

Request for Proposal (RFP)

for

**Construction of Underpass, Flyovers
(Overpass), Fobs and surface Roads around
Huda City Center Metro Station in Gurugram,
Haryana**

on

**Engineering, Procurement & Construction
(EPC) Mode**

**Gurugram Metropolitan Development
Authority/GMDA**

(GMDA-Gurugram)

NOVEMBER 2018

TABLE OF CONTENTS

S. No.	Contents	Page No.
	Notice inviting RFP	3
	Disclaimer	4
	Glossary	6
1.	Introduction	7
1.1	Background	7
1.2	Brief description of Bidding Process	8
1.3	Schedule of Bidding Process	9
2.	Instructions to Bidders	11
A	General	11
2.1	General terms of Bidding	11
2.2	Eligibility and qualification requirement of Bidder	14
2.3	Proprietary Data	20
2.4	Cost of Bidding	20
2.5	Site visit and verification of information	20
2.6	Verification and Disqualification	21
B	Documents	22
2.7	Contents of the RFP	22
2.8	Clarifications	22
2.9	Amendment of RFP	23
C	Preparation and Submission of BIDs	23
2.10	Format and Signing of BID	23
2.11	Documents comprising Technical & financial BID	23
2.12	BID Due Date	25
2.13	Late BIDs	25
2.14	Procedure of e-tendering	25
2.15	Online opening of Bids	26
2.16	Rejection of BIDs	26
2.17	Validity of BIDs	27
2.18	Confidentiality	27
2.19	Correspondence with the Bidder	27
D	BID Security	27
2.20	BID Security	27

3.	Evaluation of Technical and Opening & Evaluation of financial Bids	30
3.1	Evaluation of Technical BIDs	30
3.2	Opening and Evaluation of financial Bids	31
3.3	Selection of Bidder	31
3.4	Contacts during BID Evaluation	32
3.5	Correspondence with the Bidder	35
4.	Fraud and Corrupt Practices	33
5.	Pre-BID Conference	35
6.	Miscellaneous	36
	Appendices	
IA	Letter comprising the Technical BID	37
IB	Letter comprising the Financial BID	41
II	Bank Guarantee for BID Security	56
III	Format for Power of Attorney for signing of BID	59
IV	Format for Power of Attorney for Lead Member of Joint Venture	61
V	Format for Joint Bidding Agreement for Joint Venture	63
	Annexure of Appendix 1A	
I	Details of Bidder	42
II	Technical Capacity of the bidder	43
III	Financial Capacity of the bidder	45
IV	Details of Eligible Project	47
V	Statement of legal capacity	50
VI	Information required to Evaluate the Bid capacity	51
VII	Guidelines of the Department of Disinvestment	54

Gurugram Metropolitan Development Authority/GMDA
Notice Inviting Bid

Bid/ Package no.....

Dated

RFP for the Project of Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram, Haryana on EPC Mode
 The Gurugram Metropolitan Development Authority/GMDA is engaged in the development of Gurugram and as part of this Endeavour, it has been decided to undertake Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram, Haryana through an Engineering, Procurement and Construction (EPC) Contract. Through E-tendering on web portal <http://haryanaeprocurement.gov.in>.

The Gurugram Development Authority/GMDA represented by CEO (GMDA) now invites bids from eligible contractors for the following project:

STATE	Name of Work	Estimated cost	Tender Processing Fees	Completion Period	Maintenance Period
Haryana	Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram,	43.07 Cr.	1295/-	12 months	4 years

The complete BID document can be viewed / download from official portal <https://www.haryanaeprocurement.gov.in>/from 27.11-2018 (15:00 Hrs. IST). Bid must be submitted online only at <https://www.haryanaeprocurement.gov.in>/on or before 25-12-2018 (up to 17.00 hours IST). Bids received online shall be opened on 27-12-2018(at 11.30 hours IST).

Bid through any other mode shall not be entertained. However, Bid Security and Power of Attorney etc. shall be submitted physically by the Bidder on or before 26-12-2018 (at 17.00 hours IST), Please note that the GMDA reserves the right to accept or reject all or any of the BIDs without assigning any reason whatsoever.

Officer In-charge

Mr. Jitender Mittal,
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 Gurugram Metropolitan Development Authority/GMDA
 Contact Details
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DISCLAIMER

The information contained in this Request for Proposal document (the RFP) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority/GMDA or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an Agreement and is neither an offer nor invitation by the Authority/GMDA to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (BIDs) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority/GMDA in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority/GMDA, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the Feasibility and Drawings, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority/GMDA accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority/GMDA, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed

to form part of this RFP or arising in any way for participation in this BID Stage.

The Authority/GMDA also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. The Authority/GMDA may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority/GMDA is bound to select a Bidder or to appoint the Selected Bidder JV or Contractor, as the case may be, for the Project and the Authority/GMDA reserves the right to reject all or any of the Bidders or BIDs without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its BID including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority/GMDA or any other costs incurred in connection with or relating to its BID. All such costs and expenses will remain with the Bidder and the Authority/GMDA shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the BID, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Agreement	As defined in Clause 1.1.5
Authority/GMDA	As defined in Clause 1.1.1
Bank Guarantee	As defined in Clause 2.20.1
BID(s)	As defined in Clause 1.2.2
Bidders	As defined in Clause 1.2.2
Bidding Documents	As defined in Clause 1.1.7
BID Due Date	As defined in Clause 1.1.7
Bidding Process	As defined in Clause 1.2.1
BID Security	As defined in Clause 1.2.4
BID Price or BID	As defined in Clause 1.2.6
Contractor	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.2.1
 EPC	 As defined in Clause 1.1.1
EPC Contract	As defined in Clause 1.1.2
Estimated Project Cost	As defined in Clause 1.1.4
Feasibility Report	As defined in Clause 1.2.3
Government	Government of Haryana
Joint Venture	As defined in Clause 2.2.1
Lowest Bidder	As defined in Clause 1.2.6
LOA	As defined in Clause 3.3.4
Project	As defined in Clause 1.1.1
Re. or Rs. or INR	Indian Rupee
 RFP or Request for Proposals	 As defined in the Disclaimer

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

Gurugram Metropolitan Development Authority/GMDA

SECTION 1 INTRODUCTION

1.1 Background

- 1.1.1 The Gurugram Metropolitan Development Authority/GMDA represented by The C.E.O (the "Authority/GMDA") is engaged in the development of Metropolitan Development and as part of this Endeavour, the Authority/GMDA has decided to undertake (The "Project") through an Engineering, Procurement and Construction (the "EPC") Contract, and has decided to carry out the bidding process for selection of a bidder to whom the Project may be awarded. A brief description of the project may be seen in the Information Memorandum of the Project at the Authority/GMDA website <https://www.haryanaeprocurement.gov.in/Brief> particulars of the Project are as follows:

Name of the Road	Length in Km	Estimated Project Cost (In Rs. cr.)	No of Years for completion of work
Roads around Huda City Center Metro Station in Gurugram	As per GAD	43.07 crores	12 months

- 1.1.2 The selected Bidder (the "Contractor") shall be responsible for designing, engineering, procurement and construction of the Project under and in accordance with the provisions of an engineering, procurement and construction contract (the "EPC Contract") to be entered into between the Contractor and the Authority/GMDA in the form provided by the Authority/GMDA as part of the Bidding Documents pursuant hereto. The Contractor shall also be responsible for the maintenance of the project during the Defect Liability Period, which is expected to be as per clause 1.1.3.
- 1.1.3 The scope of work will broadly include **Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram,, Haryana** and the maintenance of the Project during the Defect Liability Period, which shall be 4 (four) years.
- 1.1.4 The estimated cost of the Project has been specified in the clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The Agreement sets forth the detailed terms and conditions for award of the project to the Contractor, including the scope of the Contractor's services and obligations.
- 1.1.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Contractor set forth in the Agreement or the Authority/GMDA rights to amend, alter, change, supplement or clarify the scope of work, the work to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority/GMDA.
- 1.1.7 The Authority/GMDA shall receive BIDs pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority/GMDA pursuant to this RFP (collectively the "Bidding Documents"), and all BIDs shall be prepared and submitted in accordance with such terms on or before the BID due date

specified in Clause 1.3 for submission of BIDs (the “BID Due Date”).

1.2 Brief description of Bidding Process

- 1.2.1** The Authority/GMDA has adopted a single stage two part system (referred to as the "Bidding Process") for selection of the Bidder for award of the Project. Under this process, the bid shall be invited under two parts. Eligibility and qualification of the Bidder will be first examined based on the details submitted under first part (Technical Bid) with respect to eligibility and qualifications criteria prescribed in this RFP. (The Bidder, which expression shall, unless repugnant to the context, include the members of the Joint Venture). The Financial Bid under the second part shall be opened of only those Bidders whose Technical Bids are responsive to eligibility and qualifications requirements as per this RFP. [GOI has issued guidelines (see Annexure VII of Appendix-1A of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority/GMDA shall be entitled to disqualify any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-IA]
- 1.2.2** Interested bidders are being called upon to submit their BID in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of 120 days from the date specified in Clause 1.3 for submission of BIDs (the Bid Due Date).
- 1.2.3** The complete Bidding Documents including the draft Agreement for the Project is enclosed for the Bidders. The Feasibility Report / Detailed Project Report prepared by the Authority/GMDA consultants of the Authority/GMDA (the "Feasibility Report/Detailed Project Report") is also enclosed. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4** A Bidder is required to deposit, along with its BID, a BID security of Rs. 43.07 lakh (Rupees fourty three lakhs seven thousand only) (the "Bid Security") online, refundable not later than 150 (One hundred & Fifty) days from the BID Due Date, except in the case of the Selected Bidder whose BID Security shall be retained till it has provided a Performance Security under the Agreement. The BID shall be summarily rejected if it is not accompanied by the BID Security.
- 1.2.5** Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective BIDs for award of the contract including implementation of the Project.
- 1.2.6** BIDs will be evaluated for the Project on the basis of the lowest cost required by a Bidder for implementing the project (the "BID Price"). The total time allowed for completion of construction under the Agreement (the Construction PeriodII) and the period during which the Contractor shall be liable for maintenance and rectification of any defect or deficiency in the Project after completion of the Construction Period (the Defect Liability PeriodII) shall be pre-determined, and are specified in the draft Agreement forming part of the Bidding Documents. In this RFP, the term “Lowest Bidder” shall mean the bidder who is quoting the lowest Bid price.
- 1.2.7** Generally, the Lowest Bidder shall be the selected Bidder. In case such Lowest Bidder withdraws or is not selected for whatsoever reason, the Authority/GMDA shall annul the Bidding Process and invite fresh BIDs.
- 1.2.8** Other details of the process to be followed under this bidding process and the terms thereof are spelt out in this RFP.
- 1.2.9** Any queries or request for additional information concerning this RFP shall be submitted by e-mail to the officer designated in Clause 2.11.4 below with identification/ title: "Queries/ Request for Additional Information: RFP for Construction of Underpass, Flyovers

(Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram, Haryana on EPC Mode

1.3 Schedule of Bidding Process

The Authority/GMDA shall endeavour to adhere to the following schedule:

Sr. No.	Event Description	Date
1	Invitation of RFP (NIT)	27.11.2018 from 15:00 hrs
2	Last date for receiving queries	12.12.2018 up to 15:00 hrs
3	Pre-BID meeting at venue 2.11.4 (i)	13.12.2018 at 11:00 hrs
4	Authority/GMDA response to queries latest by	18.12.2018 up to 17:00 hrs
5	Last date of Request for BID Document	24.12.2018 up to 17:00 hrs
6	BID Due Date	25.12.2018 up to 17:00 hrs
7	Physical Submission of Bid Security/POA etc	26.12.2018 at 17.00 Hrs. IST
8	Opening of Technical BIDs at venue 2.11.4 (i)	27.12.2018 at 11.30 Hrs. IST
9	Declaration eligible / qualified bidders	To be intimated
10	Opening of Financial BID	To be intimated
11	Letter of Award (LOA)	To be intimated
12	Validity of BID	120 days from BID Due Date
13	Signing of Agreement	To be intimated

SECTION-2 INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1. General terms of Bidding

- 2.1.1 No Bidder shall submit more than one BID for the Project. A Bidder bidding individually or as a member of a Joint Venture shall not be entitled to submit another BID either individually or as a member of any Joint Venture, as the case may be.
- 2.1.2 An International Bidder bidding individually or as a member of a Joint Venture shall ensure that Power of Attorney is apostille by appropriate Authority/GMDA and requirement of Indian Stamp Act is duly fulfilled.
- 2.1.3 The Feasibility Report / Detailed Project Report of the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Feasibility Report/Detailed Project Report shall be binding on the Authority/GMDA nor confer any right on the Bidders, and the Authority/GMDA shall have no liability whatsoever in relation to or arising out of any or all contents of the Feasibility Report/Detailed Project Report.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement.
- 2.1.5 The BID shall be furnished in the format exactly as per Appendix-I i.e. Technical Bid as per Appendix IA and Financial Bid as per Appendix IB. BID amount shall be indicated clearly in both figures and words, in Indian Rupees in prescribed format of Financial Bid and it will be signed by the Bidder's authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 2.1.6 The Bidder shall deposit a BID Security of Rs. 43.07 lakh (Rupees fourty three lakhs seven thousand only) to be deposited online only in accordance with the provisions of this RFP.
- 2.1.7 Deleted
- 2.1.8 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorising the signatory of the BID to commit the Bidder.
- 2.1.9 In case the Bidder is a Joint Venture, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix-IV. In case the Bidder is a Joint Venture, Joint Bidding Agreement in the format at Appendix V shall be submitted by the bidder.
- 2.1.10 Any condition or qualification or any other stipulation contained in the BID shall render the BID liable to rejection as a non-responsive BID.
- 2.1.11 The BID and all communications in relation to or concerning the Bidding Documents and the BID shall be in English language.

- 2.1.12** The documents including this RFP and all attached documents, provided by the Authority/GMDA are and shall remain or become the property of the Authority/GMDA and are transmitted to the Bidders solely for the purpose of preparation and the submission of a BID in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their BID. The provisions of this Clause 2.1.12 shall also apply mutatis mutandis to BIDs and all other documents submitted by the Bidders, and the Authority/GMDA will not return to the Bidders any BID, document or any information provided along therewith.
- 2.1.13** This RFP is not transferable.
- 2.1.14** Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents and also fulfilling the criterion as mentioned in clause 2.2.
- 2.1.15** In case the Bidder is a Joint Venture, it shall comply with the following additional requirements:
- (a) Number of members in a Joint Venture shall not exceed 3 (Three);
 - (b) subject to the provisions of clause (a) above, the Bid should contain the information required for each Member of the Joint Venture;
 - (c) Members of the Joint Venture shall nominate one member as the lead member (the Lead Member). Lead Member shall meet at least 60% requirement of Bid Capacity, Technical and Financial Capacity, required as per Clause 2.2.2.1, 2.2.2.2(i) & 2.2.2.3. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other Members of the Joint Venture. Other Member(s) shall meet at least 20% requirement of Bid Capacity, Technical and Financial Capacity required as per Clause 2.2.2.1, 2.2.2.2(i) & 2.2.2.3 and the JV as a whole shall cumulatively/collectively fulfil the 100% requirement; the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and defect liability
 - (d) obligations;
 - (e) an individual Bidder cannot at the same time be member of a Joint Venture applying for this Bid. Further, a member of a particular Bidder Joint Venture cannot be member of any other Bidder Joint Venture applying for this bid;
 - (f) Deleted,
 - (g) members of the Joint Venture shall have entered into a binding Joint Bidding Agreement, substantially in the form specified at Appendix V (the Jt. Bidding Agreement), for the purpose of making the Application and submitting a Bid in the event of being pre-qualified. The Jt. Bidding Agreement, to be submitted along with the Application, shall, inter alia:
 - (i) convey the commitment(s) of the Lead Member in accordance with this RFP, in case the contract to undertake the Project is awarded to the Joint Venture; and clearly outline the proposed roles & responsibilities, if any, of each member;
 - (ii) commit the approximate share of work to be undertaken by each member;
 - (iii) include a statement to the effect that all members of the Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the completion of the Project (the Defects Liability Period) is achieved in accordance with the EPC Contract; and
 - (h) except as provided under this RFP, there shall not be any amendment to the Jt. Bidding Agreement.

(i) Joint Venture not permitted.

2.1.16 While bidding is open to persons from any country, the following provisions shall apply:

- (a) Where, on the date of the Application, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
 - (b) if at any subsequent stage after the Bid due date, there is an acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member; then the Eligibility of such Bidder shall be subject to approval of the Authority/GMDA from national security and public interest perspective. The decision of the Authority/GMDA in this behalf shall be final and conclusive and binding on the Bidder.
- The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority/GMDA shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such acquisition.
- The Bidder shall promptly inform the Authority/GMDA of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.1.17 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.1.18 Any entity which has been barred by the Ministry of Road Transport & Highways or its implementing agencies for the works of Expressways, National Highways, ISC and EI works, and the bar subsists as on the date of Application, would not be eligible to submit the BID, either individually or as member of a Joint Venture.

2.1.19 The Bidder including individual or any of its Joint Venture Member should, in the last 2 (two) years, have neither failed to perform for the works of Expressways, National Highways, ISC&EI works, as evidenced by imposition of a penalty by an arbitral or judicial Authority/GMDA or a judicial pronouncement or arbitration award against the Bidder including individual or any of its Joint Venture Member, as the case may be, nor has been expelled or terminated by Ministry of Road Transport & Highway or its implementing agencies for breach by such Bidder including individual or any of its Joint Venture Member.

2.1.19.1 The Bidder including individual or any of its Joint Venture Member may provide details of all their on-going projects along with updated stage of litigation, if so, against the Authority/GMDA / Governments.

2.1.19.2 The Bidder including individual or any of its Joint Venture Member may also provide details of updated on-going process of blacklisting if so, under any contract with Authority/GMDA / Government.

2.1.19.3 The Authority/GMDA reserves the right to reject an otherwise eligible bidder on the basis of the information provided under clause 2.1.19. The decision of the Authority/GMDA in this case shall be final.

2.2 Eligibility and qualification requirements of Bidder

2.2.1 For determining the eligibility of Bidder the following shall apply:

- (a) The Bidder may be a single entity or a group of entities (the "Joint Venture"), coming together to implement the Project. However, no Bidder applying individually or as a member of a Joint Venture, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Joint Venture. However, in case the estimated cost of the project for which bid is invited is upto Rs. 100 Crore, then Joint Venture shall not be allowed.
- (b) Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into a Joint Venture agreement or under an existing agreement to form a Joint Venture. A Joint Venture shall be eligible for consideration subject to the conditions set out in Clause 2.1.15 above.
- (c) An Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified and liable for forfeiture of the BID Security or Performance Security as the case may be. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
 - (i) the Bidder, its Joint Venture Member (or any constituent thereof) and any other Bidder, its Member or any Member of its Joint Venture thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, or its Joint Venture Member thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such Bidder, or its Joint Venture Member, as the case may be), in the other Bidder, its Joint Venture Member is less than 5% (five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the Subject Person) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
 - (ii) a constituent of such Bidder is also a constituent of another Bidder; or
 - (iii) such Bidder, or any of its Joint Venture Member thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any of its Joint Venture Member thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any of its Joint Venture Member thereof; or
 - (iv) such Bidder has the same legal representative for purposes of this Application

- as any other Bidder; or
- (v) such Bidder, or any of its Joint Venture Member thereof has a relationship with another Bidder, or any of its Joint Venture Member thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Application of either or each other; or
 - (vi) such Bidder, or any of its Joint Venture Member thereof has participated as a consultant to the Authority/GMDA in the preparation of any documents, design or technical specifications of the Project.
- (d) A Bidder shall be liable for disqualification and forfeiture of BID Security, if any legal, financial or technical adviser of the Authority/GMDA in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Agreement. In the event any such adviser is engaged by the selected Bidder or Contractor, as the case may be, after issue of the LOA or execution of the Agreement for matters related or incidental to the project, then notwithstanding anything to the contrary contained herein or in the LOA or the Agreement and without Prejudice to any other right or remedy or the Authority/GMDA, including the forfeiture and appropriation of the BID Security or Performance Security, as the case may be, which the Authority/GMDA may have there under or otherwise, the LOA or the Agreement, as the case may be, shall be liable to be terminated without the Authority/GMDA being liable in any manner whatsoever to the Selected Bidder or Contractor for the same. For the avoidance or doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

2.2.2 Qualification requirements of Bidders:

2.2.2.1 BID Capacity

Bidders who inter alia meet the minimum qualification criteria will be qualified only if their available BID capacity is more than the total BID value (value as per Clause 1.1.1). The available BID capacity will be calculated as per following, based on information mentioned at Annexure-VI of Appendix-IA:

Assessed Available BID capacity = $(A \times N \times 2.5 - B)$, Where

N= Number of years prescribed for completion of work for which Bid is invited.

