgement from the Authority's Engineer of the communication seeking written confirmation. In case of failure of the Authority's Engineer or its delegated assistant to reply to the Contractor within 2 (two) days of the receipt of the communication from the Contractor, the Contractor may not carry out the instruction.
- 18.4.4 In case of any dispute on any of the instructions issued by the delegated assistant, the Contractor may refer the dispute to the Authority's Engineer, who shall then confirm, reverse or vary the instructions within [3 (three)] business days of the dispute being referred.

## **18.5 Determination by the Authority's Engineer**

- 18.5.1 The Authority's Engineer shall consult with each Party in an endeavour to reach agreement wherever this Agreement provides for the determination of any matter by the Authority's Engineer. If such agreement is not achieved, the Authority's Engineer shall make a fair determination in accordance with this Agreement having due regard to all relevant circumstances. The Authority's Engineer shall give notice to both the Parties of each agreement or determination, with supporting particulars.
- 18.5.2 Each Party shall give effect to each agreement or determination made by the Authority's Engineer in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision,

direction or determination of the Authority's Engineer, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

### **18.6 Remuneration of the Authority's Engineer**

The remuneration, cost and expenses of the Authority's Engineer shall be paid by the Authority.

### **18.7 Termination of the Authority's Engineer**

18.7.1 The Authority may, in its discretion, replace the Authority's Engineer at any time, but only after appointment of another Authority's Engineer in accordance with Clause 18.1.

18.7.2 If the Contractor has reasons to believe that the Authority's Engineer is not discharging its duties and functions in accordance with the provisions of this Agreement, it may make a written representation to the Authority and seek termination of the appointment of the Authority's Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Contractor and Authority's Engineer and make best efforts for an amicable resolution of the representation. In the event that the appointment of the Authority's Engineer is terminated hereunder, the Authority shall appoint forthwith another Authority's Engineer in accordance with Clause 18.1.

## ARTICLE 19

### PAYMENTS

#### 19.1 Contract Price

19.1.1 The Authority shall make payments to the Contractor for the Works on the basis of the lump sum price accepted by the Authority in consideration of the obligations specified in this Agreement for an amount of Rs. ... .. (Rs.....) (The “**Contract Price**”), which shall be subject to adjustments in accordance with the provisions of this Agreement. The Parties further agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Completion Certificate.

19.1.2 The Contract Price includes all duties, taxes, royalty, 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 this Agreement and on the services performed under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax including any tax that may be levied in India on profits made by it in respect of this Agreement.

19.1.3 The Contract Price shall not be adjusted for any change in costs stated in Clause 19.1.2 above, except as stated in Clauses 19.10 and 19.17.

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

19.1.5 Unless otherwise stated in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this Agreement and all things necessary for the Construction and the remedying of any Defects in the Project Roads.

19.1.6 All payments under this Agreement shall be made in Indian Rupees.

#### 19.2 Advance Payment

19.2.1 The contractors for works exceeding more than Rs.1.00 Crore of estimated cost are permitted to avail the facility of mobilization advance up to 10% in instalments for the value of the contract against an unconditional and irrevocable bank guarantee in terms of G.O Ms. No. 94 dt.1.7.2003 and G.O. Ms. No.50 I&CAD dt.2.3.2009. Mobilization advance towards labour can be availed in 3 instalments within a period of 25% of Agreement period or 3 months, whichever is earlier. Thereafter, the agency cannot avail the facility.

- a) 1% after conclusion of agreement.
- b) The remaining 4% in two instalments. 2% after completion of 50% of Investigation and designs and 2% after completion of Investigation & designs.

Mobilization advance towards new machinery and equipment not exceeding 5% of the contract value can be availed within 50% of Agreement period (or) 1 year whichever is earlier. Thereafter, the agency can not avail the facility. The mobilization advance is payable for the new machinery purchased after the date of conclusion of the agreement. Insurance and hypothecation to the Employer shall be ensured.

Interest is to be levied until the entire mobilization advance is recovered even beyond Agreement period.

19.2.2 The advance payment would be deemed as interest bearing advance at an interest rate of MCLR+PLR 3% per annum. The interest paid on the advance is chargeable from the date advance is paid. However, if completion is delayed by circumstances beyond control of the Contractor for which an extension of time has been granted the interest charges on such advances shall be waived for the period of Construction.

19.2.3 The value of Advance Bank Guarantee given by the Contractor can be progressively reduced by the amount repaid by the Contractor.

19.2.4 The advance loan together with the interest shall be repaid with percentages



deduction from the first interim payment at the rate of 10% provided that the entire advance payment along with the interest will be recovered always provided that the advance payment including interest shall be completely repaid prior to the time when 80% of the Contract Price has been certified for payment.

- 19.2.5 If the Advance Payment has not been fully repaid prior to Termination under Clause 21.7 or Article 23, as the case may be, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to the Authority. Without prejudice to the provisions of Clause 19.2.5, in the event of Termination for Contractor Default, the Advance Payment shall be deemed to carry interest at the rate of 10% (ten per cent) per annum from the date of Advance Payment to the date of recovery by encashment of the Guarantee for the Advance Payment. For the avoidance of doubt, the aforesaid interest shall be payable on each installment of the Advance Payment, regardless of whether the installment or any part thereof has been repaid to the Authority prior to Termination.

### **19.3 Procedure for estimating the payment for the Works**

- 19.3.1 The Authority shall make interim payments to the Contractor as certified by the Authority's Engineer on completion of a stage, in a length, number or area as specified and valued in accordance with the proportion of the Contract Price assigned to each item and its stage in Schedule-H.
- 19.3.2 The Contractor shall base its claim for interim payment for the stages completed till the end of the month for which the payment is claimed, valued in accordance with Clause 19.3.1, supported with necessary particulars and documents in accordance with this Agreement.
- 19.3.3 Any reduction in the Contract Price arising out of Change of Scope or the works withdrawn under Clause 8.3 shall not affect the amounts payable for the items or stage payments thereof which are not affected by such Change of Scope or

withdrawal. For avoidance of doubt and by way of illustration, the Parties agree that if the amount assigned to Major Bridges is reduced from Rs. 100 crore to Rs. 80 crore owing to Change of Scope or withdrawal of work, the reduction in payment shall be restricted to relevant payments for Major Bridges only and the payment due in respect of all other stage payments under the item Major Bridges shall not be affected in any manner. The Parties further agree that the adjustments arising out of the aforesaid modifications shall be carried out in a manner that the impact of such modifications is restricted to the said Change of Scope or withdrawal, as the case may be, and does not alter the payments due for and in respect of items or stage payments which do not form part of such Change of Scope or withdrawal.

#### **19.4 Stage Payment Statement for Works**

The Contractor shall submit a statement (the “**Stage Payment Statement**”), in 3 copies, by the 7th (seventh) day of the month to the Authority’s Engineer in the form set forth in Schedule-O, showing the amount calculated in accordance with Clause 19.3 to which the Contractor considers himself entitled for completed stage(s) of the Works. The Stage Payment Statement shall be accompanied with the progress reports and any other supporting documents. The Contractor shall not submit any claim for payment of incomplete stages of work.

#### **19.5 Stage Payment for Works**

19.5.1 Within 30 (Thirty) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 19.4, the Authority’s Engineer shall broadly determine the amount due to the Contractor and recommend the release of 90 (ninety) per cent of the amount so determined as part payment against the Stage Payment Statement, pending issue of the Interim Payment Certificate by the Authority’s Engineer. Within 10 (ten) days of the receipt of recommendation of the Authority’s Engineer, the Authority shall make electronic payment directly to the Contractor’s bank account.