A = Maximum value of civil engineering works in respect of EPC Projects executed in any one year during the last five years (updated to the price level of the year indicated in table below under note) taking into account the completed as well as works in progress. The EPC projects include turnkey project/ Item rate contract/ Construction works.

B = Value (updated to the price level of the year indicated in table below under note) of existing commitments, works for which LOA issued and on-going works to be

completed during the period of completion of the works for which BID is invited.

Note: The Statement showing the value of all existing commitments, works for which LOA issued and ongoing works as well as the stipulated period of completion remaining for each of the works listed should be countersigned by the Client or its Engineer-in-charge not below the rank of Executive Engineer or equivalent in respect of EPC Projects or Concessionaire / Authorised Signatory of SPV in respect of BOT Projects and verified by Statutory Auditor. The factor for the year for updation to the price level is indicated as under:

Year	Year-1	Year-2	Year-3	Year-4	Year-5
Up-dation factor	1.00	1.05	1.10	1.15	1.20

2.2.2.2 Technical Capacity

- (1) For demonstrating technical capacity and experience (the “Technical Capacity”), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have received payments for construction of Eligible Project(s), or has undertaken construction works by itself in a PPP project, such that the sum total thereof is more than Rs. 43.07 crore (Rupees forty three crore seven lacs only) (the “Threshold Technical Capacity”).
- (2) Provided that at least one similar work of 25% of Estimated Project Cost Rs. 10.77 crore (Rupees ten crore seventy seven lakhs only) shall have been completed from the Eligible Projects in Category 1 and/or Category 3 specified in Clause 2.2.2.5. For this purpose, a project shall be considered to be completed, if more than 90% of the value of work has been completed and such completed value of work is equal to or more than 25% of the estimated project cost.
- (3) “The Bidder shall necessarily demonstrate the following experience (“Mandatory Experience” for both RFAQ Prequalified and non-Prequalified Bidders):

Bidder should have executed construction of at least one major bridge or one Rail over Bridge (ROB) or one Flyover having span of minimum 25 meter in the last 5 (five) financial years preceding the Bid Due Date.

The Bidder should furnish the above required Project-specific information and evidence in support of its claim, as per format at Annex-II & Annex IV of Appendix-IA.

2.2.2.3 Financial Capacity: The Bidder shall have a minimum Net Worth (the “Financial Capacity”) of Rs. 4.31 Cr (rupees four crore thirty one lakhs only) at the close of the preceding financial year.

2.2.2.4 Joint Venture Not Allowed.

2.2.2.5 Categories and factors for evaluation of Technical Capacity:

- (i) Subject to the provisions of Clause 2.2.2 the following categories of experience would qualify as Technical Capacity and eligible experience (the “Eligible Experience”) in relation to eligible projects as stipulated in Clauses 2.2.2.6 (i) &

- (ii) (the "Eligible Projects"). In case the Bidder has experience across different categories, the experience for each category would be computed as per weight of following factors to arrive at its aggregated Eligible Experience:

Category	Project / Construction experience on Eligible Projects	Factors
1	Project in highways sector that qualify under Clause 2.2.2.6 (i)	1
2	Project in core sector that qualify under Clause 2.2.2.6 (i)	0.70
3	Construction in highways sector that qualify under Clause 2.2.2.6 (ii)	1
4	Construction in core sector that qualify under Clause 2.2.2.6 (ii)	0.70

- (ii) The Technical capacity in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project.
- (iii) For the purpose of this RFP:
- highways sector would be deemed to include highways, expressways, bridges, tunnels, runways, Railways (construction/re-construction of railway tracks, yards for keeping containers etc.), Metro Rails and Ports (construction/re-construction of Jetties, any other linear infrastructure including bridges etc.) and
 - core sector would be deemed to include civil construction cost of, power sector, commercial setups (SEZs etc.), airports, , industrial parks/ estates, logistic parks, pipelines, irrigation, water supply, sewerage and real estate development.
- In case of the projects executed by applicant under category 3 and 4 as a member of joint venture, the project cost should be restricted to the share of the applicant in the joint venture for determining eligibility as per provision under clause 2.2.2.2(ii). In case Statutory Auditor certifies that, the work of other members(s) is also executed by the applicant, then the total share executed by applicant can be considered for determining eligibility as per provision under clause 2.2.2.2(ii).
 - Maintenance works are not considered as eligible project for evaluation as per Instruction no. 6 to Annex-IV. As such works with nomenclature like PR, OR, FDR, SR, site/micro grading, surface renewal, resurfacing work, Tarring, B.T. surface work, temporary restoration, urgent works, periodic maintenance, repair and rehabilitation, one time maintenance, permanent protection work of bank, external pre stressing, repair of central hinge, short term OMT contract of GMDA/Govt Agencies, any type of work related to boarder fencing, work of earthwork alone, construction of buildings/hostels/hospitals etc, or not specified, shall not be considered.
 - The works such as Improvement in Riding Quality work (IRQP/IRQ), riding quality shall be considered for threshold technical capacity [2.2.2.2(i)] but not for single completed works [2.2.2.2(ii)].
 - Project in Highway sector shall constitute the following for the purpose of consideration under category 1 or 3 as applicable, if:

- a. Widening / reconstruction / up-gradation works on NH/SH or on any category of road taken up under CRF, ISC/EI, SARDP, LWE
- b. Widening / reconstruction / up-gradation works on MDRs with loan assistance from multilateral agencies or on BoT basis.
- c. Widening / reconstruction / up-gradation work of roads in Municipal corporation limits, construction of Bypasses,
- d. Construction of standalone bridges, ROBs , tunnels w.r.t roads
- e. Long term OMT works of NHAI/ PWD/GMDA.
- f. The projects with the title of RIDF, PMGSY road, link road, city roads, rural road, sector/municipality road, Bridges for railway line, work of metro rails (bridges/tunnel), real estate projects which demonstrate road development/construction bridges or culverts may be considered under category– 4.
- g. In case both the estimated cost of project and revised cost of project are provided, the revised cost of project shall be considered for evaluation.

2.2.2.6 Eligible Experience on Eligible Projects in respect of each category:

- (i) **For a project to qualify as an Eligible Project under Categories 1 and 2:**
 - (a) It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;
 - (b) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;
 - (c) the capital cost of the project should be more than 10% of the amount specified as the Estimated Project Cost; and
 - (d) the entity claiming experience shall, during the last 5 (five) financial years preceding the Bid Due Date, have itself undertaken the construction of the project for an amount equal to at least one half of the Project Cost of eligible projects, excluding any part of the project for which any contractor, sub-contractor or other agent was appointed for the purposes of construction.
- (ii) For a project to qualify as an Eligible Project under Categories 3 and 4, the Bidder should have received payments from its client(s) for construction works executed and certified fully or partially, during the 5 (five) financial years immediately preceding the Bid Due Date, and only the amounts (gross) actually received, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, receipts of less than Rs. 4.48 crore (Rupees four crore fourty eight lakhs only) shall not be reckoned as receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract / EPC contract for the project. Further, the cost of land shall not be included here under.
- (iii) The Bidder shall quote experience in respect of a particular Eligible Project under any one category only, even though the Bidder (either individually or along with a member of the joint venture) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

(iv) Deleted

2.2.2.7 Submission in support of Technical Capacity

- (i) The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date.
- (ii) The Bidder must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-IA.
- (iii) The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-IV of Appendix-IA.

2.2.2.8 Submission in support of financial capacity

- (i) The Technical Bid must be accompanied by the Audited Annual Reports of the individual Bidder for the last 5 (five) financial years, preceding the year in which the bid is submitted.
- (ii) In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- (iii) The Bidder must establish the minimum Net Worth specified in Clause 2.2.2.3, and provide details as per format at Annex-III of Appendix-IA.

2.2.2.9 The Bidder shall enclose with its Technical Bid, to be submitted as per the format at Appendix-IA, complete with its Annexes, the following Certificate(s) from its statutory auditors

- (i) Certificate(s) from its statutory auditors or the concerned client(s) stating the payments received or in case of a PPP project, the construction carried out by itself, during the past 5 years, in respect of the Eligible Projects. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Joint Venture), it should further support its claim for the payments received or construction carried out by itself in PPP Projects as applicable the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client.
- (ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.2.9 (ii). For the purposes of this RFP, net worth (the "Net Worth") shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

2.2.2.10 if a prospective Bidder has been qualified by MORTH under RFAQ process and its eligibility limit has been assigned. It may submit only appendix-1A (letter comprising the technical Bid) Annexure 1 (Details of Bidder) and annexure 6 (information related to bid capacity under clause 2.2.2.1) against the requirement of clause of 2.11.1(a) of this RFP.

2.3 Proprietary data

All documents and other information supplied by the Authority/GMDA or submitted by a Bidder to the Authority/GMDA shall remain or become the property of the Authority/GMDA. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority/GMDA will not return any Bid or any information provided along therewith.

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their BIDs and their participation in the Bidding Process. The Authority/GMDA will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective BIDs after visiting the Project site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarise themselves with the Project within the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

2.5.2 It shall be deemed that by submitting a BID, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents, Schedules annexed to EPC agreement Document;
- (b) received all relevant information requested from the Authority/GMDA;
- (c) Accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority/GMDA relating to any of the matters referred to in Clause 2.5.1 above. No claim shall be admissible at any stage on this account.
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed BID, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority/GMDA, or a ground for termination of the Agreement by the Contractor;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) Agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 The Authority/GMDA shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, including any error or mistake therein or in any information or data given by the Authority/GMDA.

2.6 Verification and Disqualification

2.6.1 The Authority/GMDA reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by the Authority/GMDA, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the

Authority/GMDA shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority/GMDA there under.

2.6.2 The Authority/GMDA reserves the right to reject any BID and appropriate the BIDS security if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Authority/GMDA, the supplemental information sought by the Authority/GMDA for evaluation of the BID.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Joint Venture, then the entire Joint Venture and each Member of the Joint Venture may be disqualified/ rejected. If such disqualification/rejection occurs after the BIDs have been opened and the lowest Bidder gets disqualified / rejected, then the Authority/GMDA reserves the right to annul the Bidding Process and invites fresh BIDs.

- 2.6.3** In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of defect liability, subsistence thereof, that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the contractor either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority/GMDA to the Selected Bidder or the Contractor, as the case may be, without the Authority/GMDA being liable in any manner whatsoever to the Selected Bidder or the Contractor. In such an event, the Authority/GMDA shall be entitled to forfeit and appropriate the BID Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority/GMDA under the Bidding Documents and / or the Agreement, or otherwise.

B.DOCUMENTS

2.7 Contents of the RFP

- 2.7.1** This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Part –I

Invitation for BIDs

Section 1. Introduction

Section 2. Instructions to Bidders

Section 3. Evaluation of BIDs

Section 4. Fraud and Corrupt Practices

Section 5. Pre-BID Conference

Section 6. Miscellaneous

Appendices

IA Letter comprising the Technical BID including Annexure I to VII

IB Letter comprising the Financial BID

II. Bank Guarantee for BID Security

III. Power of Attorney for signing of BID

Part –II
Agreement Document with schedules

Part – III
Feasibility Report provided by the Authority/GMDA

2.7.2 The draft Agreement and the Feasibility / Detailed Project Report provided by the Authority/GMDA as part of the BID Documents shall be deemed to be part of this RFP.

2.8 Clarifications

2.8.1 Bidders requiring any clarification on the RFP may notify the Authority/GMDA in Writing by e-mail in accordance with Clause 1.2.9. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority/GMDA shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the BID Due Date. The responses will be sent by fax or e-mail. The Authority/GMDA will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.8.2 The Authority/GMDA shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority/GMDA reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority/GMDA to respond to any question or to provide any clarification.

2.8.3 The Authority/GMDA may also on its own motion, if deemed necessary, issue interpretations & clarifications to all Bidders. All clarifications & interpretations issued by the Authority/GMDA shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority/GMDA or its employees or representatives shall not in any way or manner be binding on the Authority/GMDA.

2.9 Amendment of RFP

2.9.1 At any time prior to the BID Due Date, the Authority/GMDA may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

2.9.2 Any Addendum issued here under will in writing and shall be sent to all the Bidders as well on the web portal.

2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority/GMDA may, in its sole discretion, extend the BID Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of BID

2.10.1 The Bidder shall provide all the information sought under this RFP. The Authority/GMDA will evaluate only those BIDs that are received online in the required formats and complete in all respects and Bid Security, Copy of online receipt towards payment of cost of Bid document, POA and Joint Bidding Agreement etc. are received in hard copies.

2.10.2 The BID shall be typed and signed in indelible blue ink by the authorised signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the BID shall be initialed by the person(s) signing the BID.

2.11 Documents comprising Technical and Financial BID

2.11.1 The Bidder shall submit the Technical BID & Financial Bid online through e-procurement portal <https://gmda.haryanaeprocurement.gov.in> comprising of the following documents along with supporting documents as appropriate:

Technical Bid

- (a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I to VI and supporting certificates / documents. However, those bidders, whose RFAQ eligibility limit assessed by Department is not less than the estimated cost of the Project, are not required to submit Annexure II to IV of Appendix-IA;
- (b) Power of Attorney for signing the BID as per the format at Appendix-III;
- (c) Not Applicable
- (d) Not Applicable
- (e) BID Security of Rs. 43.07 lakh (Rupees fourty three lakhs seven thousand only) to be deposited online only.
- (f) No tender fee is required to be deposited.
- (g) Proof of payment of tender processing fee of Rs. 1295/- (Rupees one thousand two hundred and ninety five only);
- (h) An undertaking from the person having POA referred to in Sub. Clause-(b) above that they agree and abide by the Bid documents uploaded by GMDA and amendments uploaded, if any.
- (i) Details of Mandatory Experience as per clause 2.2.2.2 (iii).
- (j) If applicable, Certificate/Copy of RFAQ eligibility limit assessed by MORT&H.

Financial Bid

- (l) Appendix-IB (Letter comprising the Financial Bid)

2.11.2 The Bidder shall submit the following documents physically:

- (a) Original Power of Attorney for signing the BID as per format at Appendix-III;
- (b) NOT applicable,
- (c) NOT applicable,
- (d) BID Security of Rs. 43.07 lakh (Rupees fourty three lakhs seven thousand only) to be deposited online only.
- (e) Online receipt of Rs. NIL Tender document can be uploaded free of cost.
- (f) Not Applicable
- (g) An undertaking from the person having POA referred to in Sub. Clause-(a) above that they agree and abide by the Bid documents uploaded by GMDA and amendments uploaded, if any
 - (h) Statement of Legal Capacity as per format at Annexure V to Appendix –IA.
 - (i) Details of Mandatory Experience as per clause 2.2.2.2 (iii).

2.11.3 The documents listed at clause 2.11.2 shall be placed in an envelope, which shall be sealed.

The envelope shall clearly bear the identification “Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram, Haryana” and shall clearly indicate the name and address of the Bidder. In addition, the BID Due Date should be indicated on the right hand top corner of the envelope. The bid shall be submitted online in two separate envelopes:

Envelope 1 - Technical Bid: The agency shall upload the required eligibility & technical documents online in the technical bid.

Envelope 2 -Financial Bid: The Agency shall quote the prices in the price bid format under Financial Bid

2.11.4 The envelope shall be addressed to one of the following officer and shall be submitted at the

respective address:

(i) ATTN. OF: The Chief Executive Officer

DESIGNATION

ADDRESS: Gurugram Metropolitan Development Authority,
Plot No. 44 Sec-32 Gurugram.
Haryana

Mob. No.- 9810190110

Phone no- 01242746601

E-MAIL ADDRESS ceo.gmda@gov.in

The pre bid meeting will be held in the committee room of GMDA at 3rd floor.

2.11.5 If the envelope is not sealed and marked as instructed above, the Authority/GMDA assumes no responsibility for the misplacement or premature opening of the contents of the BID submitted and consequent losses, if any, suffered by the Bidder.

2.11.6 BIDs submitted by fax, telex, telegram or e-mail shall not be entertained and shall be summarily rejected.

2.12 BID Due Date

Technical & Financial BID comprising of the documents listed at clause 2.11.1 of the RFP shall be submitted online through e-procurement portal <http://haryanaeprocurement.gov.in> on or before 27.11.2018 to 25.12.2018 (upto 17.00 Hrs. IST). Documents listed at clause 2.11.2 of the RFP shall be physically submitted on or before 26.12.2018 (upto 17.00 hours IST) at the address provided in Clause 2.11.4 in the manner and form as detailed in this RFP. A receipt thereof should be obtained from the person specified at Clause 2.11.4.

2.13 Late BIDs

E-procurement portal <http://haryanaeprocurement.gov.in> shall not allow submission of any Bid after the prescribed date and time at clause 2.12. Physical receipt of documents listed at clause 2.11.2 of the RFP after the prescribed date and time at clause 2.12 shall not be considered and the bid shall be summarily rejected.

2.14 Procedure for e-tendering

2.14.1 Accessing/ Purchasing of BID documents

2.14.1.1 It is mandatory for all the Bidders to have class-III Digital Signature Certificate (DSC) (in the name of Authorized Signatory / Firm or Organization / Owner of the Firm or organization) from any of the licensed Certifying Agency (Bidders can see the list of licensed CAs from the link www.cca.gov.in) to participate in e-tendering of GMDA. DSC should be in the name of the authorized signatory as authorized in Appendix of this RFP.

2.14.1.2 To participate in the bidding, it is mandatory for the Bidders to get registered their firm /Joint Venture with e-procurement portal of <https://www.haryanaeprocurement.gov.in> in to have user ID & password which has to be obtained by submitting an annual registration charges of INR Rs. 2290/- (Rupees Two Thousand Two hundred ninety Only) (Inclusive of all taxes) to the e-tendering service provided through online payment only. Validity of online registration is one year. Following may kindly be noted:

(a) Registration with e-procurement portal of GMDA should be valid at least up to the date of submission of BID.

(b) BIDs can be submitted only during the validity of registration.

- 2.14.1.3** The firm already registered with e-tendering service provider of GMDA, and validity of registration is not expired the firm
- 2.14.1.4** The complete BID document can be viewed / downloaded by the Bidder from e-procurement portal of GMDA in <https://www.haryanaeprocurement.gov.in> or official portal of GMDA up to 24-12-2018 (up to 17.00 Hrs. IST).
- 2.14.1.5** To participate in e- bidding, Bidders have to pay Rs. 1,295 (Rupees one thousand two hundred ninety five only) towards non-refundable to e-procurement service provider against tender processing fee through only - on e-tender portal <https://www.haryanaeprocurement.gov.in> through integrated online payment gateway enabled on E-Tender portal.
- 2.14.2** Preparation & Submission of BIDs:
- 2.14.2.1** The Bidder may be submitted his Bid online following the instruction appearing on the screen. A buyer manual containing the detailed guidelines for e-procurement is also available on e-procurement portal of GMDA.
- Any agency can contact the help desk up to 4 hours before the scheduled closing date & time of the e-tender.
 - For queries pertaining to e-payment of Tender Document fee, the agency can contact the help desk at least 2 business days prior to the closing date & time of e-tender.
 - Helpdesk support will remain closed during lunch break i.e. from 1:30Pm up to 2:15Pm on each working day.
 - Haryana e-procurement Help desk office will remain closed on Saturday t (except 4th Saturday), Sunday and National Holidays.
 - Guideline for Online payment in e-tendering: post registration, the agency shall proceed for bidding by using both his digital signature certificates (one each for encryption and signing). The agency shall proceed to select the tender he is interested in for bidding. On the respective page in the e-tendering portal the agency would have following options to make payment through e-service fee and Tender document fee:
 - Debit Card
 - Net Banking
 - RTGS/ NEFT
- 2.14.2.2** The documents listed at clause 2.11.1 shall be prepared and scanned in different files (in PDF or JPEG format) and uploaded during the on-line submission of BID.
- 2.14.2.3** Bid must be submitted online only through e-procurement portal of GMDA [<http://haryanaeprocurement.gov.in>] using the digital signature of authorized representative of the Bidder on or before from 27.11.2018 to 25.12.2018 (upto 17.00 Hrs. IST).
- 2.14.3** Modifications/ Substitution/ withdrawal of BIDs
- 2.14.3.1** The Bidder may modify, substitute or withdraw its e- BID after submission prior to the BID Due Date. No BID can be modified, substituted or withdrawn by the Bidder on or after the BID Due Date & Time.
- 2.14.3.2** For modification of e-BID, Bidder has to detach its old BID from e-procurement portal and upload / resubmit digitally signed modified BID. For withdrawal of BID, bidder has to click on withdrawal icon at e-procurement portal and can withdraw its e-BID. Before withdrawal of a BID, it may specifically be noted that after withdrawal of a BID for any reason, Bidder cannot re-submit e-BID again.

2.15 Online Opening of BIDs.

2.15.1 Opening of BIDs will be done through online process.

2.15.2 The GMDA shall on-line open Technical BIDs on 27.12.2018 at 11.30 Hrs. IST, in the presence of the authorized representatives of the Bidders, who choose to attend. Technical BID of only those bidders shall be online opened whose documents listed at clause 2.11.2 of the RFP have been physically received. The GMDA will subsequently examine and evaluate the BIDs in accordance with the provisions of Section 3 of RFP.

2.16 Rejection of BIDs

2.16.1 Notwithstanding anything contained in this RFP, the Authority/GMDA reserves the right to reject any BID and to annul the Bidding Process and reject all BIDs at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority/GMDA rejects or annuls all the BIDs, it may, in its discretion, invite all eligible Bidders to submit fresh BIDs hereunder.

2.16.2 The Authority/GMDA reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any BID without assigning any reasons.

2.17 Validity of BIDs

The BIDs shall be valid for a period of not less than 120 (one hundred and twenty) days from the BID Due Date. The validity of BIDs may be extended by mutual consent of the respective Bidders and the Authority/GMDA.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority/GMDA in relation to, or matters arising out of, or concerning the Bidding Process. The Authority/GMDA will treat all information, submitted as part of the BID, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority/GMDA may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority/GMDA or as may be required by law or in connection with any legal process.

2.19 Correspondence with the Bidder

Save and except as provided in this RFP, the Authority/GMDA shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any BID.

However, the Authority/GMDA would display the result of technical evaluation on the web portal for 7 days including reasons for non-responsiveness, if any, and the financial bid will be opened thereafter.

D. BID SECURITY

2.20 BID Security

2.20.1 The Bidder shall furnish as part of its BID, a BID Security referred to in Clauses 2.1.6 and 2.1.7. to be deposited online only

2.20.2 Any BID not accompanied by the BID Security shall be summarily rejected by the Authority/GMDA as non-responsive.

2.20.3 The Selected Bidder's BID Security will be returned, without any interest, upon the bidder signing the Contract Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority/GMDA may, at the Selected Bidder's option, adjust the amount of BID Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Agreement.

2.20.4 The Authority/GMDA shall be entitled to forfeit and appropriate the BID Security as Damages inter alia in any of the events specified in Clause 2.20.5 herein below. The Bidder, by submitting its BID pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority/GMDA will suffer loss and damage on account of withdrawal of its BID or for any other default by the Bidder during the period of BID validity as specified in this RFP. No relaxation of any kind on BID Security shall be given to any Bidder.

2.20.5 The BID Security shall be forfeited and appropriated by the Authority/GMDA as damages payable to the Authority/GMDA for, inter-alia, time cost and effort of the Authority/GMDA without prejudice to any other right or remedy that may be available to the Authority/GMDA under the bidding documents and / or under the Agreement, or otherwise, under the following conditions:

(a) Deleted

(b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;

(c) If a Bidder withdraws its BID during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority/GMDA;

(d) In the case of Selected Bidder, if it fails within the specified/extended time limit by Authority/GMDA -

(i) to sign and return the duplicate copy of LOA;

(ii) to sign the Agreement; or

(iii) to furnish the Performance Security /Additional Performance Security within the period prescribed thereof in the Agreement; or

(e) In case the Selected Bidder, having signed the Agreement, commits any breach thereof prior to furnishing the Performance Security.

2.20.6 Performance Security

Within 10 (ten) days of signing of Contract Agreement, the successful Bidder shall furnish to the Authority/GMDA a Performance Security in accordance with the provisions of the Agreement and in the format given in this RFP.

The successful Bidder shall along with the Performance Security provide to the Authority/GMDA an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs.....crore (Rupees.....crore) in the form set forth in Schedule-G (the Additional Performance Security), to be modified, mutatis mutandis, for this purpose as security to the Authority/GMDA if the Bid Price of the Selected Bidder is lower by more than 10% with respect to the Estimated Project Cost. Additional Performance Security shall be calculated as under:

- (i) If the bid price offered by the Contractor is lower than 10% but upto 20% of the Estimated Project Cost, then the Additional Performance Security shall be calculated @ 20% of the difference in the (a) Estimated Project Cost (as mentioned in RFP)-10% of the Estimated Project Cost and (b) the Bid Price offered by the selected Bidder.
- (ii) If the bid price offered by the Contractor is lower than 20% of the Estimated Project Cost, then the Additional Performance Security shall be calculated @30% of the difference in the (a) Estimated Project Cost (as mentioned in RFP)-10% of the Estimated Project Cost and (b) the Bid Price offered by the selected Bidder.
- (iii) The Additional Performance Security may not be treated as part of Performance Security.

SECTION-3

EVALUATION OF TECHNICAL BIDS AND OPENING & EVALUATION OF FINANCIAL BIDS

3.1 Evaluation of Technical Bids

3.1.1 The Authority/GMDA shall open the BIDs received **physically & online on 27.12.2018** at 11.30 Hrs. IST, at the place specified in Clause 2.11.4 (i); and in the presence of the Bidders who choose to attend. Technical BID of only those bidders shall be online opened whose documents listed at clause 2.11.2 of the RFP have been received physically. The Authority/GMDA shall prepare minutes of the BID opening, including information disclosed to those present at the time of BID opening.

3.1.2 Technical Bids of those Bidders who have not submitted their Bid online, shall not be considered for opening and evaluation.

3.1.3 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority/GMDA may, in its sole discretion, exclude the relevant information for consideration of eligibility and qualification of the Bidder.

3.1.4 To facilitate evaluation of Technical BIDs, the Authority/GMDA may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Technical BID. Such clarification(s) shall be provided within the time specified by the Authority/GMDA for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

3.1.5 If a Bidder does not provide clarifications sought under Clause 3.1.4 above within the prescribed time, its Bid may be liable to be rejected. In case the Bid is not rejected, the Authority/GMDA may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority/GMDA.

3.1.6 Tests of responsiveness

3.1.6.1 As a first step towards evaluation of Technical BIDs, the Authority/GMDA shall determine whether each Technical BID is responsive to the requirements of this RFP. A Technical BID shall be considered responsive only if:

- (a) Technical BID is received online as per the format at Appendix-IA including Annexure I to VI ; However, those bidders, whose RFAQ eligibility limit assessed by Ministry is not less than the estimated cost of the Project, are not required to submit Annexure II to IV of Appendix-IA;
- (b) Documents listed at clause 2.11.2 are received physically;
- (c) Technical Bid is accompanied by the BID Security as specified in Clause 2.1.6 and 2.1.7;
- (d) Technical Bid is accompanied by the Power of Attorney as specified in Clauses 2.1.8;
- (e) Technical Bid is accompanied by Power of Attorney for Lead Member of Joint Venture and the Joint Bidding Agreement as specified in Clause 2.1.9, if so required;

- (f) Technical Bid contains all the information (complete in all respects);
- (g) Technical Bid does not contain any condition or qualification; and
- (h) Delete

3.1.6.2 The Authority/GMDA reserves the right to reject any Technical BID which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority/GMDA in respect of such BID.

3.1.7 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority/GMDA as incorrect or erroneous, the Authority/GMDA may reject / correct such claim for the purpose of qualification requirements.

3.1.8 The Authority/GMDA will get the BID security verified from the issuing Authority/GMDA and after due verification, the Authority/GMDA will evaluate the Technical BIDs for their compliance to the eligibility and qualification requirements pursuant to clause 2.2.1 & 2.2.2 of this RFP.

3.1.9 After evaluation of Technical Bids, the Authority/GMDA will publish a list of technically responsive Bidders whose financial bids shall be opened. The Authority/GMDA shall notify other bidders that they have not been technically responsive. The Authority/GMDA will not entertain any query or clarification from Applicants who fail to qualify.

3.2 Opening and Evaluation of Financial Bids

The Authority/GMDA shall inform the venue and time of online opening of the Financial Bids to the technically responsive Bidders through e-procurement portal and e-mail. The technically responsive bidders including joint venture partner(s), if any, shall inform the Authority/GMDA through email in the prescribed format enclosed at Annexure VI A of Appendix 1A, for any change in their bid capacity, due to award/ declared to be the lowest bidder in any other project as on bid submission date. In case of no change, 'NIL' information shall be furnished.

If any of the qualified bidders fails to furnish the above information due to whatsoever reasons on bid submission date, or fails to qualify in Bid Capacity in this changed scenario, his financial bid shall not be opened. The Authority/GMDA shall open the online Financial Bids of the remaining bidders only on schedule date and time in the presence of the authorised representatives of the Bidders who may choose to attend. The Authority/GMDA shall publicly announce the Bid Prices quoted by the technically responsive Bidder. Thereafter the Authority/GMDA shall prepare a record of opening of Financial Bids.

3.3 Selection of Bidder

3.3.1 Subject to the provisions of Clause 2.16.1, the Bidder whose BID is adjudged as responsive in terms of Clause 3.1.6 and who quotes lowest price shall be declared as the selected Bidder (the Selected Bidder).

3.3.2 In the event that two or more Bidders quote the same BID Price (the "Tie BIDs"), the Authority/GMDA shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

3.3.3 In the event that the Lowest Bidder is not selected for any reason, the Authority/GMDA

shall annul the Bidding Process and invite fresh BIDs. In the event that the Authority/GMDA rejects or annuls all the BIDs, it may, in its discretion, invite all eligible Bidders to submit fresh BIDs hereunder.

3.3.4 After selection, a Letter of Award (the LOA) shall be issued, in duplicate, by the Authority/GMDA to the Selected Bidder and the Selected Bidder shall, within 7(seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority/GMDA may, unless it consents to extension of time for submission thereof, appropriate the BID Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

3.3.5 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Bidder to execute the Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement.

3.3.6 Authority/GMDA shall return Bid Security of all bidders except L-1 within a week from opening of financial bid.

3.4 Contacts during BID Evaluation

BIDs shall be deemed to be under consideration immediately after they are opened and until such time the Authority/GMDA makes official intimation of award/ rejection to the Bidders. While the BIDs are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority/GMDA and/ or their employees/ representatives on matters related to the BIDs under consideration.

3.5 Correspondence with Bidder

Save and except as provided in this RFP, the Authority/GMDA shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

3.6 Any information contained in the Bid shall not in any way be construed as binding on the Authority/GMDA, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

3.7 The Authority/GMDA reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

SECTION-4

4. FRAUD AND CORRUPT PRACTICES

- 4.1** The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority/GMDA may reject a BID, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority/GMDA shall be entitled to forfeit and appropriate the BID Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority/GMDA under the Bidding Documents and/ or the Agreement, or otherwise.
- 4.2** Without prejudice to the rights of the Authority/GMDA under Clause 4.1 hereinabove and the rights and remedies which the Authority/GMDA may have under the LOA or the Agreement, or otherwise if a Bidder or Contractor, as the case may be, is found by the Authority/GMDA to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Agreement, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority/GMDA during a period of 2 (two) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority/GMDA to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3** For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority/GMDA who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Agreement or arising there from, before or after the \ execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority/GMDA, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.2.1(d) of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Contract Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority/GMDA in relation to any matter concerning the Project;
 - (b) “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
 - (c) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;

- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Authority/GMDA with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

SECTION-5

5. PRE-BID CONFERENCE

- 5.1 Pre-BID conference of the Bidders shall be convened at the designated date, time and place. A maximum of two representatives of prospective Bidders shall be allowed to participate on production of Authority/GMDA letter from the Bidder.**
- 5.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority/GMDA. The Authority/GMDA shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.**

SECTION-6

6. MISCELLANEOUS

- 6.1** The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Chandigarh shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2** The Authority/GMDA, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/ or evidence submitted to the Authority/GMDA by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3** It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority/GMDA, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future

APPENDIX IA

LETTER COMPRISING THE TECHNICAL BID

(Refer Clause 2.1.5, 2.11 and 3.1.6)

The C.E.O
Plot No. 44 Sec-32
Gurugram Metropolitan Development Authority,
Gurugram. Haryana

Sub: BID for Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram,

Dear Sir,

With reference to your RFP document dated *** **\$, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our BID for the aforesaid Project. The BID is unconditional and unqualified.

2. I/ We acknowledge that the Authority/GMDA will be relying on the information provided in the BID and the documents accompanying the BID for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid and its the Annexure I to VI along with the supporting documents are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the BID are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as EPC Contractor for the development, construction, rehabilitation and augmentation of the aforesaid Project and maintenance of the Project during the Defect Liability Period.
4. I/ We shall make available to the Authority/GMDA any additional information it may find necessary or require to supplement or authenticate the BID.
5. I/ We acknowledge the right of the Authority/GMDA to reject our BID without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last two years, we/ any of the JV partners have neither failed to perform for the works of Expressways, National Highways, ISC &EI works,, as evidenced by imposition of a penalty by an arbitral or judicial Authority/GMDA or a judicial pronouncement or arbitration award against us, nor been expelled or terminated by Ministry of Road Transport & Highways or its implementing agencies for breach on our part.
7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority/GMDA; and
 - (b) I/We do not have any conflict of interest in accordance with Clauses 2.2.1 (c) and 2.2.1 (d) of the RFP document; and
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice,

as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any Agreement entered into with the Authority/GMDA or any other public sector enterprise or any government, Central or State; and

- (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
 - (e) the undertakings given by us along with the Application in response to the RFP for the Project and information mentioned for the evaluation of the BID Capacity in Annexure VI were true and correct as on the date of making the Application and are also true and correct as on the BID Due Date and I/we shall continue to abide by them.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any BID that you may receive nor to invite the Bidders to BID for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16.2 of the RFP document.
 9. I/We believe that we/our Joint Venture satisfy(s) the Threshold Technical Capacity, Net Worth criteria and meet(s) the requirements as specified in the RFP document.
 10. I/ We declare that we/ any Member of the Joint Venture or our/Joint Venture member, are not a Member of any other Joint Venture submitting a BID for the Project.
 11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Joint Venture or any of our/their Joint venture member have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory Authority/GMDA which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
 12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Joint Venture or any of our/their Joint venture member have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
 13. I/ We further certify that no investigation by a regulatory Authority/GMDA is pending either against us/any member of Joint Venture or against our CEO or any of our directors/ managers/ employees.
 14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated 13.7.01, a copy of which forms part of the RFP at Annexure VII of Appendix-IA thereof.
 15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority/GMDA of the same immediately.
 16. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Agreement upto its validity. It would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Agreement shall be liable to be terminated without the Authority/GMDA being liable to us in any manner whatsoever.

17. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority/GMDA in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
18. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Agreement in accordance with the draft that has been provided to me/us prior to the BID Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
19. I/ We have studied all the Bidding Documents carefully and also surveyed the [Project and the traffic]. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority/GMDA or in respect of any matter arising out of or relating to the Bidding Process including the award of Agreement.
20. I/ We offer a BID Security of Rs. 43.07 lakh (Rupees forty three lakhs seven thousand only) to the Authority/GMDA in accordance with the RFP Document.
21. The BID Security has been deposited online.
22. I/ We agree and understand that the BID is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Contract is not awarded to me/us or our BID is not opened or rejected.
24. The BID Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Agreement, our own estimates of costs and after a careful assessment of the site and all own the conditions that may affect the project cost and implementation of the project.
25. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
26. {We, the Joint Venture agree and undertake to be jointly and severally liable for all the obligations of the EPC Contractor under the Contract Agreement}.
27. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the BID Due Date specified in the RFP.
28. I/ We hereby submit our BID and offer a BID Price as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement.

In witness thereof, I/we submit this BID under and in accordance with the terms of the RFP document.

7061/2018/O/o SE(GMDA-Infra I)

GURUGRAM METROPOLITAN DEVELOPMENT AUTHORITY/GMDA (GMDA)



Yours faithfully,

Date:

Place:

(Signature, name and designation
of the Authorised signatory)

Name & seal of Bidder/Lead Member

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and Deleted' may be indicated there

APPENDIX - IB
Letter comprising the Financial BID
(Refer Clauses 2.1.5, 2.11.1 and 3.1.6)

Dated:

The C.E.O
 Plot No. 44 Sec-32
 Gurugram, Haryana
 Gurugram Metropolitan Development Authority,
 Gurugram. Haryana

Sub: BID for Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram

Dear Sir,

1. With reference to your RFP document dated *** **, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our BID for the aforesaid Project. The BID is unconditional and unqualified.
2. I/ We acknowledge that the Authority/GMDA will be relying on the information provided in the BID and the documents accompanying the BID for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the BID are true copies of their respective originals.
3. The BID Price has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Agreement, our own estimates of costs and after a careful assessment of the site and all own the conditions that may affect the project cost and implementation of the project.
4. I/ We acknowledge the right of the Authority/GMDA to reject our BID without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Agreement in accordance with the draft that has been provided to me/us prior to the BID Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
6. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the BID Due Date specified in the RFP.
7. I/ We hereby submit our BID and offer a BID Price online for undertaking the aforesaid Project in accordance with the Bidding Documents and the Agreement.

Yours faithfully,

Date:

Place:

(Signature, name and designation of the
 Authorised Signatory)

Name & seal of Bidder/Lead Member:.....

Class III DSC ID of Authorised Signatory

Appendix IA
Annex-I

ANNEX-I
Details of Bidder

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/ or commencement of business:

2. Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in this Project:

3. Details of individual(s) who will serve as the point of contact/ communication for the Authority/GMDA:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:

4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
 - (e) Fax Number:
 - (f) Class III Digital Signature Certificate ID number

5. JOINT-VENTURE NOT ALLOWED

Appendix IA
Annex-II

ANNEX-II
Technical Capacity of the Bidder@
(Refer to Clauses 2.2.2.2, 2.2.2.5 and 2.2.2.7 of the RFP)

Applicant type	Project Code*	Category ^p	Experience ** (Equivalent Rs. crore) ^{\$\$}		Technical Experience [£]
			Payments received for construction of Eligible Projects in Categories & 4	Value of self-construction in 3 Eligible Projects in Categories 1 and 2	
(1)	(2)	(3)	(4)	(5)	(6)
Single entity Bidder or Lead Member Including other members of the Joint Venture	a				
	b				
	c				
	d				
	e				
	f				
Aggregate Technical Experience =					

@ Provide details of only those projects that have been undertaken by the Applicant, or its Lead member including members in case of joint venture, under its own name separately and/ or by a project company eligible under Clause 2.2.2.6(i)(b). In case of Categories 1 and 2, include only those projects which have an estimated capital cost exceeding the amount specified in Clause 2.2.2.6(i)(c) and for Categories 3 and 4, include only those projects where the payments received exceed the amount specified in Clause 2.2.2.6(ii). In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.17.

* Refer Annex-IV of this Appendix-I. Add more rows if necessary.

^{\$} Refer Clause 2.2.2.5(i)

** Construction shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/ EPC contract for the project. In no case shall the cost of maintenance and repair, operation of Highways and land be included while computing the Experience Score of an Eligible Project.

^{\$\$} For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees ¹⁴ (**) to a US Dollar.

[£] . In the case of an Eligible Project situated in an OECD country, the Experience Score so arrived at shall be further multiplied by 0.5, in accordance with the provisions of Clause 2.2.2.5(ii) and the product thereof shall be the Experience Score for such Eligible Projects.

¹⁴ The conversion rate of USD into Rupees shall be the daily representative exchange rates published by the Reserve Bank of India for the relevant date. Where relevant date should be as on the date 28 (twenty eight) days prior to the Application Due Date.

NOTE: In case of a Joint Venture, information in Annex-II and Annex-IV of Appendix-I shall be provided separately for other Members so as to establish that each such Member has 20 percent or more of the Threshold Technical Capacity. Such information may be provided as Annex-IIA, Annex-IIB, Annex-IVA and Annex-IVB respectively. (Refer Clause 2.2.2.4).

Appendix IA

Annex-III

ANNEX-III

Financial Capacity of the Bidder

(Refer to Clauses 2.2.2.3, 2.2.2.9(i), 2.2.2.8(iii) of the RFP)

(In Rs. crore²)

Bidder type	Net Cash Accruals					Net Worth ²
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
Single entity Bidder or Lead Member including other members of the Joint Venture						
TOTAL						

Bidder type	Annual Turnover										Average
	Year 1		Year 2		Year 3		Year 4		Year 5		Annual
	(Rs.)	Updation factor	(Rs.)	Updation factor	(Rs.)	Updation factor	(Rs.)	Updation factor	(Rs.)	Updation factor	Turnover crore\$)
	2	3	4	5	6	7	8	9	10	11	(2x3+4x5+6x7+8x9+10x11)/5
Single entity Bidder or Lead Member including other members of the Joint Venture		1.0		1.05		1.10		1.15		1.20	

Name & address of Bidder's Bankers:

^{\$} For conversion of other currencies into rupees, see note below Annex-II of Appendix-I. [£] The Bidder should provide details of its own Financial Capacity.

Instructions:

- The Bidder shall attach copies of the balance sheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
 - reflect the financial situation of the Bidder;
 - be audited by a statutory auditor;
 - be complete, including all notes to the financial statements; and
 - correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- Net Cash Accruals shall mean Profit After Tax + Depreciation.