19.5.2 Within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in Clause 19.4, the Authority's Engineer shall determine and shall deliver to the Authority and the Contractor an IPC certifying the amount due and payable to the Contractor, after adjusting the payments already released to the Contractor against the said statement. For the avoidance of doubt, the Parties agree that the IPC shall specify all the amounts that have been deducted from the Stage Payment Statement and the reasons therefore.

19.5.3 In cases where there is a difference of opinion as to the value of any stage, the Authority's Engineer's view shall prevail and interim payments shall be made to the Contractor on this basis; provided that the foregoing shall be without prejudice to the Contractor's right to raise a Dispute.

19.5.4 The Authority's Engineer may, for reasons to be recorded, withhold from payment:

- a) The estimated value of work or obligation that the Contractor has failed to perform in accordance with this Agreement and the Authority's Engineer had notified the Contractor; and
- b) The estimated cost of rectification of work done being not in accordance with this Agreement.

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

## **19.6 Monthly Maintenance Statement of the Project works - Not Used**

## **19.7 Payment for Maintenance of the Project works - Not Used**

## **19.8 Payment of Damages**

19.8.1 The Contractor may claim Damages due and payable to it in accordance with the provisions of this Agreement.

19.8.2 The Authority's Engineer shall issue the IPC within 15 (fifteen) days of the receipt of the claim under Clause 19.8.1, after making adjustments in

accordance with the provisions of this Agreement. The Authority shall pay to the Contractor the amount due under any IPC within a period of 30 (thirty) days from the date of the submission of the claim under this Clause 19.8. In the event of the failure of the Authority to make payment to the Contractor within the specified time, the Authority shall be liable to pay to the Contractor interest thereon and the provisions of Clause 19.9 shall apply *mutatis mutandis* thereto.

### **19.9 Time of payment and interest**

The Authority shall pay to the Contractor any amount due under any payment certificate issued by the Authority's Engineer in accordance with the provisions of this Article 19, or in accordance with any other clause of this Agreement as follows:

- a) payment shall be made no later than 30 (thirty) days from the date of submission of the Stage Payment Statement by the Contractor to the Authority's Engineer for certification in accordance with the provisions of Clause 19.4 for an IPC; provided that, in the event the IPC is not issued by the Authority's Engineer within the aforesaid period of 30 (thirty) days, the Authority shall pay the amount shown in the Contractor's Stage Payment Statement and any discrepancy therein shall be added to, or deducted from, the next payment certificate issued to the Contractor; and
- b) payment shall be made no later than 30 (thirty) days from the date of submission of the Final Payment Certificate for Works along with the discharge submitted to the Authority's Engineer in accordance with the provisions of Clause 19.15 for certification.

19.9.1 In the event of the failure of the Authority to make payment to the Contractor within the time period stated in this Clause 19.9, the Authority shall be liable to pay to the Contractor interest at the Base Rate plus 2% (two per cent), calculated at quarterly rests, on all sums remaining unpaid from the date on which the same should have been paid, calculated in accordance with the provisions of Clause 19.9.1(a) and (b) and till the date of actual payment.

## **19.10 Price adjustment for the Works**

19.10.1 The Price Adjustment is subject to under this Clause.

19.10.2 The Price Adjustment shall be applicable as under:

- a) Price adjustment shall apply only for work carried out within the stipulated time or extensions granted by the employer for the reasons attributable to the employer. It shall not apply to work carried out beyond the stipulated time with extension granted by the employer for reasons attributable to the Contractor. The price adjustment shall be determined during each quarter from the formulae as detailed herein after.
- b) price adjustment is applicable for cement and steel, Bitumen, POL, used for construction at the site of work only as per G.O Ms. No. 94 of TR&B, dated 16.4.2008 & G.O Ms. No. 252 of TR&B - (RI), Dept dt:28-08-2008. Price adjustment triggers only when the variation is beyond +/- 5% only. Price Adjustment shall not be applicable for manufactured items using cement & Steel.

19.10.3 The price adjustment shall be applicable within original contract period or extended on grounds of the departmental delays and with valid reasons and shall not be applicable to the extensions granted on account of the Contractor's faults. Price adjustment shall be applicable for components of works actually carried out during the period of the bill.

19.10.4 The price adjustment shall not be allowed where liquidated damages are levied and extension of time granted for reasons attributable to the Contractor. In the event of decrease in the prices of the above materials, the price adjustment will be done on such occasions, subject to the provision contained under this clause.

## **19.11 Restrictions on price adjustment - Not Used**

## **19.12 Price adjustment for Maintenance of Project Works - Not Used**

## 19.13 Final Payment Statement

19.13.1 Within 60 (sixty) days after receiving the Completion Certificate under Clause 12.4, the Contractor shall submit to the Authority's Engineer for consideration six copies of a Final Payment Statement (the "**Final Payment Statement**") for Works, with supporting documents showing in detail, in the form prescribed by the Authority's Engineer:

- a) The summary of Contractor's Stage Payment claims for Works as submitted in accordance with Clause 19.4;
- b) The amounts received from the Authority against each claim; and
- c) Any further sums which the Contractor considers due to it from the Authority.

If the Authority's Engineer disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the Authority's Engineer may reasonably require. The Authority's Engineer shall deliver to the Authority:

- i. an IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Article 26; or
- ii. A Final Payment Certificate in accordance with Clause 19.15 if there are no disputed items.

19.13.2 If the Authority's Engineer does not prescribe the form referred to in Clause 19.13.1 within 15 (fifteen) of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

## 19.14 Discharge

Upon submission of the Final Payment Statement for Works under Clause 19.13, the Contractor shall give to the Authority, with a copy to the Authority's Engineer, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this

Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to Clause 19.15.

### **19.15 Final Payment Certificate**

19.15.1 Within 30 (thirty) days after receipt of the Final Payment Statement for Works under Clause 19.13, and the written discharge under Clause 19.14, and there being no disputed items of claim, the Authority's Engineer shall deliver to the Authority, with a copy to the Contractor, a final payment certificate (the "**Final Payment Certificate**") stating the amount which, in the opinion of the Authority's Engineer, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the Authority's Engineer shall ascertain from the Authority all amounts previously paid by the Authority and for all sums to which the Authority is entitled, the balance, if any, due from the Authority to the Contractor or from the Contractor to the Authority, as the case may be.

19.15.2 The Authority shall, in accordance with the provisions of Clause 19.9, pay to the Contractor the amount which is stated as being finally due in the Final Payment Certificate.

### **19.16 Final payment statement for Maintenance - Not Used**

### **19.17 Change in law**

19.17.1 If as a result of Change in Law, the Contractor suffers any additional costs in the execution of the Works or in relation to the performance of its other obligations under this Agreement, the Contractor shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in cost, notify the Authority with a copy to the Authority's Engineer of such additional cost due to Change in Law.

19.17.2 If as a result of Change in Law, the Contractor benefits from any reduction in costs for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in cost, notify the other Party with a copy to the Authority's Engineer of such reduction in cost due to Change in Law.

19.17.3 The Authority's Engineer shall, within 15 (fifteen) days from the date of receipt of the notice from the Contractor or the Authority, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.

### **19.18 Correction of Interim Payment Certificates**

The Authority's Engineer may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by the Authority's Engineer.