3. Net Worth (the Net worth) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.17.
5. In the case of a Joint Venture, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.1.15 (g) of the RFP document.
6. The Bidder shall also provide the name and address of the Bankers to the Bidder.
7. The Bidder shall provide an Auditor's Certificate specifying the net worth of the Bidder and also specifying the methodology adopted for calculating such net worth in accordance with Clause 2.2.2.9 (ii) of the RFP document.

ANNEX-IV
Details of Eligible Projects
(Refer to Clauses 2.2.2.2, 2.2.2.5 and 2.2.2.7 of the RFP)

Project Code:

Entity: Self/Members:

Item	Refer Instruction	Particulars of the Project
Title & nature of the project		
Category	5	
Year-wise		
(a) payments received for construction or work executed and certified by the Engineer-in-charge/Independent Engineer/ Authority/GMDA's Engineer, and/or		
(b) revenues appropriated for self-construction under PPP projects	6	
Entity for which the project was constructed	7	
Location		
Project cost	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Projects in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 2.2.2.6 (i) and 2.2.2.6 (ii) of the RFP, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Application. Applicants should also refer to the Instructions below.
2. The Project Codes would be a, b, c, d etc.
3. A separate sheet should be filled for each Eligible Project.
4. In case the Eligible Project relates to other Members, write Member.
5. Refer to Clause 2.2.2.5 of the RFP for category number.
6. The total payments received and/or revenues appropriated for self-construction for each Eligible Project are to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 5 (five) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 1.1.17). For Categories 1 and 2, expenditure on construction of the project by the Applicant itself should be provided, but only in respect of projects having an estimated capital cost exceeding the amount specified in Clause 2.2.2.6(i)(c). In case of Categories 3 and 4, payments received only in respect of construction should be provided, but only if the amount received exceeds the minimum specified in Clause 2.2.2.6(ii). Receipts for construction works should only include capital expenditure, and should not include expenditure on maintenance & repair and operation of Highways.
7. In case of projects in Categories 1 and 2, particulars such as name, address and contact details of owner/ Authority/GMDA/ Agency (i.e. concession grantor, counter party to concession, etc.) may be provided. In case of projects in Categories 3 and 4, similar particulars of the client need to be provided.
8. Provide the estimated capital cost of Eligible Project. Refer to Clauses 2.2.2.6(i) and 2.2.2.6(ii)
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated. In the case of projects under construction, the likely date of completion or commissioning, as the case may be, shall be indicated.

10. For Categories 1 and 2, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given (Refer Clause 2.2.2.6(i)).
11. Experience for any activity relating to an Eligible Project shall not be claimed twice. In other words, no double counting in respect of the same experience shall be permitted in any manner whatsoever.
12. Certificate from the Bidder's statutory auditor[§] or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder may provide the requisite certification.
13. If the Bidder is claiming experience under Categories 1 & 2[€], it should provide a certificate from its statutory auditor in the format below:

Certificate from the Statutory Auditor regarding PPP projects

Based on its books of accounts and other published information authenticated by it, this is to certify

that..... (name of the Bidder) is/ was an equity shareholder in (title of the project company) and holds/held Rs.....Cr. (Rupees crore) of equity (which constitutes% of the total paid up and subscribed equity capital) of the project company from (date) to (date)[¥] The project was/is commenced on(date) and likely to be commissioned on (date) of commissioning of the project).

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupees crore), of which the applicant has itself undertaken the construction of project of Rs.(Rupees Crores) excluding any part of the project for which any contractor, sub-contractor or other agent was appointed for the purpose of construction as per Clause 2.2.2.6 (i) (d) by the aforesaid Applicant itself, during the past five financial years as per year-wise details noted below:

.....

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, name and designation of the authorised signatory)

[§] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

[€] Refer Clause 2.2.2.5 of the RFP.

Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary.

[€] Statutory auditor means the entity that audits and certifies the annual accounts of the company.

[¥] Refer instruction no. 10 in this Annex-IV.

[¥] In case the project is owned by the Applicant company, this language may be suitably modified to read: "It is certified that (name of Applicant) constructed and/ or owned the (name of project) from (date) to (date).

14. If the Bidder is claiming experience under Category 3 & 4, it should provide a certificate from its statutory auditors/client/Engineer-in charge/ Independent Engineer/Authority/GMDA's Engineer in the format below:

Certificate regarding construction works

Based on its books of accounts and other published information authenticated by it, {this is to certify that (name of the Bidder) was engaged by (title of the project company) to execute (name of project) for (nature of project)}. The construction of the project commenced on (date) and the

project was/ is likely to be commissioned on (date, if any). It is certified that

Bidder received payments from its Clients for Construction Works executed by them or work executed and certified by the Engineer-in-charge/Independent Engineer/Authority/GMDA's Engineer, in the aforesaid construction works.

We further certify that the total estimated capital cost of the project is Rs. cr. (Rupees

.....crore), of which the Applicant received or has executed the work as certified

by the Engineer-in-charge/Independent Engineer/Authority/GMDA's Engineer Rs. cr.

(Rupees crore), in terms of Clauses 2.2.2.5 and 2.2.2.6(ii) of the RFP,

during the past five financial years as per year-wise details noted below:

.....
.....

It is further certified that the receipts indicated above are restricted to the share of the Applicant who undertook these works as a partner or a member of joint venture/consortium.

We further certify that applicant has a share of _____% in the Joint Venture/Consortium.

Name of the audit firm:

Seal of the audit firm:

Date

(Signature, name and designation of the authorised signatory).

15. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience.

Refer Clauses 2.2.2.5 and 2.2.2.6(ii) of the RFP.

Provide Certificate as per this format only. Attach Explanatory Notes to the Certificate, if necessary. Statutory auditor means the entity that audits and certifies the annual accounts of the company. However, in case the work of other member(s) is also executed by the applicant, then this fact should also be certified by the Statutory Auditor and accordingly the language may be suitably modified.

This certification should be strike out in case of jobs/ contracts, which are executed a sole firm. The payments indicated in the certificate should be restricted to the share of Applicant in such partnership/ joint venture. This portion may be omitted if the contract did not involve a partnership/ joint venture. In case where work is not executed by partnership/ joint venture, this paragraph may be deleted.

Appendix IA
Annex-V

ANNEX-V
Statement of Legal Capacity

(To be forwarded on the letterhead of the Applicant/ Lead Member of Joint Venture)

Ref. Date:

To
C.E.O
Plot No. 44 Sec-32
Gurugram , Haryana
Gurugram Metropolitan Development Authority
Haryana

Dear Sir,

We hereby confirm that we/ our members in the Joint Venture (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFP document.

We have agreed that (insert member's name) will act as the Lead Member of our Joint Venture.*

We have agreed that (insert individual's name) will act as our representative/ will act as the representative of the Joint Venture on its behalf* and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

*Please strike out whichever is not applicable.

Appendix - IA

Annexure-VI**ANNEX-VI****Information required to evaluate the BID Capacity under clause 2.2.2.1:****To calculate the value of A**

1. A table containing value of Civil Engineering Works in respect to EPC Projects (Turnkey projects / Item rate contract/ Construction works) undertaken by the Bidder during the last 5 years is as follows:

2.

Sl. No.	Year	Value of Civil Engg. Works undertaken w.r.t. EPC Projects (Rs. In Crores)
1	2017-18/2017	
2	2016-17/2016	
3	2015-16/2015	
4	2014-15/2014	
5	2013-14/2013	

3. Maximum value of projects that have been undertaken during the F.Y. _____ out of the last 5 years and value thereof is Rs. _____ Crores (Rupees _____). Further, value updated to the price level of the year indicated in Appendix is as follows:

Rs. _____ Crores x _____ (Updation Factor as per Appendix) = Rs. _____ Crores (Rupees _____)

<p>.....</p> <p>.....</p> <p>Name of the Statutory Auditor's firm:</p> <p>Seal of the audit firm: (Signature, name and designation and Membership No. of authorised signatory)</p>	<p>.....</p> <p>.....</p> <p>Signature, name and designation of Authorised Signatory</p> <p>For and on behalf of(Name of the Bidder)</p>
--	---

Date :

Place:

To calculate the value of B

A table containing value of all the existing commitments and on-going works to be completed during the next 1.5 years is as follows:

Sl. No.	Name of Project/ Work	Percentage of participation of Bidder in the project	Dater of start / appointed date of project	Construction period as per Agreement /LOA	Value of contract as per Agreement /LOA ^a	Value of work completed	Balance value of work to be completed	Anticipated date of completion	Balance value of work at 2015-16/2015 price level
1	2	3	4	5	Rs. in Crore	Rs. in Crore	Rs. in Crore	9	Rs. in Crore
					6	7	8= (6-7)		10(3x 8x #)

Updation Factor as given below:

For Year	F.Y. / Calendar Year	Updation Factor
1	2017-18/2017	1.00
2	2016-17/2016	1.05
3	2015-16/2015	1.10
4	2014-15/2014	1.15
5	2013-14/2013	1.20

The Statement showing the value of all existing commitments, anticipated value of work to be completed in the period of construction of the project for which bid is invited and ongoing works as well as the stipulated period of completion remaining for each of the works mentioned above is verified from the certificate issued that has been countersigned by the Client or its Engineer-in-charge not below the rank of Executive Engineer or equivalent in respect of EPC Projects or Concessionaire / Authorised Signatory of SPV in respect of BOT Projects. No awarded / ongoing works has been left in the aforesaid statement which has been awarded to M/s.....individually / and other member M/s and M/s, as on bid due date of this RFP.

.....

Signature, name and designation of Authorised Signatory

For and on behalf of(Name of the Bidder)

.....

Name of the Statutory Auditor's firm: Seal of the audit firm: (Signature, name and designation and Membership No. of authorised signatory)

Date:

Place:

^β In case balance period of construction is less than the value of period of construction of the project for which bid is invited, then full value of contract as per Agreement/LOA to be mentioned, else, anticipated value of work to be completed in the period of construction of the project for which bid is invited is to be mentioned. In the absence of the anticipated value of work to be completed, the proportionate value shall be considered while evaluating the Assessed Available Bid Capacity.

Appendix - IA
Annexure-VI A

Format for information to be furnished by Technically Responsive Bidder regarding updated Bid Capacity as on bid submission date:

- 1. Name of instant project:-**
- 2. Name of the Technically Responsive Bidder:-**
- 3. Details of lowest/accepted bid price declared in favour of the Technically Responsive Bidder (either sole or J.V.) in any other project as on bid submission date.**

Sl. no.	Name of Work	Details and contact nos. email of Bid inviting Authority/GMDA	Lowest bid price as per Financial bid opening (Rs. In lakhs)	Date & time when Financial bid was opened	Date of LOA in case issued	Remarks, if any
1.						
2.						

I/ We hereby confirm that the information furnished above are latest and true to the best of my/our knowledge. We/I undertake to bear consequences as per provision of RFP in case of any above mentioned is found to be incorrect.

Authorised Signatory

.....

Name:

Place:..... **Date:**

Note: Please enclose separate details for the Joint Venture Partner(s), if any

APPENDIX-IA
Annexure VII

Guidelines of the Department of Disinvestment
(Refer Clause 1.2.1)

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex
New Delhi.

Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory Authority/GMDA that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

Appendix-IA

Annexure-VII
Page-2

- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory Authority/GMDA is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-
(A.K. Tewari)
Under Secretary to the Government of India

APPENDIX – II (Not Applicable as Bid Security is to be deposited online only)
Bank Guarantee for BID Security
(Refer Clauses 2.1.6 and 2.20.1)

B.G. No. Dated:

1. In consideration of you, *** **, having its office at *** **, (hereinafter referred to as the "Authority/GMDA", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the BID of and having its registered office at (hereinafter referred to as the "Bidder" which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the*** ** Project on Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram, Haryana on EPC basis (hereinafter referred to as the Project) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft contract Agreement (hereinafter collectively referred to as Bidding Documents), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the Bank), at the request of the Bidder, do hereby in terms of Clause 2.1.6 read with Clause 2.1.7 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority/GMDA an amount of Rs. 43.07 lakh (Rupees fourty three lakhs seven thousand only) (hereinafter referred to as the Guarantee) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority/GMDA stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority/GMDA is disputed by the Bidder or not, merely on the first demand from the Authority/GMDA stating that the amount claimed is due to the Authority/GMDA by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its BID open during the BID validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. 43.07 lakh (Rupees fourty three lakhs seven thousand only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the BID Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority/GMDA and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority/GMDA shall be the sole judge to decide

as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its BID open during the BID validity period set forth in the said Bidding Documents, and the decision of the Authority/GMDA that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority/GMDA and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority/GMDA.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority/GMDA shall be entitled to treat the Bank as the principal debtor. The Authority/GMDA shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the BIDs or the BID validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority/GMDA, and the Bank shall not be released from its liability under these presents by any exercise by the Authority/GMDA of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority/GMDA or any indulgence by the Authority/GMDA to the said Bidder or by any change in the constitution of the Authority/GMDA or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Authority/GMDA to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority/GMDA may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority/GMDA in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. 43.07 lakh (Rupees forty three lakhs seven thousand only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority/GMDA serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [*** (indicate date falling 180 days after the BID Due Date)].
14. This guarantee shall also be operatable at our..... Branch at New Delhi, from whom, confirmation regarding the issue of this guarantee or extension / renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

Signed and Delivered by Bank

By the hand of Mr./Ms, its and authorised official.

(Signature of the Authorised Signatory)
(Official-Seal)

APPENDIX-III**Format for Power of Attorney for signing of BID****(Refer Clause 2.1.8)**

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./ Ms(name) son/daughter/wife of and presently residing at....., who is presently employed with us/ the Lead Member of our Joint Venture and holding the position of , as our true and lawful attorney (hereinafter referred to as the Attorney) to do in our name and on our behalf, all such acts, deeds and things as are necessary r required in connection with or incidental to submission of our BID for Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram, Haryana the Project proposed or being developed by the Gurugram Metropolitan Development Authority/GMDA (the Authority/GMDA) including but not limited to signing and submission of all applications, BIDs and other documents and writings, participate in Pre-BID and other conferences and providing information/ responses to the Authority/GMDA, representing us in all matters before the Authority/GMDA, signing and execution of all contracts including the agreement and undertakings consequent to acceptance of our BID, and generally dealing with the Authority/GMDA in all matters in connection with or relating to or arising out of our BID for the said Project and/ or upon award thereof to us and/or until the entering into of the EPC Contract with the Authority/GMDA.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For

(Signature, name, designation and address)
of person authorized by Board Resolution
(in case of Firm/ Company)/ partner in case of

Partnership firm**Witnesses:**

- 1.
- 2.

Accepted

.....

(Signature)**(Name, Title and Address of the Attorney) (Notarised)****Person identified by me/ personally appeared before me/****Attested/ Authenticated*****(*Notary to specify as applicable)****(Signature Name and Address of the Notary)****Seal of the Notary****Registration No. of the Notary****Date:.....**

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

APPENDIX-IV**Format for Power of Attorney for Lead Member of Joint Venture**

(Refer Clause 2.1.9)

Whereas the Gurugram Metropolitan Development Authority (the Authority) has invited BIDs for the Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram, Haryana on EPC Mode (the Project).

Whereas,,, and (collectively the Joint Venture) being Members of the Joint Venture are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other BID documents including agreement in respect of the Project, and

Whereas, it is necessary for the Members of the Joint Venture to designate one of them as the Lead Member with all necessary power and Authority/GMDA to do for and on behalf of the Joint Venture, all acts, deeds and things as may be necessary in connection with the Joint Venture's BID for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s. having our registered office at ..., M/s. ...

having our registered office at, and having our registered office at, (hereinafter

collectively referred to as the Principals) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/S having its registered office at, being one of the Members of the Joint Venture, as the Lead Member and true and lawful attorney of the Joint Venture (hereinafter referred to as the Attorney). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Joint Venture and any one of us during the bidding process and, in the event the Joint Venture is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Joint Venture, all or any of such acts, deeds or things as are necessary or required or incidental to the pre - qualification of the Joint Venture and submission of its BID for the Project, including but not limited to signing and submission of all applications, BIDs and other documents and writings, participate in pre BID and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the BID of the Joint Venture and generally to represent the Joint Venture in all its dealings with the Authority/GMDA, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Joint Venture's BID for the in all respect Project and/ or upon award thereof till the EPC Contract is entered into with the Authority/GMDA & Compelled.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Joint Venture.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED
THIS POWER OF ATTORNEY ON THIS DAY OF 2.....

For (Signature) (Name & Title)	For (Signature) (Name & Title)	For (Signature) (Name & Title)
---	---	---

(Executants)

(To be executed by all the Members of the Joint Venture)

Witnesses:

- 1.
- 2.

Notes:

The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure. Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

APPENDIX V

Format for Joint Bidding Agreement for Joint Venture

(Refer Clause 2.1.9 & 2.1.15(g))

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of20...

AMONGST

1. {..... Limited, and having its registered office at } (hereinafter referred to as the First Part which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, having its registered office at } and (hereinafter referred to as the Second Part which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, and having its registered office at} (hereinafter referred to as the Third Part which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST, {SECOND and THIRD} PART are collectively referred to as the "Parties" and each is individually referred to as a "Party"

WHEREAS,

- (A) [The Gurugram Metropolitan Development Authority (GMDA) represented by C.E.O, (the Authority/GMDA) is engaged in the development of Metropolitan city and as part of that the Authority/GMDA has decided to undertake Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the Bids") by its Request for Proposal No. dated(the "RFP") for award of contract for Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram, Haryana (the Project) through an EPC Contract.
- (B) The Parties are interested in jointly bidding for the Project as members of a Joint Venture and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Joint Venture shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Application.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Joint Venture(Not-Allowed)

2.1 The Parties do hereby irrevocably constitute a Joint Venture (the Joint Venture) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Joint Venture and not individually and/ or through any other Joint Venture constituted for this Project, either directly or indirectly.

3. Covenants

The Parties hereby undertake that in the event the Joint Venture is declared the selected Bidder and awarded the Project, it shall enter into an EPC Contract with the Authority/GMDA for performing all its obligations as the Contractor in terms of the EPC Contract for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Joint Venture and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Joint Venture during the Bidding Process and until the Appointed Date under the EPC Contract;
- (b) Party of the Second Part shall be {the Member of the Joint Venture; and}
- (c) Party of the Third Part shall be {the Member of the Joint Venture.}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the EPC Contract, till such time as the completion of the Project is achieved under and in accordance with the EPC Contract.

6. Share of work in the Project

The Parties agree that the proportion of construction in the EPC Contract to be allocated among the members shall be as follows:

First Party:
Second Party:
{Third Party:}

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) **Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and Authority/GMDA to enter into this Agreement;**
- (b) **The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and Authority/GMDA to execute this Agreement on behalf of the Joint Venture Member is annexed to this Agreement, and will not, to the best of its knowledge:**
 - (i) **require any consent or approval not already obtained;**
 - (ii) **violate any Applicable Law presently in effect and having applicability to it;**
 - (iii) **violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;**
 - (iv) **violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or**
 - (v) **create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;**
- (c) **this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and**
- (d) **there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.**

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until Project completion (the "Defects Liability Period") is achieved under and in accordance with the EPC Contract, in case the Project is awarded to the Joint Venture. However, in case the Joint Venture is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Applicant is not pre-qualified or upon return of the Bid Security by the Authority/GMDA to the Bidder, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of {India}.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority/GMDA.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.SIGNED, For and on behalf of

LEAD MEMBER by:	SECOND PART	THIRD PART
(Signature)	(Signature)	(Signature)
(Name)	(Name)	(Name)
(Designation)	(Designation)	(Designation)
(Address)	(Address)	(Address)

In the presence of:

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and Authority/GMDA to execute this Agreement on behalf of the Joint Venture Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX VI

INTEGRITY PACT FORMAT

(To be executed on plan paper and submitted along with technical bid to be sign by the bidder and same signatory competent/ authorized to sign the relevant contract on behalf of GMDA) Preamble

- GMDA, in the fulfillment of the legal mandate under the Gurugram Metropolitan Development Authority (GMDA) Act, 2017, intends to invite proposals and bids and award contracts for procurement, works, goods and services.
- GMDA values integrity, probity and honesty promoting economic use of resources and fairness/transparency in its relations with its Bidder(s) and /or Contractor(s). In order to ensure integrity, transparency and trustworthiness in public procurement of goods and services, GMDA is proposing to adopt an 'Integrity Pact' with the prospective bidders/contractors, committing the persons/officials of both parties not to resort to corrupt practices in any aspect/stage of the contract or exercise any influence on any aspect of the contract. Only those bidders/contractors, who commit themselves to such a Pact with GMDA, would be considered competent to participate in the bidding process.
- The Integrity Pact program shall cover Request for Proposals/Tenders (RFP) for procurement, works, goods and services of value more than Rs. 1 crore.
- In order to achieve these goals, GMDA will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principles mentioned above.