### **19.19 Authority's claims**

If the Authority considers itself to be entitled to any payment from the Contractor under any Clause of this Agreement, it shall give notice and particulars to the Contractor 20 (twenty) days before making the recovery from any amount due to the Contractor, and shall take into consideration the representation, if any, made by the Contractor in this behalf, before making such recovery.

### **19.20 Bonus for early completion**

In the event that the Project Completion Date occurs prior to the Scheduled Completion Date, the Contractor shall be entitled to receive a payment of bonus equivalent to 0.2 % (Zero point Two percentage) of the total Contract Price calculated on monthly basis by which the Project Completion Date precedes the Scheduled Completion Date, but subject to a maximum of 1% (One percent) of the Contract Price. Provided, however, that the payment of bonus, if any, shall be made only after the issue of the Completion Certificate. For the avoidance of the doubt, the Parties agree that for the purpose of determining the bonus payable hereunder, the Contract



Price shall always be deemed to be the amount specified in Clause 19.1.1, and shall exclude any revision thereof for any reason. The Parties also agree that bonus shall be payable only if each work for which Extension of Time has been granted is completed within respective Extended Time.

## **ARTICLE 20**

### **INSURANCE**

#### **20.1 Insurance for Works and Maintenance**

20.1.1 The Contractor shall effect and maintain at its own cost the insurances specified in Schedule-P and as per the requirements under the Applicable Laws.

20.1.2 Subject to the provisions of Clause 21.6, the Authority and the Contractor shall, in accordance with its obligations as provided for in this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Article 20 or cannot be recovered from the insurers.

20.1.3 Subject to the exceptions specified in Clause 20.1.4 below, the Contractor shall, save and except as provided for in this Agreement, fully indemnify, hold harmless and defend the Authority 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 any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein.

20.1.4 Notwithstanding anything stated above in Clause 20.1.3, the Authority 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 use or occupation of land or any part thereof by the Authority;
- b) the right of the Authority to execute the Works, or any part thereof, on, over, under, in or through any land;
- 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 this Agreement; and
- d) the death of or injury to persons or loss of or damage to property

resulting from any act or neglect of the Authority, its agents, 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, the Authority 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 the Authority, its servants or agents or other contractors not associated with the Contractor in such injury or damage.

20.1.5 Without prejudice to the obligations of the Parties as specified under Clauses 20.1.3 and 20.1.4, the Contractor shall maintain or effect such third party insurances as may be required under the Applicable Laws.

20.1.6 The Contractor shall provide to the Authority, within 30 days of the Appointed Date, evidence of professional liability insurance maintained by its Design Director and/or consultants to cover the risk of professional negligence in the design of Works. The professional liability coverage shall be for a sum of not less than [3% (three per cent)] of the Contract Price and shall be maintained until the end of the Defects Liability Period.

## **20.2 Notice to the Authority**

No later than 15 (fifteen) days after the date of this Agreement, the Contractor shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 15 (fifteen) days of receipt of such notice, the Authority 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.

## **20.3 Evidence of Insurance Cover**

20.3.1 All insurances obtained by the Contractor in accordance with this Article 20

shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Appointed Date, the Contractor shall furnish to the Authority notarised 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 the Authority. The Contractor shall act in accordance with the directions of the Authority. Provided that the Contractor shall produce to the Authority the insurance policies in force and the receipts for payment of the current premia.

20.3.2 The Contractor shall ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement.

#### **20.4 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, the Authority 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.

#### **20.5 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, 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.

## **20.6 Contractor's waiver**

The Contractor hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority 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.

## **20.7 Cross liabilities**

Any such insurance maintained or effected in pursuance of this Article 20 shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Authority as separately insured.

## **20.8 Accident or injury to workmen**

Notwithstanding anything stated in this Agreement, it is hereby expressly agreed between the Parties that the Authority 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 Sub-contractor, save and except as for death or injury resulting from any act, omission or default of the Authority, its agents or servants. The Contractor shall indemnify and keep indemnified the Authority 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 the Authority shall be liable.

## **20.9 Insurance against accident to workmen**

The Contractor shall effect and maintain during the Agreement such insurances as may be required to insure the Contractor's personnel and any other persons employed by it on the Project Roads from and against any liability incurred in pursuance of this Article 20. Provided that for the purposes of this Clause 20.9, the Contractor's

personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. It is further provided that, in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Clause 20.9 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the Authority is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Authority, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Authority.

#### **20.10 Application of insurance proceeds**

The proceeds from all insurance claims, except for life and injury, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Roads and the provisions of this Agreement in respect of construction of works shall apply mutatis mutandis to the works undertaken out of the proceeds of insurance.

#### **20.11 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 this Agreement.

## **ARTICLE 21**

### **FORCE MAJEURE**

#### **21.1 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 21.2, 21.3 and 21.4 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.

#### **21.2 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 Roads for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 10 (ten) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 21.3;
- c) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;
- d) any judgement 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 the Authority;
- 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.

### **21.3 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 10 (ten) days in an Accounting Year;
- c) any civil commotion, boycott or political agitation which prevents construction of the Project Roads by the Contractor for an aggregate period exceeding 10 (ten) days in an Accounting Year;
- d) any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event;
- 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.

### **21.4 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 19.17;
- 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 unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, 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, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- e) any event or circumstances of a nature analogous to any of the foregoing.

## **21.5 Duty to report Force Majeure Event**

21.5.1 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 21 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.

21.5.2 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 10 (ten) 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.

21.5.3 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 Clause 21.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## **21.6 Effect of Force Majeure Event on the Agreement**

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

- a) upon 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 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, one half of such excess amount shall be reimbursed by the Authority to the Contractor for the Force Majeure events; and
- c) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the

#### Authority 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.

21.6.2 Save and except as expressly provided in this Article 21, 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.

21.6.3 Upon the occurrence of any Force Majeure Event during the Construction Period, the Project Completion Schedule for and in respect of the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects.

### **21.7 Termination Notice for Force Majeure Event**

21.7.1 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 21, 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.

### **21.8 Termination Payment for Force Majeure Event**

21.8.1 In the event of this Agreement being terminated on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 23.5.

Provided that in the event Termination occurs during the Maintenance Period, the Authority's Engineer shall only determine the value of Works associated with Maintenance.

21.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include:

- a) any sums due and payable under Clause 23.5; and
- b) the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for use in Construction or Maintenance, only if such Plant and Materials are in conformity with the Specifications and Standards;

Provided that in the event Termination occurs during the Maintenance Period, the Authority's Engineer shall only determine the value of Works associated with Maintenance.

21.8.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Contractor in an amount that would be payable under Clause 23.6.2 as if it were an Authority Default.

## **21.9 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 excuse on account of such Force Majeure Event.

## **21.10 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 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 22**

### **SUSPENSION OF CONTRACTOR'S RIGHTS**

#### **22.1 Suspension upon Contractor Default**

Upon occurrence of a Contractor Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend carrying out of the Works or Maintenance or any part thereof, and (ii) carry out such Works or Maintenance itself or authorise any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Contractor and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.

#### **22.2 Authority to act on behalf of Contractor**

During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Authority for all costs incurred during such period. The Contractor hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 22.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Contractor with respect to the Project Roads and its design, engineering, construction and maintenance, and which is used or created by the Contractor in performing its obligations under the Agreement.

#### **22.3 Revocation of Suspension**

22.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 60 (sixty) days from the date of

Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

22.3.2 Upon the Contractor having cured the Contractor Default within a period not exceeding 60 (sixty) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement.

## **22.4 Termination**

22.4.1 At any time during the period of Suspension under this Article 22, the Contractor may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 23.

22.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Contractor Default.

## **ARTICLE 23**

### **TERMINATION**

#### **23.1 Termination for Contractor Default**

23.1.1 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 the Authority or due to Force Majeure. The defaults referred to herein shall include:

- a) the Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 7.3, the Contractor fails to cure, within a Cure Period of 30 (thirty) days, the Contractor Default for which the whole or part of the Performance Security was appropriated;
- c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-J, subject to any Time Extension, and continues to be in default for 45 (forty five) days;
- d) the Contractor abandons or manifests intention to abandon the construction or Maintenance of the Project Roads without the prior written consent of the Authority;
- e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 10.1 or stops Works and/or the Maintenance for 30 (thirty) days without reflecting the same in the current



programme and such stoppage has not been authorised by the Authority's Engineer;

- f) the Project Completion Date does not occur within the period specified in Schedule-J for the Scheduled Completion Date, or any extension thereof;
- g) failure to complete the Punch List items within the periods stipulated therefore in Clause 12.2.1;
- h) 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 Authority's Engineer;
- i) the Contractor subcontracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or the Maintenance without the prior approval of the Authority;
- j) the Contractor creates any Encumbrance in breach of this Agreement;
- k) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect ;
- l) 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 Project;
- m) 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 the Authority, a Material Adverse Effect;
- n) 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 has the capability and experience necessary for the performance of its obligations under this Agreement; and
  - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
- o) 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;
  - p) the Contractor submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
  - q) the Contractor has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
  - r) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority.

23.1.2 Without prejudice to any other rights or remedies which the Authority may

have under this Agreement, upon occurrence of a Contractor Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor; provided that before issuing the Termination Notice, the Authority 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.

23.1.3 After termination of this Agreement for Contractor Default, the Authority may complete the Works and/or arrange for any other entities to do so. The Authority and these entities may then use any Materials, Plant and equipment, Contractor's documents and other design documents made by or on behalf of the Contractor.

## **23.2 Termination for Authority Default**

23.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority 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, the Authority shall be deemed to be in default of this Agreement (the "**Authority 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) the Authority 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) the Authority has failed to make payment of any amount due and payable to the Contractor within the period specified in this Agreement;
- c) the Authority has failed to provide, within a period of 180 (one

hundred and eighty) days from the Appointed Date, the environmental clearances required for construction of the Project Roads;

- d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- e) the Authority's Engineer fails to issue the relevant Interim Payment Certificate within 60 (sixty) days after receiving a statement and supporting documents.

23.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Authority Default, the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Contractor shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority 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.

23.2.3 If on the consideration of the Authority's representation or otherwise, the contractor does not issue the Termination Notice on such 15th day and prefers to continue with the project, it is deemed that the cause of action of the Termination Notice has been condoned by the Contractor. Hence he forfeits his right to any other remedy on that count.

### **23.3 Termination for Authority's convenience**

Notwithstanding anything stated hereinabove, the Authority may terminate this Agreement for convenience. The termination shall take effect 30 (thirty) days from the date of notice hereunder.

### **23.4 Requirements after Termination**

Upon Termination of this Agreement in accordance with the terms of this Article 23,

the Contractor shall comply with and conform to the following:

- a) deliver to the Authority all Plant and Materials which shall have become the property of the Authority under this Article 23;
- b) deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, Maintenance, other design documents and in case of Termination occurring after the Provisional Certificate has been issued, the “as built’ Drawings for the Works;
- c) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws; and
- d) Vacate the Site within 15 (fifteen) days.

### **23.5 Valuation of Unpaid Works**

23.5.1 Within a period of 45 (forty-five) days after Termination under Clause 23.1, 23.2 or 23.3, as the case may be, has taken effect, the Authority’s Engineer shall proceed in accordance with Clause 18.5 to determine as follows the valuation of unpaid Works (the “**Valuation of Unpaid Works**”):

- a) value of the completed stage of the Works, less payments already made;
- b) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards; and
- c) value of Maintenance, if any, for completed months, less payments already made,

and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.

23.5.2 The Valuation of Unpaid Works shall be communicated to the Authority, with a copy to the Contractor, within a period of 30 (thirty) days from the date of

Termination.

## **23.6 Termination Payment**

23.6.1 Upon Termination on account of Contractor's Default under Clause 23.1, the Authority shall:

- a) encash and appropriate the Performance Security and Retention Money, or in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in Clause 7.1.1, as agreed pre-determined compensation to the Authority for any losses, delays and cost of completing the Works and Maintenance, if any;
- b) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment and interest thereon; and
- c) pay to the Contractor, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

23.6.2 Upon Termination on account of an Authority Default under Clause 23.2 or for Authority's convenience under Clause 23.3, the Authority shall:

- a) return the Performance Security and Retention Money forthwith;
- b) encash and appropriate the bank guarantee, if any, for and in respect of the outstanding Advance Payment; and
- c) pay to the Contractor, by way of Termination Payment, an amount equal to:
  - i. Valuation of Unpaid Works;
  - ii. the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;

- iii. the reasonable cost of temporary works, as determined by the Authority's Engineer; and
- iv. 10% (ten per cent) of the cost of the Works and Maintenance that are not commenced or not completed,

and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.

23.6.3 Termination Payment shall become due and payable to the Contractor within 30 (thirty) days of a demand being made by the Contractor to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at the Base Rate plus 2% (two per cent), calculated at quarterly rests, 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 Authority of its payment obligations in respect thereof hereunder.

23.6.4 The Contractor expressly agrees that Termination Payment under this Article 23 shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

## **23.7 Other rights and obligations of the Parties**

Upon Termination for any reason whatsoever

- a) property and ownership in all Materials, Plant and Works and the Project Roads shall, as between the Contractor and the Authority, vest in the Authority in whole; provided that the foregoing shall be without prejudice to Clause 23.6
- b) risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Authority; and

- c) the Authority shall be entitled to restrain the Contractor and any person claiming through or under the Agreement from entering upon the Site or any part of the Project except for taking possession of materials, stores, implements, construction plants and equipment of the Contractor, which have not been vested in the Authority in accordance with the provisions of this Agreement.

### **23.8 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 24**

### **ASSIGNMENT AND CHARGES**

#### **24.1 Restrictions on 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 the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

#### **24.2 Hypothecation of Materials or Plant**

The Contractor cannot pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Contractor in no case can assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person/institution/company providing financing to the Contractor in connection with the performance of the Contractor's obligations under this Agreement. All payments shall only be made to the contractor.

## **ARTICLE 25**

### **LIABILITY AND INDEMNITY**

#### **25.1 General indemnity**

25.1.1 The Contractor will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority 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 the Agreement, including any errors or deficiencies in the design documents, 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 Authority Indemnified Persons.

#### **25.2 Indemnity by the Contractor**

25.2.1 Without limiting the generality of Clause 25.1, the Contractor shall fully indemnify, hold harmless and defend the Authority and the Authority 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 Sub-contractors, suppliers and representatives;  
or
- c) Non-payment of amounts due as a result of Materials or services furnished to the Contractor or any of its Sub-contractors which are payable by the

Contractor or any of its Sub-contractors.

25.2.2 Without limiting the generality of the provisions of this Article 25, the Contractor shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority 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 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 Roads, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Contractor shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Contractor is unable to secure such licence 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.

### **25.3 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 25 (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.

## **25.4 Defence of claims**

25.4.1 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 25, the Indemnifying Party shall be entitled, at its option, to assume and control the defence 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 defence. 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.