Clause 1- Commitments of GMDA

1. GMDA commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - a. No employee of GMDA, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise or accept, for self or third person, any material or other benefit which the person is not legally entitled to.
 - b. GMDA will during the tender process treat all Bidder(s) with equity and reason. GMDA will in particular, before and during the tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the process or the contract execution.
 - c. GMDA will exclude from the process all known prejudiced persons.

Clause 2- Commitments of the Bidder(s) / Contractor(s)

1. The Bidder(s)/Contractor(s) shall also commit himself/herself/itself to take all measures necessary to prevent corruption. He/She/It commits himself to observe the following principles during his participation in the tender process and during the contract execution.
 - a. The Bidder(s)/contractor(s) will not, directly or through any other persons or firm, offer, promise or give to any of GMDA's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage during tender process or during the execution of the contract.
 - b. The Bidder(s)/Contractor(s) will not enter into any undisclosed agreement or understanding, whether formal or informal, whether collusive or otherwise, with other Bidders. This applies in particular to prices, specifications, certifications, subsidiary

- contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.
- c. The Bidder(s)/Contractor(s) will not commit any offence under any law; further the Bidder(s) /Contractors will not use improperly, for purposes of competition or personal gain, or pass on to others, any information or document provided by GMDA as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
 - d. In case of sub-contracting, GMDA Bidder(s)/Contractor(s) shall ensure the adoption and signing of the Integrity Pact by the sub-contractor.
 - e. The Bidder(s)/Contractor(s) will, when presenting his/her/its bid, disclose any and all payments he/she/it has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.

Clause 3: Disqualification from tender process and exclusion from future contracts

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of Clause 2, above or in any other form such as to put his reliability or credibility in question, GMDA is entitled to disqualify the Bidder(s)/Contractor(s) from the tender process and blacklist the Bidder(s)/Contractor(s) from participating in future tenders of GMDA for a period of three years.

Clause 4: Compensation for Damages

1. If GMDA has disqualified the Bidder(s) from the tender process prior to the award of the contract according to Clause 3, GMDA is entitled to demand and recover damages equivalent to Earnest Money Deposit/Bid Security.
2. If GMDA has terminated the contract according to Clause 3, or if GMDA is entitled to terminate the contract according to Clause 3, GMDA shall be entitled to demand and recover from the Bidder(s)/Contractor(s), liquidated damages of the Contract value or the amount equivalent to Performance Bank Guarantee.

Clause 5: Previous Transgression

1. The Bidder(s)/Contractor(s) declares that no previous transgressions occurred in the last three years with any other company in any country conforming to the anti-corruption approach or with any other public sector enterprise in India that could justify his exclusion from the tender process.
2. If the bidder makes incorrect statement on this subject, he can be disqualified from the tender process for action can be taken as per the procedure mentioned in "Guidelines on Banning of business dealings".

Clause 6: Equal treatment of all Bidders / Contractors/Subcontractors.

1. The Bidder(s)/Contractor(s) undertake(s) to obtain from all sub-contractors a commitment in conformity with this Integrity Pact.
2. GMDA will enter into agreements with identical conditions as this one with all bidders and contractors.
3. GMDA will disqualify from the tender process, bidders who do not sign this Integrity Pact or violate its provisions.

Clause 7: Criminal charges against violating bidders/contractors.

1. If the GMDA obtains knowledge of bidder/contractor or sub-contractor or of an employee or representative or an associate of the bidder/contractor, which constitutes corruption or if the GMDA has substantive suspicion in this regard, GMDA shall take action accordingly.

Clause 8: Independent External Monitor

1. GMDA shall appoint a person of high integrity and proven reputation as Independent External Monitor for monitoring this Pact. The appointment shall be for a period of three years. The task of the Independent External Monitor is to review independently and objectively, whether and to what extent, GMDA and the Bidder(s)/Contractor(s) comply with the obligations under this agreement.
2. The Monitor is not subject to instructions by the representatives of the both sides and shall perform his/her functions neutrally and independently. The reports of the Independent External Monitor shall be submitted to the Chief Executive Officer, Gurugram Metropolitan Development Authority (GMDA). In case, the Independent External Monitor so desires, the report may be submitted directly to the Chairperson of GMDA.
3. The mandate of the Independent External Monitor shall extend to the principles and commitments contained in the Preamble and Clauses 1 and 2. It shall not extend to procedural completeness or procedural shortcomings except in so far as it impinges upon the principles and commitments contained in the Preamble and Clauses 1 and 2.
4. The Bidder(s)/Contractor(s) accepts that the Independent External Monitor has the right to access without restriction to all project documentation of GMDA including that provided by the Contractor. The Contractor will also grant the Independent External Monitor, upon his/her request, unrestricted and unconditional access to his project documentation. The same is applicable to sub-contractors. The Independent External Monitor is under obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality.
5. Either on receipt of a complaint or otherwise, as soon as the Independent External Monitor notices, or believes to notice, a violation of this agreement, he/she will so inform GMDA and request GMDA to take corrective action. The Independent External Monitor can in this regard submit non-binding recommendations. Every report or recommendation of the Independent External Monitor after it has been submitted to the Chief Executive Officer or Chairperson of GMDA, as the case may be, shall be placed in the public domain on the website of GMDA.
6. The Independent External Monitor shall not receive any remuneration but shall be paid travelling allowance or official conveyance in lieu thereof, as is eligible to be received by the Chief Secretary to the State Government.

Clause 9: Integrity Pact Duration

1. This Integrity Pact begins when both Parties have legally signed it. It shall expire for the Contractor(s), 12 months after the last payment under the contract, and for other unsuccessful Bidder(s), 3 months after the contract has been awarded.
2. If any complaint is made/lodged by either Party during this time, the same shall be binding and continue to remain valid notwithstanding the end of the period mentioned in sub-clause (1) above.

Clause 10: Other Provisions

1. If the Bidder(s)/Contractor(s) is/are a partnership or a consortium, the Integrity Pact must be signed by all members of the partnership or consortium.
2. Should one or several provisions of this Integrity Pact turn out to be invalid, the remainder of this Integrity Pact shall continue to remain valid.
3. Information relating to procurements/contracts covered under the Integrity Pact and its progress would be shared with the Independent External Monitor on a monthly basis.

In witness whereof the parties have signed and executed the part and at the place and date first done mentioned in the presence of following witness.

For and on behalf of GMDA
Office seal
Place
Date

For and on behalf of bidder

Witness 1 (name and address)

Witness 2 (name and address)

AGREEMENT

FOR

**CONSTRUCTION OF UNDERPASS, FLYOVERS
(OVERPASS), FOBS AND SURFACE ROADS
AROUND HUDA CITY CENTER METRO STATION IN
GURUGRAM, HARYANA**

ON

**ENGINEERING, PROCUREMENT &
CONSTRUCTION (EPC) MODE**

**GURUGRAM METROPOLITAN
DEVELOPMENT AUTHORITY (GMDA)**

NOVEMBER 2018

Contents

Overview of the Framework

PART I Preliminary 9

Recitals 10

1	Definitions and Interpretation	12
1.1	Definitions	12
1.2	Interpretation	12
1.3	Measurements and arithmetic conventions	14
1.4	Priority of agreements and errors/discrepancies	14
1.5	Joint and several liability	15

PART II Scope of the Project 16

2	Scope of the Project	17
2.1	Scope of the Project	17

3	Obligations of the Contractor	18
3.1	Obligations of the Contractor	18
3.2	Obligations relating to sub-contracts and any other agreements	19
3.3	Employment of foreign nationals	19
3.4	Contractor's personnel	20
3.5	Advertisement on Project	20
3.6	Contractor's care of the Works	20
3.7	Electricity, water and other services	20
3.8	Unforeseeable difficulties	20

4	Obligations of the Authority	22
4.1	Obligations of the Authority	22
4.2	Maintenance obligations prior to the Appointed Date	23
4.3	Environmental Clearances	23

5	Representations and Warranties	24
5.1	Representations and warranties of the Contractor	24
5.2	Representations and warranties of the Authority	25
5.3	Disclosure	26

6	Disclaimer	27
6.1	Disclaimer	27

PART III

Construction and Main	28
tenance	
7 Performance Security	29
7.1 Performance Security	29
7.2 Extension of Performance Security	30
7.3 Appropriation of Performance Security	30
7.4 Release of Performance Security	30
7.5 Retention Money	31
8 Right of Way	32
8.1 The Site	32
8.2 Procurement of the Site	32
8.3 Damages for delay in handing over the Site	33
8.4 Site to be free from Encumbrances	34
8.5 Protection of Site from encroachments	34
8.6 Special/temporary Right of Way	34
8.7 Access to the Authority and the Authority's Engineer	35
8.8 Geological and archaeological finds	35
9 Utilities and Trees	36
9.1 Existing utilities and roads	36
9.2 Shifting of obstructing utilities	36
9.3 New utilities	36
9.4 Felling of trees	37
10 Design and Construction of the Project	38
10.1 Obligations prior to commencement of Works	38
10.2 Design and Drawings	39
10.3 Construction of the Project	41
10.4 Maintenance during Construction Period	42
10.5 Extension of time for completion	42
10.6 Incomplete Works	44
10.7 Maintenance Manual	44
11 Quality Assurance, Monitoring and Supervision	45
11.1 Quality of Materials and workmanship	45
11.2 Quality control system	45
11.3 Methodology	45
11.4 Inspection and technical audit by the Authority	46
11.5 External technical audit	46
11.6 Inspection of construction records	46
11.7 Monthly progress reports	46
11.8 Inspection	46
11.9 Samples	47
11.10 Tests	47
11.11 Examination of work before covering up	47

11.12	Rejection	47
11.13	Remedial work	48
11.14	Delays during construction	48
11.15	Quality control records and Documents	48
11.16	Video recording	49
11.17	Suspension of unsafe Construction Works	49
12	Completion Certificate	50
12.1	Tests on completion	50
12.2	Provisional Certificate	50
12.3	Completion of remaining Works	51
12.4	Completion Certificate	51
12.5	Rescheduling of Tests	52
13	Change of Scope	53
13.1	Change of Scope	53
13.2	Procedure for Change of Scope	53
13.3	Payment for Change of Scope	55
13.4	Restrictions on Change of Scope	55
13.5	Power of the Authority to undertake works	55
14	Maintenance	56
14.1	Maintenance obligations of the Contractor	56
14.2	Maintenance Requirements	57
14.3	Maintenance Programme	57
14.4	Safety, vehicle breakdowns and accidents	57
14.5	Lane closure	57
14.6	Reduction of payment for non-performance of Maintenance obligations	58
14.7	Authority's right to take remedial measures	58
14.8	Restoration of loss or damage to Project	58
14.9	Overriding powers of the Authority	58
15	Supervision and Monitoring during Maintenance	60
15.1	Inspection by the Contractor	60
15.2	Inspection and payments	60
15.3	Tests	60
15.4	Reports of unusual occurrence	61
16	Traffic Regulation	62
16.1	Traffic regulation by the Contractor	62
17	Defects Liability	63
17.1	Defects Liability Period	63

17.2	Remedying Defects	63
17.3	Cost of remedying Defects	63
17.4	Contractor's failure to rectify Defects	63
17.5	Contractor to search cause	64
17.6	Extension of Defects Liability Period	64
18	Authority's Engineer	65
18.1	Appointment of the Authority's Engineer	65
18.2	Duties and authority of the Authority's Engineer	65
18.3	Delegation by the Authority's Engineer	65
18.4	Instructions of the Authority's Engineer	66
18.5	Determination by the Authority's Engineer	66
18.6	Remuneration of the Authority's Engineer	66
18.7	Termination of the Authority's Engineer	67
	PART IV	
	Financial Covenants	
19	Payments	69
19.1	Contract Price	69
19.2	Advance Payment	69
19.3	Procedure for estimating the payment for the Works	71
19.4	Stage Payment Statement for Works	71
19.5	Stage Payment for Works	71
19.6	Monthly Maintenance Statement of the Project	72
19.7	Payment for Maintenance of the Project	72
19.8	Payment of Damages	73
19.9	Time of payment and interest	73
19.10	Price adjustment for the Works	73
19.11	Restrictions on price adjustment	76
19.12	Price adjustment for Maintenance of Project	76
19.13	Final Payment Statement	77
19.14	Discharge	77
19.15	Final Payment Certificate	78
19.16	Final payment statement for Maintenance	78
19.17	Change in law	78
19.18	Correction of Interim Payment Certificates	79
19.19	Authority's claims	79
19.20	Bonus for early completion	79
20	Insurance	80
20.1	Insurance for Works and Maintenance	80
20.2	Notice to the Authority	81
20.3	Evidence of Insurance Cover	81
20.4	Remedy for failure to insure	81
20.5	Waiver of subrogation	81
20.6	Contractor's waiver	82
20.7	Cross liabilities	82

20.8	Accident or injury to workmen	82
20.9	Insurance against accident to workmen	82
20.10	Application of insurance proceeds	83
20.11	Compliance with policy conditions	83
 Part V		
	Force Majeure and Termination	84
21	Force Majeure	85
21.1	Force Majeure	85
21.2	Non-Political Event	85
21.3	Indirect Political Event	85
21.4	Political Event	86
21.5	Duty to report Force Majeure Event	86
21.6	Effect of Force Majeure Event on the Agreement	87
21.7	Termination Notice for Force Majeure Event	88
21.8	Termination Payment for Force Majeure Event	88
21.9	Dispute resolution	88
21.10	Excuse from performance of obligations	88
22	Suspension of Contractor's Rights	90
22.1	Suspension upon Contractor Default	90
22.2	Authority to act on behalf of the Contractor	90
22.3	Revocation of Suspension	90
22.4	Termination	91
23	Termination	92
23.1	Termination for Contractor Default	92
23.2	Termination for Authority Default	93
23.3	Termination for Authority's convenience	94
23.4	Requirements after Termination	94
23.5	Valuation of Unpaid Works	95
23.6	Termination Payment	95
23.7	Other rights and obligations of the Parties	96
23.8	Survival of rights	96
 PART VI		
	Other Provisions	97
24	Assignment and Charges	98
24.1	Restrictions on assignment and charges	98
24.2	Hypothecation of Materials or Plant	98
25	Liability and Indemnity	98
25.1	General indemnity	99
25.2	Indemnity by the Contractor	99
25.3	Notice and contest of claims	99
25.4	Defence of claims	100

25.5	No consequential claims	101
25.6	Survival on Termination	101
26	Dispute Resolution	102
26.1	Dispute Resolution	102
26.2	Conciliation	102
26.3	Arbitration	102
26.4	Adjudication by Regulatory Authority, Tribunal or Commission	103
27	Miscellaneous	104
27.1	Governing law and jurisdiction	104
27.2	Waiver of immunity	104
27.3	Delayed payments	104
27.4	Waiver	104
27.5	Liability for review of Documents and Drawings	105
27.6	Exclusion of implied warranties etc.	105
27.7	Survival	105
27.8	Entire Agreement	105
27.9	Severability	105
27.10	No partnership	106
27.11	Third Parties	106
27.12	Successors and assigns	106
27.13	Notices	106
27.14	Language	107
27.15	Counterparts	107
27.16	Confidentiality	107
27.17	Copyright and Intellectual Property rights	107
27.18	Limitation of Liability	108
28	Definitions	109
28.1	Definitions	109
	Schedules	117
A	Site of the Project	118
1	The Site	118
	Annex-I: Site	119
	Annex-II: Dates for providing Right of Way	124
	Annex-III: Alignment Plans	125
	Annex-IV: Environmental Clearances	126
B	Development of the Project	127
	1. Development of the Project	127
	2. Rehabilitation and augmentation	127
	3. Specifications and Standards	127
	Annex-I: Description of project	128

C	Project Facilities	142
	1. Project Facilities	142
	2. Description of Project Facilities	142
		145
D	Specifications and Standards	
	1. Construction	145
	2. Design Standards	145
	Annex-I: Specifications and Standards for Construction	146
	1. Specification and Standard	146
	2. Deviations from the Specifications and Standard	146
E	Maintenance Requirements	147
1	Maintenance Requirements	147
2	Repair/rectification of Defects and deficiencies	147
3	Other Defects and deficiencies	147
4	Extension of time limit	147
5	Emergency repairs/restoration	147
6	Daily inspection by the Contractor	148
7	Pre-monsoon Inspection/Post-monsoon Inspection	148
8	Repairs on account of natural calamities	148
	Annex-I: Repair/rectification of Defects and deficiencies	149
F	Applicable Permits	152
1	Applicable Permits	152
G	Annex-I: Form of Guarantee for Performance Security	153
	Annex-II: Form of Guarantee for Withdrawal of Retention Money	156
	Annex-III: Form of Guarantee for Advance payment	159
H	Contract Price Weightages	162
I	Drawings	164
1	Drawings	164
2	Additional drawings	164
	Annex-I: List of Drawings	165
J	Project Completion Schedule	166
1	Project Completion Schedule	166
2	Project Milestone-I	166
3	Project Milestone-II	166
5	Project Milestone-III	166
6	Scheduled Completion Date	167
7	Extension of time	168
K	Tests on Completion	168
1	Schedule for Tests	168
2	Tests	168
3	Agency for conducting Tests	169

4	Completion Certificate	169
L	Provisional/ Completion Certificate	170/171
M	Payment reduction for non-compliance	172
1	Payment reduction for non-compliance with the Maintenance Requirements	172
2	Percentage reductions in lump sum payments	172
N	Selection of Authority's Engineer	174
	1. Selection of Authority's Engineer	174
2	Terms of Reference	174
3	Appointment of Government entity as Authority's Engineer	174
	Annex-I: Terms of Reference for Authority's Engineer	175
O	Forms of Payment Statements	181
1	Stage Payment Statement for Works	181
2	Monthly Maintenance Payment Statement	181
3	Contractor's Claim for Damages	181
P	Insurance	182
1	Insurance during Construction Period	182
2	Insurance for Contractor's Defects Liability	182
3	Insurance against injury to persons and damage to property	182
4	Insurance to be in joint names	183

Part I

Preliminary

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

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

BETWEEN

The **GMDA (Gurugram Metropolitan Development Authority)** Gurugram Haryana in India, P l o t No. 44 Sec-32 Gurugram (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) represented by CEO, of One Part;

AND

{-----}, means the selected bidder 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.

Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro station in Gurugram, Haryana

WHEREAS:

- (A) Gurugram Metropolitan Development Authority (GMDA) was entrusted the work of Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro station in Gurugram, Haryana
- (B) The AUTHORITY/GMDA had resolved to improve and augment the existing 3-Arm and 4-Arm junctions and segregated pedestrian movement with construction of Underpass, Flyovers, FOBS and widening/construction of surface roads at HUDA City Center Metro Station in Gurugram in state of Haryana on Engineering, Procurement, Construction (“EPC”) basis in accordance with the terms and conditions to be set forth in an agreement to be entered into.
- (C) The AUTHORITY/GMDA had accordingly invited proposals by its Request for Proposal (RFP) for short listing of bidders for EPC of the above referred project and had shortlisted certain bidders including, inter alia, the selected bidder.
- (D) The AUTHORITY/GMDA had prescribed the technical and commercial terms and conditions, and invited bids (the “Request for Proposals” or “RFP”) from the bidders for undertaking the Project.
- (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 at the contract price specified hereinafter, requiring the selected bidder to inter alia:
 - i. deliver to AUTHORITY/GMDA a legal opinion from the legal counsel of the selected bidder with respect to the Authority/GMDA 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

ii. Execute this Agreement within 15 (fifteen) days of the date of issue of LOA.

(F) 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/GMDA 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:

The following documents attached hereto shall be deemed to form an integral part of this Contract:

(a) Volume-I : The Agreement; Corrigendum to the Agreement; Addendum, if any, to RFP; Letter comprising the financial Bid; Letter of Acceptance; Power of Attorney; Joint Venture Agreement, if any; Legal opinion; Any other document to be specified

(b) Volume-II: Technical Bid

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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, 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, upgradation 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 [Delhi] 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 “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause shall not operate so as to increase liabilities or obligations of the Authority/GMDA hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorization, 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 authorized 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;
- (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 or referred to in 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 or referred to herein 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. this Agreement at (a) above shall prevail over the agreements and documents at (b).

1.4.2 Subject to the provisions of 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.

1.5 Joint and several liability (JOINT-VENTURE NOT ALLOWED):

1.5.1 If the Contractor has formed a Consortium 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 Consortium 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 Consortium, the Lead Member shall represent all the members of the Consortium 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 Consortium 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 Consortium.}

Part II

Scope of Project

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- (a) construction of the Project structures and Roads 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) maintenance of the Project structures and Roads in accordance with the provisions of this Agreement and in conformity with the requirements set forth in Schedule-E; and
- (c) performance and fulfillment of all other obligations of the Contractor in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.

ARTICLE 3

OBLIGATIONS OF THE CONTRACTOR

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, and maintenance of the Project 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 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 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** The Contractor shall remedy any and all loss or damage to the Project during the Maintenance Period at the Contractor's cost, including those stated in Clause 14.1.2, save and except to the extent that any such loss or damage shall have arisen on account of any default or neglect of the Authority/GMDA or on account of a Force Majeure Event.
- 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, licenses, agreements and permissions for Materials, methods, processes and systems used or incorporated into the Project;
 - (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/GMDA 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 authorized personnel shall have the right of access to all these documents at all reasonable times;

- (i) cooperate with other contractors employed by the Authority/GMDA 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/GMDA or of others.