25.4.2 If the Indemnifying Party has exercised its rights under Clause 25.3, 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).

25.4.3 If the Indemnifying Party exercises its rights under Clause 25.3, 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 authorised 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 defence 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 defence 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:
  - i. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - ii. that 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-clauses (b), (c) or (d) of this Clause 25.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence 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.

### **25.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 25, 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.

### **25.6 Survival on Termination**

The provisions of this Article 25 shall survive Termination.

## ARTICLE 26

### DISPUTE RESOLUTION

#### 26.1 Dispute Resolution

- 26.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 26.2.
- 26.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

#### 26.2 Conciliation

- 26.2.1 **Contractor’s claims:** If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of this Agreement, the Contractor shall give notice to the Authority’s Representative, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance. If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Authority shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause shall apply. The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance. The

Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Authority's Representative. Without admitting the Authority's liability, the Authority's Representative may, after receiving any notice under this Clause, monitor the record-keeping and/or Instruct the Contractor to keep further contemporary records. The Contractor shall permit the Authority's Representative to inspect all these records, and shall (if instructed) submit copies to the Authority's Representative. Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Authority's Representative, the Contractor shall send to the Authority's Representative a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- a) this fully detailed claim shall be considered as interim;
- b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Authority's Representative 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, or within such other period as may be proposed by the Contractor and approved by the Authority's Representative. Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Authority's Representative and approved by the Contractor, the Authority's Representative shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within



the above defined time period. Within the above defined period of 42 days, the Authority's Representative shall to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry), and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract. Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate. If the Authority's Representative does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Authority's Representative and any of the Parties may refer to the Dispute Board in accordance with Clause 26.2.2. The requirements of this Clause are in addition to those of any other Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded for reasons under this Clause.

**26.2.2 Appointment of the Dispute Resolution Board:** Disputes shall be referred to a DB for decision in accordance with this Clause. The Parties shall appoint a DB within 3 months of signing of Agreement. The DB shall comprise of three suitably qualified persons (–the members), each of whom shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. The DB is to comprise of three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman. The terms of the remuneration of each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties.

Each Party shall be responsible for paying one-half of this remuneration. If at any time the Parties so agree, they may jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party. If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Clause. The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Authority or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the Performance Certificate is issued by the Authority.

**26.2.3 Obtaining Dispute Board's Decision:** If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Authority's Representative, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Authority's Representative. Such reference shall state that it is given under this Clause. The DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB. Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s). Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an

arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract. If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give a Notice of Dissatisfaction to the other Party. In either event, this Notice of Dissatisfaction shall state that it is given under this Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Neither Party shall be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Clause. If the DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding

## **26.3 Arbitration**

26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 26.3.2. Such arbitration shall be held in accordance with the Arbitration & Conciliation Act, 1996 of India. The venue of such arbitration shall be at Vijayawada the language of arbitration proceedings shall be English.

26.3.2 Disputes shall be settled by arbitration in accordance with the following provisions:

- a) Selection of Arbitrators. Each dispute submitted by a Party to arbitration shall be heard by an arbitration tribunal composed of three (3) arbitrators, in accordance with the following provisions:

- i. the Authority and the Contractor shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration tribunal. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by Secretary, the Indian Council of Arbitration, New Delhi.
  - ii. If, in a dispute subject to paragraph (a) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the Secretary, the Indian Council of Arbitration, New Delhi to appoint a arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the arbitrator of the other party for that dispute.
- b) Rules of Procedure. Arbitration proceedings shall be conducted in accordance with procedure of the Arbitration & Conciliation Act 1996, of India and its amendments.
- c) Substitute Arbitrators. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.
- d) Nationality and Qualifications of Arbitrators. The arbitrators appointed pursuant to paragraphs 1(a) through 1(b) above shall be a legal or technical expert with extensive experience in relation to the matter in dispute.
- e) Miscellaneous. In any arbitration proceeding hereunder:
  - i. proceedings shall be held in at Vijayawada
  - ii. the English language shall be the official language for all purposes; and
  - iii. the decision of the majority of the arbitrators shall be final and

binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

- iv. The expenses incurred by each party in connection with the dispute preparation, presentation etc. of its proceedings as also the fees and expenses paid to the Arbitrator appointed by such party or on its behalf shall be borne by each party itself. Fees and expenses for the Presiding Arbitrator including the cost of proceedings shall be shared equally by both the parties.
- v. Court Jurisdiction: Vijayawada.

## **26.4 Settlement of claims**

26.4.1 Settlement of claims for Rs. 50,000/- and below shall be by Arbitration. All disputes or difference arising of or relating to the Contract shall be referred to the adjudication among the following panel of arbitrators.

- a) Claims up to a value of Rs. 10,000/- - Executive Engineer, ADCL
- b) Claims above Rs. 10,000/- and up to Rupees 50,000/- - Chief Engineer, ADCL
- c) The arbitration shall be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act 1996 or any statutory modification thereof.
- d) The arbitrator shall state his reasons in passing the award.

26.4.2 Claims above Rs. 50,000/-. **All claims of above Rs. 50,000/- are to be settled by a Civil Court of competent jurisdiction by way of Civil suit and not by arbitration.**

26.4.3 A reference for adjudication under this clause shall be made by the contractor within six months from the date of intimating the contractor of the preparation of final bill or his having accepted payment whichever is earlier.

## **ARTICLE 27**

### **MISCELLANEOUS**

#### **27.1 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Vijayawada shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

#### **27.2 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 judgement 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 judgement that may be made or given in connection therewith).

#### **27.3 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 30 (thirty) 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 Base Rate plus 2 (two) per cent, calculated at quarterly rests, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

## **27.4 Waiver**

27.4.1 Waiver, including partial or conditional waiver, 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 of or obligations under this Agreement;
- b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- c) Shall not affect the validity or enforceability of this Agreement in any manner.

27.4.2 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 thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## **27.5 Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

- a) no review, comment or approval by the Authority or the Authority's Engineer of any Document or Drawing submitted by the Contractor nor any observation or inspection of the construction, or maintenance of the Project Roads 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) The Authority shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

## **27.6 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 either Party not contained in a binding legal agreement executed by both Parties.

## **27.7 Survival**

27.7.1 Termination shall:

- a) not relieve the Contractor or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, 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.

27.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

## **27.8 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 Proposals shall be deemed to form part of this Agreement and treated as such.

### **27.9 Severability**

If for any reason whatever, 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 will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

### **27.10 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.

### **27.11 Third parties**

This Agreement is 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.

## **27.12 Successors and assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

## **27.13 Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- a) in the case of the Contractor, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Contractor may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the person as the Contractor may from time to time designate by notice to the Authority; [address of the selected bidder]
- b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the [Chairman and Managing Director] of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Contractor; provided that if the Contractor does not have an office in Vijayawada it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on

the working day following the date of its delivery.

### **27.14 Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

### **27.15 Counterparts**

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

### **27.16 Confidentiality**

The Parties shall treat the details of this 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 the Authority.

### **27.17 Copyright and Intellectual Property rights**

27.17.1As 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 this Agreement) to give to the Authority a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence 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 this Agreement, including replacements of any computers supplied by the Contractor:

27.17.2 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) the Authority for purposes other than those permitted under this Clause 27.17.

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

## **27.18 Limitation of Liability**

27.18.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement, save and except as provided under Articles 23 and 25.

27.18.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Articles 23 and 25, shall not exceed the Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

## ARTICLE 29

### SPECIAL CONDITIONS OF THE CONTRACT

#### 28.1 Land:

28.1.1 **Land for Contractor's Use:** The contractor will be permitted to use Authority's land for execution of work. The contractor shall have to make his own arrangements for clearing the site, leveling, providing drainage and other facilities for labor staff colonies, site office, workshop or stores and for related activities. The Contractor shall apply to the Authority within a reasonable time after the award of the contract and at least 30 days in advance of its use, the details of land required by him for the work at site and the land required for his camp and should any private land which has not been acquired, be required by the contractor for his use. The same may be acquired by the contractor at his own cost by private negotiations and no claim shall be admissible to him on this account. The Authority/ Authority's representative reserves the right to refuse permission for use of any government land for which no claim or compensation shall be admissible to the contractor. The contractor shall, however, not be required to pay cost or any rent for the Government land given to him.

#### 28.1.2 Surrender of Occupied Land:

- a) The Government land as here in before mentioned shall be surrendered to the Authority/ Authority's Representative within seven days, after issue of completion certificate. Also, no land shall be held by the contractor longer than the Authority shall deem necessary and the contractor shall on the receipt of due notice from the Authority/ Authority's Engineer, vacate and surrender the land which the Chief Engineer may certify as no longer required by the Contractor for the purpose of the work.
- b) The Contractor shall make good to the satisfaction of the Authority/

Authority 's engineer any damage to areas, which he has to return or to other property or land handed over to him for purpose of this work. Temporary structures may be erected by the contractor for storage sheds, offices, residences etc., for non-commercial use, with the permission of the Authority/ Authority 's representative on the land handed over to him at his own cost. At the completion of the work these structures shall be dismantled site cleared and handed over to the. Authority/ Authority 's representative the land required for providing amenities will be given free of cost from Government lands if available otherwise the contractor shall have to make his own arrangements.

### **28.2 Contractor not to dispose off Spoil etc.: -**

The contractor shall not dispose off or remove except for the purpose of fulfillment of this contract, sand, stone, clay ballast, earth, trees and shrubs or other materials obtained in the excavation made or lying on the site of the work, and all such materials and produce shall remain property of the Government. The Authority may upon request from the contractor, or if so stipulated in the conditions of the contract allow the contractor to use any of the above materials for the works either free of cost or after payment as may be specifically mentioned or considered necessary during the execution of the work.

### **28.3 Explosive and Fuel Storage Tanks:**

No explosive shall be stored within 1/2 (half) KM of the limit of the camp sites. The storage of gasoline and other fuel oils or of Butane, Propane and other liquefied petroleum gases, shall conform to the regulations of Andhra Pradesh State Government and Government of India. The tanks, above ground and having capacity in excess of 2,000 liters, shall not be located within the camp area, nor within 200 m, of any building.

### **28.4 Indemnity Bond**

I \_\_\_\_\_ contractor S/o. \_\_\_\_\_ aged Resident of do

hereby bind myself to pay all the claims may come (a) under Workmen 's Compensation Act. 1933 with any statutory modification thereof and rules there under or otherwise for or in respect of any damage or compensation payable in connection with any accident or injury sustained (b) under Minimum Wages Act 1948 (c) under payment of wages Act. 1936 (d) under the Contractor labour (Regulation and Abolition) Act. 1970 by workmen engaged for the performance of the business relating to the above contract ie., Failing such payment of claims of workmen engaged in the above work, I abide in accepting for the recovery of such claims, effected from any of my assets with the authorities. Accepting for the recovery of such claims, effected from any of my assets with the authorities.

### **28.5 Plant and Equipment:**

28.5.1 The contractor shall have sufficient plant, equipment and labour and shall work such hours and shifts as may be necessary to maintain the progress on the work as per the approval progress schedule. The working and shifts hours shall comply with the Govt. Regulations in force.

28.5.2 It is expressly and clearly understood that contractor shall make his own arrangements to equip himself with all machinery and special tools and plant for the speedy and proper execution of the work and the authority does not undertake responsibility towards their supply.

### **28.6 Conflict of Interest:**

Any bribe, commission, gift or advantage given, promised or offered by on behalf of contractor or his partner, agent or servant or any one on his behalf to any officer, servant, representatives, agents of Authority/ Authority's representative, or any persons on their behalf, in relation to the obtaining or to execution of this, or any other contract with Authority/ Authority's representative shall in addition to any criminal liability, which it may occur, subject to the cancellation of this or all other contracts and also to payment of any loss or damage resulting from any such cancellation. Authority/ Authority

's representative shall then be entitled to deduct the amount, so payable from any money, otherwise due to the contractor under this or any other contract.

### **28.7 Contract documents and materials to be treated as Confidential:**

All documents, correspondences, decisions and orders, concerning the contract shall be considered as confidential and/or restricted in nature by the contractor and he shall not divulge or allow access to them by any unauthorized person.

### **28.8 Security measures:**

- a) Security requirements for the work shall be in accordance with the Government 's general requirements including provisions of this clause and the Contractor shall conform to such requirements and shall be held responsible for the actions of all his staff, employees and the staff and employees of his sub-contractors.
- b) All contractor's employees, representatives and sub-contractor 's employees shall wear identifications badges provided by the contractor. Badges shall identify the contractor, showing and employee 's number and shall be worn at all times while at the site. Individual labor will not be required to wear identification badges
- c) All vehicles used by the contractor shall be clearly marked with contractor 's name.
- d) The contractor shall be responsible for the security of the works for the duration of the contract and shall provide and maintain continuously adequate security personnel to fulfill these obligations. The requirements of security measures shall include, but not limited to maintenance of order on the site, provision of all lighting, fencing, guard flagmen and all other measures necessary for the protection of the works within the colonies, camps and elsewhere on the site, all materials delivered to the site, all persons employed in connection with the works continuously throughout working and non-working period including nights, Sundays and holidays for



duration of the contract.

- e) Other contractors working on the site concurrently with the contractor will provide security for their own plant and materials. However, their security provisions shall in no way relieve the contractor of his responsibilities in this respect.
- f) Separate payment will not be made for provision of security services.

### **28.9 Firefighting measures:**

- a) The contractor shall provide and maintain adequate firefighting equipment and take adequate fire precaution measures for the safety of all personnel and temporary and permanent works and shall take action to prevent damage to destruction by fire of trees shrubs and grasses.
- b) Separate payment will not be made for the provision of fire prevention measures.

### **28.10 Sanitation:**

The contractor shall implement the sanitary and watch and ward rules and regulations for all forces employed under this contract and if the Contractor fails to enforce these rules, the Employer/ Employee 's representative may enforce them at the expenses of the Contractor.

### **28.11 Training of personnel:**

The contractor, shall, if and as directed by the Authority/ Authority 's representative provides free of any charge adequate facilities, for vocational training of Government Officers, students, Engineers, supervisors, foremen, skilled workman etc. not exceeding six in number at any one time on the contractor 's work. Their salaries, allowances etc. will be borne by the Government and the training schemes will be drawn up by the Authority/ Authority 's representative in consultation with the contractor.

### **28.12 Possession prior to completion:**

The Authority/ Authority 's representative shall have the right to take possession of or use any completed part of work or works or any part thereof under construction either temporarily or permanently. Such possession or use shall not be deemed as an acceptance of any work either completed or not completed in accordance with this contract, except where expressly otherwise specified by the Authority/ Authority's representative.