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

3.2 Obligations relating to sub-contracts and any other agreements

3.2.1 The Contractor, whether Consortium/Joint Venture or sole, shall not subcontract any Works in more than 49% (forty nine per cent) of the total length of the Project and shall carry out Works directly under its own supervision and through its own personnel and equipment in at least 51% (fifty one per cent) of the total length of the Project . 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. For the avoidance of doubt, the Parties agree that the Contractor may sub-divide the aforesaid length of 51% (fifty one per cent) in no more than 2 (two) sections of the Project . The Parties further agree that all obligations and liabilities under this Agreement for the entire Project shall at all times remain with the Contractor.

3.2.2. In the event any sub-contract for Works, or the aggregate of such subcontracts with any Sub-contractor, exceeds 5% (five percent) of the Contract Price, the Contractor shall communicate the name and particulars, including the relevant experience of the sub-contractor, to the Authority/GMDA prior to entering into any such sub-contract. The Authority/GMDA 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 subcontractor 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/GMDA 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.

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 subcontractors 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 Subcontractors 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. The Contractor will try to hire at least 10% trained workmen as per NSQF. If necessary the requisite workmen may be got trained through authorized training centres of Directorate General of Training (DGT). The Contractor will organize training at project site/sites for the trainees as and when required as per the training schedule finalized in consultation with the training centres, and the Project Director. The trainees are to be paid stipend (subject to maximum limit of Rs. 15,000/- per person) on the basis of minimum wages to compensate for loss of income during the training period. The expenditure on training and stipend to be paid to the trainees shall be borne by Authority/GMDA.

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 Subcontractor'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

The Project 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/GMDA.

3.7 Electricity, water and other services

The Contractor shall be responsible for procuring of all power, water and other services that it may require.

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) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (c) 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/GMDA 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/GMDA shall be responsible for the correctness of the Scope of the Project, Project Facilities, Specifications and Standards and the criteria for testing of the completed Works.

4.1.3 The Authority/GMDA shall provide to the Contractor:

- (a) Upon receiving the Performance Security under Clause 7.1.1, the Right of Way in accordance with the provisions of Clauses 8.2 and 8.3, within a period of 30 (thirty) days from the date of this Agreement, on no less than 90% (ninety per cent) of the total length of the Project ;
- (b) Approval of the general arrangement drawings (the "GAD") from railway authorities to enable the Contractor to construct road over-bridges/ under-bridges at level crossings on the Project in accordance with the Specifications and Standards, and subject to the terms and conditions specified in such approval, within a period of 60 (sixty) days from the Appointed Date, and reimbursement of all the costs and expenses paid by the Contractor to the railway authorities for and in respect of the road over-bridges/under bridges; and
- (c) All environmental clearances as required under Clause 4.3.

4.1.4 Delay in providing the Right of Way or approval of GAD by railway authorities, as the case may be, in accordance with the provisions of Clause 4.1.3 shall entitle the Contractor to Damages in a sum calculated in accordance with the provisions of Clause 8.3 of this Agreement and Time Extension in accordance with the provisions of Clause 10.5 of this Agreement. For the avoidance of doubt, the Parties agree that the Damages for delay in approval of GAD by the railway authorities for a particular road over-bridge/under-bridge shall be deemed to be equal to the Damages payable under the provisions of Clause 8.3 for delay in providing Right of Way for a length of 2 (two) kilometer for each such road over-bridge/under-bridge.

4.1.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree that the aggregate Damages payable under Clauses 4.1.4, 8.3 and 9.2 shall not exceed 1% (one per cent) of the Contract Price. For the avoidance of doubt, the Damages payable by the Authority/GMDA under the aforesaid Clauses shall not be additive if they arise concurrently from more than one cause but relate to the same part of the Project.

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/GMDA and both parties further agree this as final cure against delays of the Authority/GMDA.

4.1.6 The Authority/GMDA 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 favorable 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 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 Subcontractors 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 Subcontractors.

4.2 Maintenance obligations prior to the Appointed Date

The Authority/GMDA shall, prior to the Appointed Date, maintain the Project, at its own cost and expense, so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 10 (ten) days prior to the last date for submission of the Bid, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof. For the avoidance of doubt, the Authority/GMDA shall undertake only routine maintenance prior to the Appointed Date, and it shall undertake special repairs only in the event of excessive deterioration or damage caused due to unforeseen events such as floods or earthquake.

4.3 Environmental Clearances

The Authority/GMDA represents and warrants that the environmental clearances required for construction of the Project shall be procured by the Authority/GMDA prior to the date of issue of LOA. For the avoidance of doubt, the present status of environmental clearances is specified in Schedule-A.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties of the Contractor

The Contractor represents and warrants to the Authority/GMDA that:

- (a) It is duly organized 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 authorize 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/GMDA 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/GMDA in connection therewith;
- (l) All information provided by the {selected bidder/ members of the Consortium} in response to the Request for Qualification and 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/GMDA and any Subcontractors, designers, consultants or agents of the Contractor.

5.2 Representations and warranties of the Authority

The Authority/GMDA 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;
- (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; and
- (h) it has procured Right of Way and environment clearances such that the Contractor can commence construction forthwith on 90% (ninety per cent) of the total length of the Project .

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 Qualification, 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, traffic volumes, suitability and availability of access routes to the Site and all information provided by the Authority/GMDA 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/GMDA 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/GMDA 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/GMDA 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/GMDA shall not be liable in any manner for such risks or the consequences thereof.

Part III

Construction and Maintenance

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/GMDA, 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 percent) 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/GMDA shall release the Bid Security to the Contractor.

The Contractor shall along with the Performance Security provide to the Authority an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs.

crore(Rupees crore) in the form set forth in Schedule-G (the "Additional Performance Security"), to be modified, mutatis mutandis, for this purpose as security to the Authority if the Bid Price offered by the Contractor is lower by more than 10% with respect to the Estimated Project Cost. Additional Performance Security shall be calculated as under:

- (i) If the bid price offered by the Contractor is lower than 10% but upto 20% of the Estimated Project Cost, then the Additional Performance Security shall be calculated @20% of the difference in the (a) Estimated Project Cost (as mentioned in RFP)-10% of the Estimated Project Cost and (b) the Bid Price offered by the selected Bidder.
- (ii) If the bid price offered by the Contractor is lower than 20% of the Estimated Project Cost, then the Additional Performance Security shall be calculated @30% of the difference in the (a) Estimated Project Cost (as mentioned in RFP)-10% of the Estimated Project Cost and (b) the Bid Price offered by the selected Bidder.
- (iii) The Additional Performance Security shall be valid until 28 (twenty eight) days after the issue of Completion Certificate under Article 12 of this Agreement.
- (iv) The Additional Performance Security shall not be treated as part of Performance Security.

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/GMDA, in accordance with the provisions of Clause 7.1.3, the Authority/GMDA 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 the 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/GMDA.

7.2 Extension of Performance Security

The Contractor may initially provide the Performance Security for a period of 2 (two) 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/GMDA 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/GMDA 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/GMDA 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/GMDA shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 23.

7.3.3 The Additional Performance Security shall be encashed, in case the Contractor cannot achieve the Milestones –II/III/IV ... within the prescribed period as per this Agreement due to the fault of the Contractor.

7.4 Release of Performance Security

7.4.1 The Authority/GMDA 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/GMDA shall not be obliged to release the Performance Security until all Defects identified during the Defects Liability Period have been rectified.

7.4.2 The Authority/GMDA shall return the Additional Performance Security to the Contractor within 28 (twenty eight) days from the date of issue of Completion Certificate under Article 12 of this Agreement.

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

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

8.2 Procurement of the Site

- 8.2.1** The Authority/GMDA Representative and the Contractor shall, within 30 (thirty) days of the date of this Agreement, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Subject to the provisions of Clause 8.2.3, such memorandum shall have appended thereto an appendix (the “Appendix”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been given to the Contractor. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall be deemed to constitute a valid evidence of giving the Right of Way to the Contractor for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

Whenever the Authority/GMDA is ready to hand over any part or parts of the Site included in the Appendix, it shall inform the Contractor, by notice, the proposed date and time such of handing over. The Authority/GMDA Representative and the Contractor shall, on the date so notified, inspect the specified parts of the Site, and prepare a memorandum containing an inventory of the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site so handed over. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall be deemed to constitute a valid evidence of giving the relevant Right of Way to the Contractor.

- 8.2.2** The Authority/GMDA shall provide the Right of Way to the Contractor in respect of all land included in the Appendix by the date specified in Schedule-A for those parts of the Site referred to therein, or no later than 90 (ninety) days of the Appointed Date for those parts of the Site which have not been specified in Schedule-A, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Contractor, it shall pay to the Contractor, Damages in a sum calculated in accordance with Clause 8.3.

- 8.2.3** Notwithstanding anything to the contrary contained in this Clause 8.2, the Authority/GMDA shall specify the parts of the Site, if any, for which Right of Way shall be provided to the Contractor on the dates specified in Schedule-A. Such parts shall also be included in the Appendix prepared in pursuance of Clause 8.2.1. For the avoidance of doubt, the Parties expressly agree that the Appendix shall in no event contain sections of

the Project the cumulative length of which exceeds 10% (ten per cent) of the total length of the Project.

8.3 Damages for delay in handing over the Site

- 8.3.1** In the event the Right of Way to any part of the Site is not provided by the Authority/GMDA on or before the date(s) specified in Clause 8.2 for any reason other than Force Majeure or breach of this Agreement by the Contractor, the Authority/GMDA shall pay Damages to the Contractor in a sum calculated in accordance with the following formula for and in respect of those parts of the Site to which the Right of Way has not been provided:

Amount of Damages in Rs. per day per metre = $0.05 \times C \times 1/L \times 1/N$

Where

C = the Contract Price; L = length of the Project in metres; and

N = Completion period in days (Appointed Date to Scheduled Completion Date)

In the event that any Damages are due and payable to the Contractor under the provisions of this Clause 8.3.1 for delay in providing the Right of Way, the Contractor shall, subject to the provisions of Clause 10.5, be entitled to Time Extension equal to the period for which the Damages have become due and payable under this Clause 8.3.1, save and except that:

- (a) If any delays involve time overlaps, the overlaps shall not be additive; and**
- (b) Such Time Extension shall be restricted only to the Works which are affected by the delay in providing the Right of Way.**

For the avoidance of doubt, the Parties expressly agree that the Damages specified hereunder and the Time Extension specified in Clause 10.5 shall be restricted only to failure of the Authority/GMDA to provide the Right of Way for and in respect of the width of the roadway, its embankment and a parallel working strip at least 3 (three) metres wide.

- 8.3.2** Notwithstanding anything to the contrary contained in this Agreement, the Contractor expressly agrees that Works on all parts of the Site for which Right of Way is granted within 90 (ninety) days of the Appointed Date, or with respect to the parts of the Site provided in Schedule-A, no later than the date(s) specified therein, as the case may be, shall be completed before the Scheduled Completion Date and shall not qualify for any Time Extension under the provisions of Clause 8.3.1.

- 8.3.3** Notwithstanding anything to the contrary contained in this Agreement, the Authority/GMDA may at any time withdraw any Works forming part of this Agreement, subject to such Works not exceeding an aggregate value, such value to be determined in accordance with Schedule-H, equal to 10 (ten) percent of the Contract Price.

Provided that if any Works cannot be undertaken within the municipal limits of a town or within any area falling in a reserved forest or wildlife sanctuary, as the case may be, because the requisite clearances or approvals for commencing construction of Works therein have not been given within 240 (two hundred and forty) days of the Appointed date, the affected Works shall be deemed to be withdrawn under the provisions of this Clause 8.3.3 unless

the Parties agree to the contrary, and such Works shall not be computed for the purposes of the aforesaid ceiling of 10% (ten per cent) hereunder.

- 8.3.4** In the event of withdrawal of Works under Clause 8.3.3, the Contract Price shall be reduced by an amount equal to 90 (ninety) per cent of the value of the Works withdrawn and the Contractor shall not be entitled to any other compensation or Damages for the withdrawal of Works.

Provided that if any Works are withdrawn after commencement of the Construction of such works, the Authority/GMDA shall pay to the Contractor 110% (one hundred and ten per cent) of the fair value of the work done, as assessed by the Authority's Engineer:

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/GMDA to the Contractor pursuant hereto free from all Encumbrances and occupations and without the Contractor being required to make any payment to the Authority/GMDA 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/GMDA 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 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/GMDA 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/GMDA has un-restricted access to the Site during any emergency situation, 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/GMDA 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/GMDA 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/GMDA. It is also agreed that the Authority/GMDA 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/GMDA of the controlling body of that road, right of way or utility.

9.2 Shifting of obstructing utilities

9.2.1 The Contractor shall, in accordance with Applicable Laws and with assistance of the Authority/GMDA, 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 or Maintenance of the Project in accordance with this Agreement. The actual cost of such shifting shall be paid by the Contractor and reimbursed by the Authority/GMDA 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/GMDA, 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.

9.2.2 Any Utility crossing the box portion of underpass will be required to be temporarily supported during the construction as per instruction and approval of GMDA/Authority

9.3 New utilities

9.3.1 The Contractor shall allow, subject to such conditions as the Authority/GMDA 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 in accordance with this Agreement and any damage caused by such use shall be restored forthwith at the cost of the Authority/GMDA.

9.3.2 The Authority/GMDA 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 The Authority/GMDA may by notice require the Contractor to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity to the Project, whereupon the connecting portion thereof that falls within the Site shall be constructed by the Contractor on payment of the cost. The cost to be paid by the Authority/GMDA to the Contractor shall be determined by the Authority's Engineer. For the avoidance of doubt, in the event such road is to be constructed for the benefit of any

entity, the Authority/GMDA may require such entity to make an advance deposit with the Contractor or the Authority/GMDA, as the case may be, of an amount equal to the estimated cost as determined by the Authority's Engineer and such advance shall be adjusted against the cost of construction as determined by the Authority's Engineer hereunder.

As regard to shifting of storm water drain and other open channels, the same shall be covered in the scope of work mentioned in the schedule –B as part of this EPC contract.

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/GMDA shall assist the Contractor in obtaining the Applicable Permits for felling of trees to be identified by the Authority/GMDA for this purpose if and only if such trees cause a Material Adverse Effect on the construction or maintenance of the Project . The cost of such felling shall be borne by the Authority/GMDA 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/GMDA and shall be disposed in such manner and subject to such conditions as the Authority/GMDA 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/GMDA within the time specified in the Agreement.

ARTICLE 10

DESIGN AND CONSTRUCTION OF THE PROJECT

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 authorized to deal with the Authority/GMDA 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 under and in accordance with the Applicable Laws and Applicable Permits.

10.1.2 The Authority/GMDA shall, within 30 (thirty) 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/GMDA and the Authority's Engineer a programme (the "Programme") for the Works, developed using networking techniques giving the following details:

Part I: Contractor's organization for the Project, the general methods and arrangements for design and construction, environmental management plan, Quality Assurance Plan including design quality plan, traffic management and safety plan covering safety of users and workers during construction, Contractor's key personnel and equipment.

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.

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.

10.1.5 The Contractor shall appoint a safety consultant (the "Safety Consultant") to carry out safety audit at the design stage of the Project in accordance with the Applicable Laws and Good Industry Practice. The Safety Consultant shall be appointed after proposing to the Authority/GMDA a panel of three names of qualified and experienced firms from whom the Authority/GMDA may choose one to be the Safety Consultant. Provided, however, that if the panel is not acceptable to the Authority/GMDA and the reasons for the same are furnished to the Contractor, the Contractor shall propose to the Authority/GMDA a revised panel of three names from the firms empanelled as safety consultants by the [Ministry of Road Transport and Highways] for obtaining the consent of the Authority/GMDA. The Contractor shall also obtain the consent of the Authority/GMDA for the key personnel of the Safety Consultant who shall have adequate experience and qualifications in safety audit of the highway projects. The Authority/GMDA 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 Safety Consultant.

10.1.6 The safety audit pursuant to Clause 10.1.5 shall be carried out by the Safety Consultant in respect of all such design details that have a bearing on safety of Users as well as pedestrians and animals involved in or associated with accidents. The recommendations of the Safety Consultant shall be incorporated in the design of the Project and the Contractor shall forward to the Authority's Engineer a certificate to this effect together with the recommendations of the Safety Consultant. In the event that any works required by the Safety Consultant shall fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Contractor shall make a report thereon and seek the instructions of the Authority/GMDA for Change in Scope. For the avoidance of doubt, the Safety Consultant to be engaged by the Contractor shall be independent of the design and implementation team of the Contractor.

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 Authority's Engineer.

10.2.2 The Contractor shall appoint a proof check consultant (the "Proof Consultant") after proposing to the Authority/GMDA for their approval from a panel of Consultants listed as Annexure-1. The Contractor shall also obtain the consent of the Authority/GMDA for two key personnel of the Proof Consultant who shall have adequate experience and qualifications in highways and bridges respectively.

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 as set forth in Schedule-I, the following shall apply:

- (a) The Contractor shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of the design and Drawings, duly certified by the Proof Consultant, to the Authority's Engineer for review. Provided, however, that in respect of Major Bridges and Structures, the Authority'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 upto 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/GMDA 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/GMDA; 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 Authority/GMDA and the Authority's Engineer a complete set of as built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

10.3 Construction of the Project

10.3.1 The Contractor shall construct the Project 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 (Three hundred and sixty-five) 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 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 percent) 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/GMDA 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/GMDA 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/GMDA 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/GMDA 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 percent) of the Contract Price.

10.4 Maintenance during Construction Period

10.4.1 During the Construction Period, the Contractor shall maintain, at its cost, the existing lane(s) of the Project so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition 10 (ten) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Contractor may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Contractor only with the prior written approval of the Authority's Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Contractor shall at all times be responsible for ensuring safe operation of the Project. It is further agreed that in the event the Project includes construction of a bypass or tunnel and realignment of the existing carriageway, the Contractor shall maintain the existing highway in such sections until the new Works are open to traffic.

10.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event of default by the Contractor in discharging the obligations specified in Clause 10.4.1 above, the Authority/GMDA shall get these maintenance works done as recommended by the Authority's Engineer to avoid public inconvenience at the risk and cost of the Contractor in order to keep the road in traffic worthy condition.

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/GMDA, 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/GMDA, 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/GMDA 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 anytime Extension granted under this Agreement, the Contractor shall endeavour to complete the balance work expeditiously and shall pay Damages to the Authority/GMDA 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 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) Organization, 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/GMDA or any representative authorised by the Authority/GMDA in this behalf may inspect and review the progress and quality of the construction of Project 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/GMDA 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/GMDA, 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/GMDA 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/GMDA 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/GMDA 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 Authority's Engineer may require.

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) percent 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/GMDA to incur any additional costs, such cost shall be recoverable by the Authority/GMDA from the Contractor; and may be deducted by the Authority/GMDA 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, 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/GMDA for undertaking such work shall, without prejudice to the rights of the Authority/GMDA to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Authority/GMDA 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 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/GMDA 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/GMDA 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/GMDA 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/GMDA recommending whether or not the suspension hereunder may be revoked.

Upon receiving the recommendations of the Authority's Engineer, the Authority/GMDA 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.

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 , or a Section thereof, the Contractor shall notify the Authority's Engineer of its intent to subject the Project or a Section thereof, to Tests. The date and time of each of the Tests shall be determined by the Authority's Engineer in consultation with the Contractor, and notified to the Authority/GMDA 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 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 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 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 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 , 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 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 can not 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 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 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/GMDA 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/GMDA 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/GMDA or due to Force Majeure, the Authority/GMDA 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/GMDA 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/GMDA 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 shall vest in the Authority.

12.5 Rescheduling of Tests If the Authority's Engineer certifies to the Authority/GMDA 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/GMDA 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/GMDA 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/GMDA of executing, maintaining or operating the Project, (iii) improve the efficiency or value to the Authority/GMDA of the completed Project, 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/GMDA to consider such Change of Scope. The Authority/GMDA shall, within 15 (fifteen) days of receipt of such proposal, either accept such Change of Scope with modifications, if any, and initiate proceedings there for 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/GMDA 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 there under (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/GMDA 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 .

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 **except over head charge of 5% will be taken in place of 10 % and 25% in case of road and bridge respectively and 30% escalation & 1% labour cess will be taken on the rate of machinery given for year 2001** as taken MORTH Data Book . and the applicable schedule of rates for the relevant circle, as published by the 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/GMDA 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/GMDA 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/GMDA till the matter is resolved in accordance with Article 26; or
- (b) Proceed 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/GMDA 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, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Contractor shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) 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 . 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

14.1 Maintenance obligations of the Contractor

14.1.1 The Contractor shall maintain the Project for a period of 4 (four) years commencing from the date of the Provisional Certificate (the "Maintenance Period"). For the performance of its Maintenance obligations, the contractor shall be paid 0.25% of the Contract Price for the first year and 0.5%, 0.5%, 0.75% of the Contract Price for the second, third and fourth year respectively. in case of road projects. Amount shall be, inclusive of all taxes. The amount payable for maintenance shall be adjusted to reflect any increase or decrease arising out of variation in WPI to be determined in accordance with the provisions of Clause 19.12. For the avoidance of doubt, it is agreed that in the event no Provisional Certificate is issued, the Maintenance Period shall commence from the date of the Completion Certificate. It is further agreed that the Contract Price hereunder shall be reckoned with reference to the amount specified in Clause 19.1.1, which shall be adjusted to the extent of Change of Scope and the works withdrawn under the provisions of Clause 8.3.3, but shall not include any price adjustments in pursuance of Clause 19.10.

14.1.2 During the Maintenance Period, the Authority/GMDA shall provide to the Contractor access to the Site for Maintenance in accordance with this Agreement. The obligations of the Contractor hereunder shall include:

- (a) permitting safe, smooth and uninterrupted flow of traffic on the Project ;
- (b) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices ,lift/escalators;
- (c) undertaking repairs to structures;
- (d) informing the Authority/GMDA of any unauthorized use of the Project ;
- (e) informing the Authority/GMDA of any encroachments on the Project ; and
- (f) operation and maintenance of all communication, patrolling, and administrative systems necessary for the efficient maintenance of the Project ,under pass ,flyover and FOBs inkling lift and escalators . in accordance with the provisions of this Agreement including round the clock security security of all lighting fixture ,lift ,pumps etc.by providing adequate employees and security persons . For ensuring proper security cctvcemras must be installed in adique numbers.
- (g) undertake the cleaning of whole project area by providing mechanical broomer and adequate personal .
- (h) undertake the maintance of holticulture work and replacement of damaged plants with new including plantation and maintance of seasonal plants .

14.1.3 In respect of any Defect or deficiency not specified in Schedule-E, the Contractor shall, at its own cost, undertake repair or rectification in accordance with Good Industry Practice, save and except to the extent that such Defect or deficiency shall have arisen on account of any default or neglect of the Authority/GMDA or a Force Majeure Event.

14.1.4 The Contractor shall remove promptly from the Project any waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and

orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

14.2 Maintenance Requirements

The Contractor shall ensure and procure that at all times during the Maintenance Period, the Project conforms to the maintenance requirements set forth in Schedule-E (the "Maintenance Requirements").

14.3 Maintenance Programme

14.3.1 The Contractor shall prepare a monthly maintenance programme (the Maintenance Programme") in consultation with the Authority's Engineer and submit the same to the Authority's Engineer not later than 10 (ten) days prior to the commencement of the month in which the Maintenance is to be carried out. For this purpose a joint monthly inspection by the Contractor and the Authority's Engineer shall be undertaken. The Maintenance Programme shall contain the following:

- (a) The condition of the road in the format prescribed by the Authority's Engineer;
- (b) The proposed maintenance works; and
- (c) Deployment of resources for maintenance works.

14.4 Safety, vehicle breakdowns and accidents

14.4.1 The Contractor shall ensure safe conditions for the Users, and in the event of unsafe conditions, lane closures, diversions, vehicle breakdowns and accidents, it shall follow the relevant operating procedures for removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

14.4.2 The Contractor shall maintain and operate a round-the-clock vehicle rescue post with one mobile crane having the capacity to lift a truck with a Gross Vehicle Weight of 30,000 (thirty thousand) kilograms; and such post shall be located at ****. The Contractor shall promptly remove any damaged vehicles and debris from the Project to enable safe movement of traffic and shall report all accidents to the police forthwith.

14.5 Lane closure

14.5.1 The Contractor shall not close any lane of the Project for undertaking maintenance works except with the prior written approval of the Authority's Engineer. Such approval shall be sought by the Contractor through a written request to be made at least 10 (ten) days before the proposed closure of lane and shall be accompanied by particulars thereof. Within 5 (five) business days of receiving such request, the Authority's Engineer shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.

14.5.2 Upon receiving the permission pursuant to Clause 14.5.1, the Contractor shall be entitled to close the designated lane for the period specified therein, and in the event of any delay in re-opening such lane, the Contractor shall, for every stretch of 250 (two hundred and fifty) metres, or part thereof, pay Damages to the Authority/GMDA calculated at the rate

of 0.1% (zero point one per cent) of the monthly maintenance payment for each day of delay until the lane has been re-opened for traffic.

14.6 Reduction of payment for non-performance of Maintenance obligations

14.6.1 In the event that the Contractor fails to repair or rectify any Defect or deficiency set forth in Schedule-E within the period specified therein, it shall be deemed as failure of performance of Maintenance obligations by the Contractor and the Authority/GMDA shall be entitled to effect reduction in monthly lump sum payment for maintenance in accordance with Clause 19.7 and Schedule-M, without prejudice to the rights of the Authority/GMDA under this Agreement, including Termination thereof.

14.6.2 If the nature and extent of any Defect justifies more time for its repair or rectification than the time specified in Schedule-E, the Contractor shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Authority's Engineer and conveyed to the Contractor and the Authority/GMDA with reasons thereof.

14.7 Authority's right to take remedial measures

In the event the Contractor does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the Maintenance Inspection Report under Clause 15.2 or a notice in this behalf from the Authority/GMDA or the Authority's Engineer, as the case may be, the Authority/GMDA shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the cost of the Contractor, and to recover its cost from the Contractor. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Contractor to the Authority as Damages.

14.8 Restoration of loss or damage to Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Maintenance from any cause attributable to the Contractor, the Contractor shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

14.9 Overriding powers of the Authority

14.9.1 If in the reasonable opinion of the Authority, the Contractor is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users and pedestrians, the Authority/GMDA may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Contractor to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

14.9.2 In the event that the Contractor, upon notice under Clause 14.9.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority/GMDA may exercise overriding powers under this Clause 14.9.2 and take over the performance of any or all the

obligations of the Contractor to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority/GMDA shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be recovered by the Authority from the Contractor, and the Authority/GMDA shall be entitled to deduct any such costs and expenses incurred from the payments due to the Contractor under Clause 19.7 for the performance of its Maintenance obligations.

14.9.3 In the event of a national emergency, civil commotion or any other circumstances specified in Clause 21.3, the Authority may take over the performance of any or all the obligations of the Contractor to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Contractor as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 21. It is also agreed that the Contractor shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 14.9.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

ARTICLE 15

SUPERVISION AND MONITORING DURING MAINTENANCE

15.1 Inspection by the Contractor

15.1.1 The Authority's Engineer shall undertake regular inspections to evaluate continuously the compliance with the Maintenance Requirements.

15.1.2 The Contractor shall carry out a detailed pre-monsoon inspection of all bridges, culverts and drainage system in accordance with the guidelines contained in IRC: SP35. Report of this inspection together with details of proposed maintenance works as required shall be conveyed to the Authority's Engineer forthwith. The Contractor shall complete the proposed maintenance works before the onset of the monsoon and send a compliance report to the Authority's Engineer. Post monsoon inspection shall be undertaken by the Contractor and the inspection report together with details of any damages observed and proposed action to remedy the same shall be conveyed to the Authority's Engineer forthwith.

15.2 Inspection and payments

15.2.1 The Authority's Engineer may inspect the Project at any time, but at least once every month, to ensure compliance with the Maintenance Requirements. It shall make a report of such inspection ("Maintenance Inspection Report") stating in reasonable detail the Defects or deficiencies, if any, with particular reference to the Maintenance Requirements, the Maintenance Manual, and the Maintenance Programme, and send a copy thereof to the Authority and the Contractor within 10 (ten) days of such inspection.

15.2.2 After the Contractor submits to the Authority's Engineer the Monthly Maintenance Statement for the Project pursuant to Clause 19.6, the Authority's Engineer shall carry out an inspection within 10 (ten) days to certify the amount payable to the Contractor. The Authority's Engineer shall inform the Contractor of its intention to carry out the inspection at least 3 (three) business days in advance of such inspection. The Contractor shall assist the Authority's Engineer in verifying compliance with the Maintenance Requirements.

15.2.3 For each case of non-compliance of Maintenance Requirements as specified in the inspection report of the Authority's Engineer, the Authority's Engineer shall calculate the amount of reduction in payment in accordance with the formula specified in Schedule-M.

15.2.4 Any deduction made on account of non-compliance will not be paid subsequently even after establishing the compliance thereof. Such deductions will continue to be made every month until the compliance is procured.

15.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Authority's Engineer shall require the Contractor to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Contractor shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority's Engineer and furnish the results of such tests forthwith to the Authority's Engineer.

15.4 Reports of unusual occurrence

The Contractor shall, during the Maintenance Period, prior to the close of each day, send to the Authority and the Authority's Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and Project. A monthly summary of such reports shall also be sent within 3 (three) business days of the closing of month. For the purposes of this Clause 15.4, accidents and unusual occurrences on the Project shall include:

- (a) Accident, death or severe injury to any person;
- (b) Damaged or dislodged fixed equipment;
- (c) Flooding of Project ; and (d) any other unusual occurrence.

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 road 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 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. For the assistance of the Contractor a Traffic Management Plan during construction is shown in Drawing No. TMP/2018E11 in drawing volume. But it will be entirely the responsibility of the Contractor to ensure smooth and safe flow of traffic during construction and maintenance.

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 or any Section thereof, till the expiry of a period of 4 (four) 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 42 (forty 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 or any Section thereof shall form a part of the Maintenance obligations of the Contractor as specified in Article 14.

17.1.2 Deleted.

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 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 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

twenty 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 Authority's Engineer should be appointed within 30 days from the date of this Agreement or before declaration of Appointed Date. 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.

Part IV

Financial Covenants

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. For the avoidance of doubt, the Parties expressly agree that the Contract Price shall not include the cost of Maintenance which shall be paid separately in accordance with the provisions of Clause 19.7. 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 .

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

19.2 Advance Payment

19.2.1 The Authority shall make an interest-bearing (@ Bank Rate) advance payment (the "Advance Payment"), equal in amount to 10 (ten) percent of the Contract Price, exclusive for mobilisation expenses. The Advance Payment for mobilisation expenses shall be made in two installments each equal to 5% (five percent) of the Contract Price. The second 5% (five percent) mobilisation advance would be released after submission of utilization certificate by the Contractor for the first 5% advance already released earlier.

In addition to above, the Authority shall make an additional interest-bearing advance payment against newly purchased key construction equipment required for the works as per agreed construction programme and brought to the site, if so requested by the Contractor subject to the same terms and conditions specified for Advance Payment for mobilisation expenses in this Agreement. The maximum of such advance shall be 5% (five percent) of the Contract Price against Bank Guarantee. This advance shall be further subject to the condition that (i) such new equipment are considered by the Authority's Engineer to be necessary for the works and (ii) these new equipment should be procured in the name of

Contractor and is verified by Authority's Engineer to have been brought to site. The Advance Payment for mobilization expenses and for acquisition of key new construction equipment would be deemed as interest bearing advance at Bank Rate, to be compounded annually. The interest would be recovered along with the recovery of mobilization Advance Payment in equal installments as per provision laid down for the mobilization advance recovery.

19.2.2 The Contractor may apply to the Authority for the first installment of the Advance Payment at any time after the Appointed Date, along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such installment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof.

19.2.3 Deleted.

19.2.4 At any time, after 60 (sixty) days from the Appointed Date, the Contractor may apply to the Authority for the second installment of the Advance Payment along with an irrevocable and unconditional guarantee from a Bank for an amount equivalent to 110% (one hundred and ten per cent) of such installment, substantially in the form provided at Annex-III of Schedule-G, to remain effective till the complete and full repayment thereof.

19.2.5 The Advance Payment shall be paid by the Authority to the Contractor within 15 (fifteen) days of the receipt of its respective requests in accordance with the provisions of this Clause 19.2.

19.2.6 Deleted.

19.2.7 The advance payment shall be repaid through percentage deductions from the stage payments determined by the Authority's Engineer in accordance with Sub-Clause 19.5, as follows:

- (a) Deductions shall commence in the next Stage Payment Statement following that in which the total of all certified stage payments (excluding the advance payment and deductions and repayments of retention) exceeds 20% (twenty percent) of the Contract Price; and
- (b) Deductions shall be made at the rate of 15% (fifteen percent) of each Stage Payment Statement until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 80% (80 percent) of the Contract Price has been certified for payment.

19.2.8 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 19.2.7, 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 Bank Guarantee for the Advance Payment. For the avoidance of doubt, the aforesaid interest shall be payable on each instalment of the Advance Payment, regardless of whether the instalment 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 10 (ten) 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) percent 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

19.6.1 The Contractor shall submit to the Authority's Engineer a monthly maintenance statement ("Monthly Maintenance Statement") in 3 (three) copies by the 7th (seventh) day of each month in the format set forth in Schedule-O for the Maintenance of the Project during the previous month.

19.6.2 The monthly lump sum amount payable for Maintenance shall be 1/12th (one-twelfth) of the annual cost of Maintenance as specified in Clause 14.1.1.

19.7 Payment for Maintenance of the Project

19.7.1 Within 15 (fifteen) days of receipt of the Monthly Maintenance Statement from the Contractor pursuant to Clause 19.6, the Authority's Engineer shall verify the Contractor's monthly maintenance statement and certify the amount to be paid to the Contractor taking into account:

- (a) Compliance with the Maintenance Requirements; and
- (b) Reduction for non-compliance with the Maintenance Requirement in accordance with Clause 19.7.2.

The Authority's Engineer shall deliver to the Authority an IPC approving or amending the monthly maintenance statement to reflect the amount due to the Contractor in accordance with this Agreement.

19.7.2 Maintenance shall be measured in units of **one kilometer each**; provided, however, that payment thereof shall be made in fixed monthly amounts in accordance with this Agreement. If the Maintenance Requirements set forth in Schedule-E are not met, reduction in payments shall be made in accordance with the provisions of Schedule-M. The reductions for noncompliance with the Maintenance Requirements shall be applied on the basis of monthly inspections by the Authority's Engineer.

19.7.3 The deduction made on account of non-compliance with the Maintenance Requirements shall not be subsequently considered for payment after the compliance is achieved by repair or rectification.

19.7.4 The Authority shall pay to the Contractor every quarter any amount due under any IPC under this Clause 19.7. The payment shall be made no later than 30 (thirty) days from the date of submission of the last IPC for the relevant quarter.

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

19.9.1 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.

19.9.2 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 percent), 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 amounts payable to the Contractor for Works shall be adjusted in accordance with the provisions of this Clause 19.10.

19.10.2 Subject to the provisions of Clause 19.10.3, the amounts payable to the Contractor for Works, shall be adjusted in the IPC issued by the Authority's Engineer for the increase or

decrease in the index cost of inputs for the Works, by the addition or subtraction of the amounts determined by the formulae prescribed in Clause 19.10.4.

19.10.3 To the extent that full compensation for any increase or decrease in costs to the Contractor is not covered by the provisions of this or other Clauses in this Agreement, the costs and prices payable under this Agreement shall be deemed to include the amounts required to cover the contingency of such other increase or decrease of costs and prices.

19.10.4 The Contract Price shall be adjusted for increase or decrease in rates and price of labour, cement, steel, Plant, machinery and spares, bitumen, fuel and lubricants, and other material inputs in accordance with the principles, procedures and formulae specified below:

- (a) Price adjustment shall be applied on completion of the specified stage of the respective item of work in accordance with Schedule-H;
- (b) Adjustment for each item of work/stage shall be made separately.
- (c) The following expressions and meanings are assigned to the value of the work done:

RW= Value of work done for the completion of a stage under the following items of Schedule-H:

- (i) Road works; and
- (ii) Other works

BR = Value of work done for the completion of a stage under the items Major Bridges and Structures (Schedule-H)

- (d) Price adjustment for changes in cost shall be paid in accordance with the following formulae:
 - (i)
$$VRW = 0.85 RW \times [PL \times (LI - LO)/LO + PA \times (AI - AO)/AO + PF \times (FI - FO)/FO + PB \times (BI - BO)/BO + PM \times (MI - MO)/MO + PC \times (CI - CO)/CO + PS \times (SI - SO)/SO]$$
 - (ii)
$$VBR = 0.85 BR \times [PL \times (LI - LO)/LO + PA \times (AI - AO)/AO + PF \times (FI - FO)/FO + PM \times (MI - MO)/MO + PC \times (CI - CO)/CO + PS \times (SI - SO)/SO]$$

Where

VRW = Increase or decrease in the cost of road works/other works during the period under consideration due to changes in the rates for relevant components as stated in sub-paragraph (e)

VBR = Increase or decrease in the cost of Major Bridges and Structures during the period under consideration due to changes in the rates for relevant components as stated in sub-paragraph (e)

PB, PC, PL, PM, and PS are the percentages of bitumen, cement, labour, other materials, and steel/components (including strands and cables) respectively for the relevant item as stated in sub-paragraph (e)

PA is the percentage of Plant, machinery and spares component for the relevant item as stated in sub-paragraph (e).

PF is the percentage of fuel and lubricants for the relevant items as stated in sub-paragraph (e).

AO = The wholesale price index as published by the Ministry of Commerce & Industry, Government of India (hereinafter called “WPI”) for construction machinery for the month of the Base Date.

AI = The WPI for construction machinery for the month three months prior to the month to which the IPC relates.

BO = The official retail price of bitumen at the nearest refinery at [Panipat] on the Base Date.

BI = The official retail price of bitumen at nearest refinery at [Panipat], on the first day of the month three months prior to the month to which the IPC relates.

CO = The WPI for grey cement for the month of the Base Date..

CI = The WPI for grey cement for the month three months prior to the month to which the IPC relates.
FO = The official retail price of high speed diesel (HSD) oil at the existing consumer pumps of Indian Oil Corporation (“IOC”) in the State of [Haryana] on the Base Date.

FI = The official retail price of HSD at the existing consumer pumps of IOC in the State of [Haryana] on the first day of the month three months prior to the month to which the IPC relates.

LO = The consumer price index for industrial workers for the [circle **** in the State of Uttar Pradesh], published by Labour Bureau, Ministry of Labour, Government of India, (hereinafter called “CPI”) for the month of the Base Date.

LI = The CPI for the month three months prior to the month to which the IPC relates.

MO = The WPI for all commodities for the month of the Base Date.

MI = The WPI for all commodities for the month three months prior to the month to which the IPC relates.

SO = The WPI for steel (re-bars) for the month of the Base Date.

SI = The WPI for steel (re-bars) for the month three months prior to the month to which the IPC relates.

- (e) The following percentages shall govern the price adjustment of the Contract Price:

Component	Item				
	Road Works				Major Bridges and Structures
	Earthwork, Granular work, and Other works	Bituminous work	Cement Concrete Pavement	Culverts, minor bridges and other structures	
Labour (PL)	[20%]	[20%]	[20%]	[15%]	[15%]
Cement (PC)	[5%]	Nil	[20%]	[15%]	[15%]
Steel (PS)	Nil	Nil	Nil	[15%]	[20%]
Bitumen (PB)	Nil	[15%]	Nil	Nil	Nil
Fuel and lubricants (PF)	[10%]	[10%]	[10%]	[10%]	[10%]
Other Materials (PM)	[50%]	[40%]	[35%]	[30%]	[25%]
Plant, machinery and spares. (PA)	[15%]	[15%]	[15%]	[15%]	[15%]
Total	100%	100%	100%	100%	100%

- (f) In case an IPC relates to a month which is within 3 (three) months from the Base Date, no price adjustment shall be applicable.

19.11 Restrictions on price adjustment

Price adjustment shall be due and payable only in respect of the stages of Works for which the Stage Payment Statement has been submitted by the Contractor no later than 30 (thirty) days from the date of the applicable Project Milestone or the Scheduled Completion Date, as the case may be, including any Time Extension granted therefor in accordance with the provisions of this Agreement. For the avoidance of doubt, in the event of submission of any Stage Payment Statement after the period specified herein, price adjustment shall be applicable until the date of the respective Project Milestone or the Scheduled Completion Date, as the case may be.

19.12 Price adjustment for Maintenance of Project

Lump sum payment for Maintenance shall be adjusted every quarter for changes in rates and prices of various inputs in accordance with the formula given below:

$$V = P \times (W^I - W^O) / W^O$$

V = Increase or decrease in the quarterly lump sum payment

P= Quarterly lump sum payment due to the Contractor after adjusting any reduction in payment for noncompliance of the Maintenance Requirements

W^O = The wholesale price index (all commodities) for the month of the Base Date.

W^I = The wholesale price index (all commodities) for the first day of the quarter under consideration for determining the price adjustment.