### **28.13 Payment upon termination:**

If the contract is terminated because of a fundamental breach of contract by the contractor, the Authority/ Authority's Representative shall issue a certificate for the value of the work done less advance payment received upon the date of the issue of the certificate and less the percentage to apply to the work not completed as indicated in the contract data. Additional liquidated damages shall not apply. If the total amount due to the Authority exceeds any payment due to the contractor the difference shall be a debt payable to the Authority. In case of default for payment within 28 days from the date of issue of notice to the above effect, the contractor shall be liable to pay interest at 12% per annum for the period of delay.

### **28.14 Access to the contractor's books:**

Whenever it is considered necessary by the Authority/ Authority's Representative to ascertain the actual cost of execution of any particular extra item of work or supply of the plant or material on which advance is to be made or of extra items or claims, he shall direct the contractor to produce the relevant documents such as payrolls, records of personnel, invoices of materials & Item of works and any or all data relevant to the item or necessary to by the Authority/ Authority's representative. and by any other persons authorized by the Authority/ Authority 's representative in writing.

### **28.15 B.I.S. [I.S.I.] books and APSS to be kept at site:**

A complete set of Indian Standard specifications, CPHEEO manual on sewerage and treatment and any other relevant literature referred to in —Technical Specifications and A.P.S.S. shall be kept at site for reference.

### **28.16 Site Order Book:**

An order book shall be kept at the site of the work. As far as possible, all orders regarding the work are to be entered in this book. All entries shall be signed and dated by Authority's Representative in direct charge of the work and by the contractor or by his representative. In important cases, the Authority's Representative will countersign the entries, which have been made. The order book shall not be removed from the work, except with the written permission of the Authority's Representative.

### **28.17 Income Tax:**

- a) During the currency of the contract deduction of income tax at 2% shall be made from the gross value of each bill of the contract, the contract value of which is in excess of Rs. 10,000/- for deduction of tax at rates lower than 2% procedure stipulated under section 194-C (4) of Income Tax Act, 1961 shall be followed.
- b) Income Tax clearance certificate should be furnished before the payment of final bill.
- c) The contractor's staff, personnel and labour will be liable to pay personnel income taxes in respect of their salaries and wages as are chargeable under the laws and regulations for the time being in force, and the contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such laws and regulations.

### **28.18 Seigniorage charges:**

28.18.1 Seigniorage charges will be recovered as per rules from the work bills of the contract or based on the theoretical requirement materials at the following rates

(As per G.O. Ms. No. 100, Industries and Commerce (M.I) Dept., dated 31.10.2015). The rates are liable to be revised and amended from time to time by the State Government, by notification in the 'Andhra Pradesh Gazettee'. If the revised Seigniorage fee is more than the above mentioned, the recovery from the contractor's bills is as per revised rates, without modifying the proposed Seigniorage charges as mentioned above.

28.18.2 The Seigniorage charges are to be recovered as provided in the agreement. Any escalation in these charges beyond the provisions of the agreement is to be borne by the department debiting such escalated amount to the works estimate concerned.

28.18.3 In addition to the above Seigniorage charges, DMF @30%, Merit @2% on Seigniorage charges will also be recovered as per the Letter No. 7586/P-MR/2014 dated 06.10.2016 of Directorate of Mines and Geology and Secretary to Government (Mines), Industry and Commence department

### **28.19 Good & Service Tax (GST):**

28.19.1 GST at the rate of 18.0% on all the items of works. Any changes made in the GST structure from time to time shall be effected

28.19.2 The contractor should produce a valid GST Tax Clearance Certificate before the payment of the final bill, otherwise payment to the contractor will be withheld.

### **28.20 Additional works/ Extra items:**

28.20.1 Entrustment of the additional items contingent to the main work and within the scope of contract will be authorized by the employer and the contractor shall be bound to execute such additional items at no extra cost to the employer and the cost of such items shall be deemed to have been included in the contract price quoted.

28.20.2 Entrustment of additional items of work contingent to main work and outside

the scope of the contract will be authorized by the employer with the prior approval of the Committee constituted by the Government and the contractor shall be bound to execute such additional items and shall be compensated at the price decided by the Committee formulated by the Government.

28.20.3 Whenever additional items not contingent on the main work and outside the scope of original contract are entrusted to the contractor, entrustment of such items and the price to be paid shall be referred to the Committee formulated by Government for final decision.

28.20.4 Payment in such cases where the designs approved result in "Substantial Reduction" in quantities of that component from the estimated quantities, the payment schedule will be adjusted to the actual quantities only and limited as per estimate rates for that component. Payment schedule will remain unchanged in case of increase in the quantities in a component in terms of Memo.No.28569/M&MI (T-IV)/2012-1 dt.20-12-2012 of I&CAD (PW) Dept.

### **28.21 Measurement of works:**

28.21.1 Measurements shall be recorded by EPC Contractor in M. Books and L.F. Books issued by the concerned Authority's Representative duly numbered and certified. The M. Books and L.F. Books have to be maintained by the EPC Contractor through authorized graduate engineers as per procedure prescribed in Code and finally to be handed over to the authority.

28.21.2 The M. Books and L.F. Books shall be maintained by EPC Contractor and bills are to be submitted to the Authority/Authority's Representative by the EPC Contractor along with a true extract of the entire set for checking and making payment. The Authority/Authority's Representative has to check the measurements and levels as per the standing codal provisions. The Authority shall keep the full set of true extract and return the originals to the agency for further use after due procedures completed. The entire original record shall be finally handled over for record to the Authority by the EPC Contractor.

- 28.21.3 EPC Contractor shall prepare monthly work bills based on measurements of work done and submit to Authority/ Authority's Representative.
- 28.21.4 Payments shall be regulated in accordance with Schedule - H of payment component wise.
- 28.21.5 The eligibility for payment shall be limited to completed portions of works, subject to other conditions envisaged in the agreement and executive instructions from time to time.
- 28.21.6 The Authority's Representative is empowered to modify the sub-components reach- wise/ stage-wise keeping the component unaltered.
- 28.21.7 In respect of EPC works the conventional Schedule- A giving the quantities against each item of work is dispensed with. Only project information regarding project features, major components as available are given in project profile of bid documents. Scope of work and basic project parameters of the project and deliverables shall be defined in the bid documents. The bidders shall review the data / information provided in bid documents and satisfy themselves. Any doubts shall be got cleared in pre bid meeting. The contractor shall quote the bid price in lump-sum after careful analysis of cost involved for the performance work considering all basic parameters, specifications and conditions of contract The bid offer shall be for the whole work and not for individual item / part of work. The bidder shall quote for the entire work on a single source responsibility basis. The cost of all items of work necessary to achieve the objective as setout in the basic parameters shall be included in the bid price. The total cost of work shall be mentioned.
- 28.21.8 The agency shall furnish the detailed estimates prepared based on approved drawings as per provision of agreement.
- 28.21.9 Drawings given, listed and indexed in bid documents are indicative. The above drawings show the system, as a whole .The contractor shall carry out investigation to prepare detailed layout, designs and drawings of all components of the work within the stipulated time period, to be approved by

departmental authority. The contractor shall follow all relevant BIS codes / circulars issued by the department from time to time for various components of the works. In case of difference of opinion on technical matters between the contractor and the Engineer-in-charge, the decision of the appellate authority shall be final and binding on the contractor.

**ARTICLE 29**  
**INTEGRITY PACT**



## **ARTICLE 30**

### **DEFINITIONS**

#### **30.1 Definitions**

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**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;

“**Advance Payment**” shall have the meaning set forth in Clause 19.2;

“**Affected Party**” shall have the meaning set forth in Clause 21.1;

“**Affiliate**” means, in relation to either Party {and/or Members}, a person who controls, is controlled by, or is under the common control with such Party {or Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Agreement**” means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the

subsistence of this Agreement;

**“Applicable Permits”** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project Roads during the subsistence of this Agreement;

**“Appointed Date”** means that date which is later of the 15th day of the date of this Agreement, the date on which the Contractor has delivered the Performance Security in accordance with the provisions of Article 7 and the date on which the Authority has provided in stretches the Right of Way on first Section as per Schedule A;

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

**“Authority Default”** shall have the meaning set forth in Clause 23.2;

**“Authority’s Engineer”** shall have the meaning set forth in Clause 18.1;

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

**“Bank”** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to the Authority;

**“Base Rate”** means the floor rate of interest announced by the State Bank of India for all its lending operations;

**“Base Date”** means the last date of that calendar month, which date precedes the Bid Due Date by at least 28 (twenty eight) days;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the selected bidder/Consortium in response to the Request for Proposals in accordance with the provisions thereof;

“**Bid Security**” means the bid security provided by the Contractor to the Authority in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

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

- a) the enactment of any new Indian law;
- b) the repeal, modification or re-enactment of any existing Indian law;
- c) the commencement of any Indian law which has not entered into effect until the Base Date;
- d) a change in the interpretation or application of any Indian law by a judgement 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 Base Date; or
- e) Deleted;

“**Change of Scope**” shall have the meaning set forth in Article 13;

“**Change of Scope Notice**” shall have the meaning set forth in Clause 13.2.1;

“**Change of Scope Order**” shall have the meaning set forth in Clause 13.2.4;

“**Completion Certificate**” shall have the meaning set forth in Clause 12.4;

“**Construction**” shall have the meaning set forth in Clause 1.2.1 (f);

“**Construction Period**” means the period commencing from the Appointed Date and ending on the date of the Completion Certificate;

“**Contract Price**” means the amount specified in Clause 19.1.1;

“**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 23.1;

“**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 the Authority or the Authority’s Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Authority’s Engineer to accord their approval;

“**Damages**” shall have the meaning set forth in paragraph (w) of Clause 1.2.1;

“**Defect**” means any defect or deficiency in Construction of the Works or any part thereof, which does not conform with the Specifications and Standards, and in the case of Maintenance, means any defect or deficiency which is specified in Schedule-E;

“**Defects Liability Period**” shall have the meaning set forth in Clause 17.1;

“**Dispute**” shall have the meaning set forth in Clause 26.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes set forth in Article 26;

**“Drawings”** means all of the drawings, calculations and documents pertaining to the Project Roads as set forth in Schedule-I, and shall include ‘as built’ drawings of the Project Roads;

**“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 safety or security of the individuals on or about the Project Roads, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

**“Encumbrances”** means, in relation to the Project Roads, 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 Roads, where applicable herein but excluding utilities referred to in Clause 9.1;

**“EPC”** means engineering, procurement and construction;

**“Final Payment Certificate”** shall have the meaning set forth in Clause 19.15.1;

**“Final Payment Statement”** shall have the meaning set forth in Clause 19.13.1;

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 21.1;

**“GAD”** or **“General Arrangement Drawings”** shall have the meaning set forth in Clause 4.1.3 (b);

**“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 Government 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 Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project Roads or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement;

“IRC” means the Indian Roads Congress;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 25;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 25;

“Indirect Political Event” shall have the meaning set forth in Clause 21.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Contractor pursuant to Article 20, and includes all insurances required to be taken out by the Contractor under Clauses 20.1 and 20.9 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, trademarks, 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 Authority’s Engineer for payment to the Contractor in respect of Contractor’s claims for payment raised in accordance with the provisions of this Agreement;

{“Lead Member” shall, in the case of a consortium, mean the member of such consortium who shall have the authority to bind the contractor and each member of the Consortium; and shall be deemed to be the Contractor for the purposes of this Agreement; The Lead member shall itself undertake and perform at least 30 (thirty) per cent of the total length of the Project Roads;}

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

“Major Bridge” means a bridge having a total length of more than 60 (sixty) metres between the inner faces of the dirt walls as specified in IRC:5-1998;

“Manual” shall mean the Manual of Standards and Specifications for Four Laning of Roadss (IRC: SP:84-2014);

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Materials” are all the supplies used by the Contractor for incorporation in the Works or for the maintenance of the Project Roads;

“Monthly Maintenance Statement shall have the meaning set forth in Clause 19.6.1;

“Non-Political Event” shall have the meaning set forth in Clause 21.2;

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

“Performance Security” shall have the meaning set forth in Clause 7.1;

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

“Political Event” shall have the meaning set forth in Clause 21.4;

“Programme” shall have the meaning set forth in Clause 10.1.3;

“Project” means the construction and maintenance of the Project Roads 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 equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road over-bridges, drainage works, traffic signals, sign boards, kilometre-stones, toll plaza, electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices; and (b) Project Facilities situated on the Site;

“Project Completion Date” means the date on which the Provisional Certificate is issued and in the event no Provisional Certificate is issued, the date on which the Completion Certificate is issued;

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

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



“Project works” means the Site comprising the proposed roads, utilities, and its subsequent development and augmentation in accordance with this Agreement;

“Project Milestone” means the project milestone set forth in Schedule-J;

“Proof Consultant” shall have the meaning set forth in Clause 10.2.2;

“Provisional Certificate” shall have the meaning set forth in Clause 12.2;

“Punch List” shall have the meaning set forth in Clause 12.2.1;

“Quality Assurance Plan” or “QAP” shall have the meaning set forth in Clause 11.2;

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

“Request for Proposals” or “RFP” shall have the meaning set forth in Recital ‘D’;

“Retention Money” shall have the meaning set forth in Clause 7.5.1;

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

“Scheduled Completion Date” shall be the date set forth in Clause 10.3.1;

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

“Section” means a part of the Project Roads;

“Site” shall have the meaning set forth in Clause 8.1;

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

expressly approved by, the Authority;

"Stage Payment Statement" shall have the meaning set forth in Clause 19.4;

"Structures" means an elevated road or a flyover, as the case may be;

"Sub-contractor" means any person or persons to whom a part of the Works or the Maintenance has been subcontracted by the Contractor 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 22;

"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, Materials, equipment and services incorporated in and forming part of the Project Roads 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 either Party to the other upon Termination in accordance with Article 23;

"Terms of Reference" or "TOR" shall have the meaning set forth in Clause 18.2.1;

"Tests" means the tests set forth in Schedule-K to determine the completion of Works in accordance with the provisions of this Agreement;

"Time Extension" shall have the meaning set forth in Clause 10.5.1;

"User" means a person who travels or intends to travel on the Project Roads or any

part thereof in/on any vehicle;

“Valuation of Unpaid works” shall have the meaning set forth in Clause 23.5.1;

“Works” means all works including survey and investigation, design, engineering, procurement, construction, Plant, Materials, maintenance, temporary works and other things necessary to complete the Project Roads in accordance with this Agreement; and

“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.

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

|  |   |
|--|---|
| SIGNED, SEALED AND DELIVERED<br>For and on behalf of [CCDMC] by:<br><br>(Signature)<br>(Name)<br>(Designation) | SIGNED, SEALED AND DELIVERED<br>For and on behalf of THE CONTRACTOR by:<br><br>(Signature)<br>(Name)<br>(Designation) |
|--|---|

In the presence of: 1.

2.

{COUNTERSIGNED and accepted by:

Name and particulars of other members of the Joint Venture}