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

19.16.1 Within 30 (thirty) days after completion of the Maintenance Period, the Contractor shall submit to the Authority’s Engineer six copies of the final payment statement for Maintenance of the Project, with supporting documents showing the details set forth below in the form prescribed by the Authority’s Engineer :

- (a) The total amount claimed in accordance with the monthly statement for Maintenance of Project ;
- (b) The amount paid in accordance with the Interim Payment Certificates; and
- (c) Any sums which the Contractor considers to be due to it, with supporting documents.

19.16.2 The Authority’s Engineer shall certify final payment within 30 (thirty) days of the receipt of the final payment statement of Maintenance under Clause 19.16.1, segregating the items of amount payable from the items of amount disallowed. The Authority shall make payment on the basis of the final payment authorised by the Authority’s Engineer within a period of 30 (thirty) days of the receipt of the Final Payment Statement from the Authority’s Engineer.

19.16.3 If the Authority’s Engineer does not prescribe the form within 15 (fifteen) days of the date of issue of the Completion Certificate, the Contractor shall submit the statement in such form as it deems fit.

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 0.02% (zero point zero two per cent) of the Contract Price for each day by which the Project Completion Date precedes the Scheduled Completion Date, but subject to a maximum of 3% (three per cent) 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 site 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 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.

Part V

Force Majeure and Termination

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, Subcontractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 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 judgment or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings for reasons other than (i) failure of the Contractor to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by 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 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, license, 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 NonPolitical 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 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 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 therefor 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 ;
- (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.

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 percent), 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 obligation

Upon Termination for any reason whatsoever

- (a) property and ownership in all Materials, Plant and Works and the Project 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.

Part VI

Other Provisions

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

Notwithstanding the provisions of Clause 24.1, the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. Further, the Contractor may, by written notice to the Authority, assign its right to receive payments under this Agreement either absolutely or by way of charge, to any person providing financing to the Contractor in connection with the performance of the Contractor's obligations under this Agreement. The Contractor acknowledges that any such assignment by the Contractor shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement.

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, 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, authorizing continued use of the infringing work. If the Contractor is unable to secure such license within a reasonable time, the Contractor shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

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 defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such 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 defense of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defenses 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

In the event of any Dispute between the Parties, either Party may call upon the Authority's Engineer, or such other person as the Parties may mutually agree upon (the "Conciliator") to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Contractor for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) business days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) business day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 26.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 26.3.

26.3 Arbitration

26.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 26.2, shall be finally finally settled by arbitration in accordance with the rules of arbitration of the SOCIETY FOR AFFORDABLE REDRESSAL OF DISPUTES (SAROD).

26.3.2 Deleted.

26.3.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay.

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

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

26.3.6 In the event the Party against whom the Award has been granted challenges the Award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank

Guarantee for a sum equal to 120 % (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

26.4 Adjudication by Regulatory Authority, Tribunal or Commission

In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Contractor and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 26.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

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 Gurugram (Haryana) 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 judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

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) percent, 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 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 Qualification or Request for Proposals, as the case may be, 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; [***]
- (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] 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 [Delhi] it may send such notice by facsimile or email 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 email, 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

27.17.1 As between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing this Agreement) to give to the Authority a no terminable transferable non-exclusive royalty-free license 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 28

DEFINITIONS

28.1 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 judgments, 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, licenses, permits, authorizations, 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 during the subsistence of this Agreement;

“Appointed Date” means that date which is later of the 30th 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 the working front on no less than 90% (Ninety per cent) of the total length of Project ;

“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 authorized 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 judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Base Date; or

“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;

“Consortium” means the consortium of entities which have formed a joint venture for implementation of this Project;};

“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;

§ This definition may be omitted if the Contractor is not a Consortium.

“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 as set forth in Schedule-I, and shall include „as built” drawings of the Project ;

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

“Emergency” means a condition or situation that is likely to endanger the safety or security of the individuals on or about the Project , 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 , any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project , where applicable herein but excluding utilities referred to in 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);

“GOI” or “Government” means the Government of India;

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

“Interim Payment Certificate” or “IPC” means the interim payment certificate issued by the 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;

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

“Maintenance” means the maintenance of the Project as set forth in Article 14 for the period specified therein;

“Maintenance Inspection Report” shall have the meaning set forth in Clause 15.2.1; “Maintenance Manual” shall have the meaning ascribed to it in Clause 10.7; “Maintenance Programme” shall have the meaning set forth in Clause 14.3; “Maintenance Period” shall have the meaning set forth in Clause 14.1.1; “Maintenance Requirements” shall have the meaning set forth in Clause 14.2;

“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:51998;

“Manual” shall mean the Manual of Standards and Specifications for Four Laning of Highways (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 ;

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

\$This definition may be omitted if the Contractor is not a Consortium.

“MORTH” means the Ministry of Road Transport and Highways or any substitute thereof dealing with Highways;

“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 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, kilometer-stones, [toll plaza(s)], electrical systems, communication systems, rest areas, relief centers, maintenance depots and administrative offices; and (b) Project Facilities situated on the Site;

“Project Completion Date” means the date on which the 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 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 ” means the Site comprising the existing roads around Huda City Center Metro Station at Gurugram, Haryana as per Overall plan Drawing No. 1PP/2018E01 annexed as Volume-III and all Project Assets, 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’; **“Request for Qualification”** or **“RFQ”** shall have the meaning set forth in

Recital „C’; **“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 in accordance with this Agreement;

“Safety Consultant” shall have the meaning set forth in Clause 10.1.5;

“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 ;

“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 , as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Contractor to, and expressly approved by, the Authority;

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

“Structures” means an elevated walkway, underpass 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 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 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 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

SIGNED, SEALED AND

DELIVERED

DELIVERED

For and on behalf of
THE AUTHORITY by:

For and on behalf of
THE CONTRACTOR by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of:

1.

2.

{COUNTERSIGNED and accepted by:

Name and particulars of other members of the Consortium}

Schedules

SCHEDULE - A

(See Clauses 2.1 and 8.1)

SITE OF THE PROJECT**1 The Site**

- 1.1** Site of the Project of Construction of underpass, flyovers, fobs and surface roads around HUDA city center in Gurugram, in Haryana shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A.
- 1.2** The dates of handing over the Right of Way to the Contractor are specified in Annex-II of this Schedule-A.
- 1.3** An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Contractor, and such inventory shall form part of the memorandum referred to in Clause 8.2.1 of this Agreement.
- 1.4** The alignment plans of the Project are specified in Annex-III. In the case of sections where no modification in the existing alignment of the Project Road is contemplated, the alignment plan has not been provided. Alignment plans have only been given for sections where the existing alignment is proposed to be upgraded. The proposed profile of the Project Roads shall be followed by the contractor with minimum FRL as indicated in the alignment plan. The contractor, however, improve/upgrade the Road Profile as indicated in Annexure-III based on site/design/clearance requirement.
- 1.5** The status of the environment clearances obtained or awaited is given in Annex IV.
- 1.6** The various chainages used are the new design chainages of the proposed improvement plan.

Annex - I
(Schedule-A)

Site

1. Site

The Site of the Project comprises of the sections for Decongestion of Traffic around HUDA City Center Metro Station in Gurugram by providing Underpass, Flyovers, FOBS and widening of surface Roads.



Site Plan

The land, carriageway and structures comprising the Site are described below:

2. Land

The Site of the Project Road comprises the land (sum total of land already in possession and land to be possessed) as described below:

S. No.	Chainage (km) as shown in Overall Plan Drawing No. P&P/		Existing ROW (m)	Remarks
	From	To		
1	0	270 m	60m	HUDA City Center Road
2.	0	600 m	60m	Along Arya Samaj Road
3	0	470 m	60m	Along Signature Tower Road
4	0	420 m	60m	Along Road to IFFCO Chowk
5	0	170 m	30m	Along Road to Galleria Market

3. Carriageway

The present carriageways of the Project Roads are of variable divided carriageways. The type of the existing pavement is flexible

4. Major Bridges

The Site includes the following Major Bridges: NIL

Sl. No.	Chainage (km)	Type of Structure			No. of Spans with span length (m)	Width (m)
		Foundation	Substructure	Superstructure		
NA	NA	NA	NA	NA	NA	NA

5 Road over-bridges (ROB)/ Road under-bridges (RUB)

The Site includes the following ROB (road over railway line)/RUB (road under railway line): NIL

Sl. No.	Chainage (km)	Type of Structure		No. of Spans with span length (m)	Width (m)	ROB/ RUB
		Foundation	Superstructure			
NA	NA	NA	NA	NA	NA	NA

6 Grade separators

The Site includes the following grade separators: NIL

S. No.	Chainage (km)	Type of Structure		No. of Spans with span length (m)	Width (m)
		Foundation	Superstructure		
NA	NA	NA	NA	NA	NA

7 Minor bridges: NIL

The Site includes the following minor bridges: NIL

S. No.	Chainage (km)	Type of Structure			No. of Spans with span length (m)	Width (m)
		Foundation	Substructure	Superstructure		
NA	NA	NA	NA	NA	NA	NA

8 Railway level crossings

The Site includes the following railway level crossings: NIL

S. No.	Location (km)	Remarks
NA	NA	NA

9 Underpasses (vehicular, non-vehicular)

The Site includes the following underpasses: NIL

S. No.	Chainage (km)	Type of Structure	No. of Spans with span length (m)	Width (m)
Nil	Nil	Nil	Nil	Nil

10 Culverts

The Site has the following culverts: NIL

S. No.	Chainage (km)	Type of Culvert	Span /Opening with span length (m)	Width (m)
NA	NA	NA	NA	NA

11 Bus bays

There are only bus stops on Arya Samaj Road

There is a Land earmarked for City Bus Stand Sector-29 adjacent to HUDA City Center Metro Station towards IFFCO Chowk in East.

S. No.	Chainage (km)	Length (m)	Left Side Hand	Right Hand Side
NA	NA	NA	NA	NA

12 Truck Lay byes

The details of truck lay byes are as follows: NIL

S. No.	Chainage (km)	Length (m)	Left Hand Side	Right Hand Side
NA	NA	NA	NA	NA

13 Road side drains

Drains on the site are existing at intermittent locations.

14 Major junctions

The details of major junctions are as follows:

S. No.	Location	At grade	Separated	Category of Cross Road
1	West of Metro Station	At Grade	3-Arm	Local Roads
2	East Of Metro Station	At Grade	4-Arm	Local Roads

15 Minor junctions: There are a few local Access roads**16 Bypasses: NIL**

The details of the existing road sections proposed to be bypassed are as follows:

S. No.	Name of bypass (town)	Chainage (km) From km - to km	Length (in Km)
NA	NA	NA	NA

17 Other structures:

- a. There is existing FOB in front of Metro Station over HUDA City Center Road. The deck, substructure and stairs in steel and foundation in concrete. This FOB has to be dismantled

and all the steel components to be brought to the store and stacked as per the directions of GMDA/Authority Engineer.

- b. There is another partly constructed FOB on near Metro Station on road to Signature Tower. The foundations in concrete and Steel Columns are constructed. The built structure is to be dismantled and all the steel components to be brought to the store and stacked as per the directions of GMDA/Authority Engineer.**
- c. The roads are comprised with central verge/dividing medians and footpath & grill is installed.**
- d. The roads are equipped with street light etc.**
- e. The traffic lights has also been provided at Z Chowk and Signature Tower road Chowk**
- f. Some directions boards and barricading has been provided for regularization of the traffic with some temporary structures constructed by Haryana Police.**

Annex - II
(Schedule-A)

Dates for providing Right of Way

The dates on which the Authority shall provide Right of Way to the Contractor on different stretches of the Site are stated below:

Sl. No	From km to km	Length (km)	Width (m)	Date providing ROW*
1	2	3	4	5
Full Right of Way (full width) On all the roads of the Project	As per Plan and Profile attached in Volume-III Drawings	Variable	Variable	ROW is available on appointed date

Annex - III
(Schedule-A)

Alignment Plans

The proposed alignment plan of the Project are attached in Volume-III Drawings

**Annex - IV
(Schedule-A)**

Environment Clearances

The following environment clearances have been obtained:

1. Environment clearance approval from MOEF is not required
2. Clearance under wild life (protection) Act 1972 is not required
3. Forest Clearance is not required

SCHEDULE - B
(See Clause 2.1)**Development of the Project****1 Development of the Project**

Development of the Project shall include design and construction of the Improvement of Junction as described in this Schedule-B, in Schedule-C and the alignment plans as specified in Annex-III of Schedule-A. The proposed profile of various roads of the project shall be followed by the contractor with minimum FRL and vertical clearances as indicated in the alignment plan. The contractor however may improve/upgrade the Road Profile and structures as indicated in Annexure-III of Schedule-A based on site/design/ clearance requirement.

2 Rehabilitation and augmentation

Rehabilitation and augmentation shall include the Project as described in Annex-I of this Schedule-B and in Schedule-C.

3 Specifications and Standards

The Project shall be designed and constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex – I

(Schedule-B)

Description of the project

1 WIDENING OF THE EXISTING ROADS

- 1.1 The Project shall follow the existing alignment unless otherwise specified by the Authority and shown in the alignment plans specified in Annex III of Schedule-A. Geometric deficiencies, if any, in the existing horizontal and vertical profiles shall be corrected as per the prescribed standards for plain terrain to the extent land is available.

1.2 WIDTH OF CARRIAGEWAY

- 1.2.1 The paved carriageway shall be as detailed below excluding median:

Sl. No.	Road Details	Chainage (Km)		Width of carriageway (m)
		Start	End	
1	MC 01	0+000.000	0+255.000	10.50
2	MC 02	0+000.000	0+235.000	10.50
		0+235.000	0+255.000	VARIES (10.50-12.50)
		0+255.000	0+270	12.50
3	MC 03	0+000.000	0+705.000	7.50
4	MC 04-LHS	0+000.000	0+040.000	10.50
		0+040.000	0+065.000	VARIES (10.5-17.50)
		0+065.000	0+075.000	VARIES (17.50-21.00)
		0+075.000	0+090.000	21.00
		0+090.000	0+100.000	VARIES (17.50-21.00)
		0+100.000	0+115.000	17.50
		0+115.000	0+125.000	VARIES (14.00-17.50)
		0+125.000	0+258.000	14.00
		0+258.000	0+268.000	VARIES (14.00-17.50)
		0+268.000	0+313.000	21.50
		0+313.000	0+336.000	VARIES (10.50-21.50)
5	MC 04-RHS	0+336.000	0+417.340	10.50
		0+000.000	0+040.000	10.50
		0+040.000	0+075.000	VARIES (10.50-14.00)
		0+075.000	0+348.000	14.00
		0+348.000	0+358.000	VARIES (14.00-18.00)
		0+358.000	0+388.000	18.00
		0+388.000	0+398.000	VARIES (10.50-18.00)
		0+398.000	0+417.340	10.50

6	MC 05-LHS	0+000.000	0+037.000	10.50
		0+037.000	0+057.000	VARIES (10.5-11.00)
		0+057.000	0+067.000	11.00
		0+067.000	0+077.000	VARIES (7.50-11.00)
		0+077.000	0+166	7.50
7	MC 05 - RHS	0+000.000	0+060.000	10.50
		0+060.000	0+075.000	VARIES (10.5-11.00)
		0+075.000	0+085.000	11.00
		0+085.000	0+095.000	VARIES (7.50-11.00)
		0+095.000	0+166	7.50
8	MC 06-LHS	0+000.000	0+100.000	10.50
9	MC 06 - RHS	0+000.000	0+015.000	18.75
		0+015.000	0+075.000	VARIES (10.5-18.75)
		0+075.000	0+226.282	10.50
10	MC 07-LHS	0+000.000	0+020.000	VARIES (18.00-19.00)
		0+020.000	0+140.000	18.00
		0+140.000	0+252.000	VARIES (10.50-18.00)
		0+252.000	0+262.984	10.50
11	MC 07 - RHS	0+000.000	0+262.984	10.50
12	MC 08	0+000.000	0+223.585	10.50
13	MC 09	0+000.000	0+223.272	10.50
14	MC 10	0+000.000	0+005.000	5.50
		0+005.000	0+027.000	VARIES (5.50-12.00)
		0+027.000	0+048.983	VARIES (5.50-12.00)
		0+048.983	0+053.983	5.50
15	MC 11	0+000.000	0+025.000	12.25
		0+025.000	0+085.000	11.50
		0+085.000	0+155.000	VARIES (10.50-12.25)
		0+155.000	0+194.000	10.50
		0+194.000	0+199.000	VARIES (10.50-13.80)
		0+199.000	0+219.000	13.80
		0+219.000	0+224.000	VARIES (10.50-13.80)
		0+224.000	0+234.000	10.50
		0+234.000	0+264.000	VARIES (10.50-16.50)
		0+264.000	0+266.930	16.50

16	MC 12	0+000.000	0+028.000	16.50
		0+028.000	0+038.000	VARIES (16.50-18.50)
		0+038.000	0+050.000	18.50
		0+050.000	0+134.000	18.00
		0+134.000	0+159.000	VARIES (18.00-20.00)
		0+159.000	0+235.725	20.00
17	MC 13	0+000.000	0+066.566	10.50
18	MC 14	0+000.000	0+025.000	VARIES (24.00-14.00)
		0+025.000	0+081.520	14.00
19	MC 15	0+000.000	0+025.000	5.50
		0+025.000	0+050.000	VARIES (5.50-12.00)
		0+050.000	0+054.000	12.00
		0+054.000	0+078.000	VARIES (5.50-12.00)
		0+078.000	0+089.164	5.50
20	MC 16	0+000.000	0+243.642	10.50
21	MC 17	0+000.000	0+229.031	10.50
22	MC 18	0+000.000	0+099.682	7.50
23	MC 19	0+000.000	0+142.692	7.50
24	MC 20	0+000.000	0+023.000	10.50
		0+023.000	0+071.000	VARIES (10.50-12.25)
		0+071.000	0+131.000	11.50
		0+131.000	0+145.360	12.25
25	MC 21	0+000.000	0+074.305	7.50
26	MC 22	0+000.000	0+064.822	7.50
27	MC 23	0+000.000	0+188.551	7.50
28	MC 24	0+000.000	0+079.222	6.00
29	MC 25	0+000.000	0+080.793	5.50

2 GEOMETRIC DESIGN AND GENERAL FEATURES

2.1 General

Geometric design and general features of the Project shall be in accordance with IRC:86 (latest edition)

2.2 Design speed

The design speed shall be minimum 50 km per hr for straight movements, 25 Km per hour for Left and Right Turning and service roads.

2.3 Improvement of the existing road geometrics

In the sections, where improvement of the existing road geometrics to the prescribed standards is not possible, the existing road geometrics shall be improved to the extent possible within the given right of way and proper road signs and safety measures shall be provided.

2.4 Right of Way

Details of the Right of Way are given in Annex II of Schedule-A.

2.5 Type of shoulders**A. Footpaths/fully paved shoulders shall be provided in the following stretches:**

Sl. No.	Stretch	Fully shoulders/ footpaths	Width (m)	Remarks
1.	Full Stretch on Project Roads	(Drain + Utility space) cum walkway	Variable -Minimum 2.0m to be merged with existing footpath (which is to be reconstructed) & drain network	On both sides on surface
2	Full stretch in front of Fortis Hospital opposite HCC Metro station	Pedestrian Plaza	8.5m	Only on the side towards Fortis Hospital

2.6 Lateral and vertical clearances at underpasses**2.6.1 Lateral and vertical clearances at underpasses and provision of guardrails/ crash barriers shall be as per IRC:54****2.6.2 Lateral clearance: The width of the opening at the underpasses shall be as follows:**

Sl. No.	Location (Chainage) (from km - to km)	Span/opening (m)	Remarks
1	MC 03 (Ch 0 to Ch 705m)	8.0m clear opening -7.5m carriageway Widening on curves shall be done as per codal provision No RE wall be considered for underpass.	Vertical Clearance =5.5 m

2.7 Lateral and vertical clearances at overpasses**2.7.1 Lateral and vertical clearances at overpasses shall be as per paragraph 2.11 of the Manual.**

2.7.2 Lateral clearance: The width of the opening of overpasses shall be as follows:

Sl. No.	Location (Chainage) (from km to km)	Span/opening (m)	Remarks
1	Flyover-1: MC01, MC02(Ch 0 to Ch 269.5m) as shown in the drawings	45m comprising of 3 spans of 15.0 m each) Overall width 23.2 m comprising of two carriageway of 10.5 m each with 1.2 m wide median with crash barrier on both sides of the both carriageways. (Loading for design to be considered for super vehicle loading)	Minimum 2.5 m vertical Clearance
2	Foot Over Bridge-1 on road to Signature Tower as shown in the drawing with stairs, escalators for both up & down and Lifts	56.0m comprising of 2 spans of 25.0m each and 3.0 m cantilever on both sides	Vertical clearance = 5.5m
3	Foot Over Bridge-2 on road to IFFCO Chowk as shown in the drawing with stairs, escalators for both up & down and Lifts	44.3m comprising of 2 spans of 20.0m each and 1.3 m cantilever on one side & 3.0 m cantilever on other side.	Vertical clearance = 5.5m

2.8 Service roads

Service roads shall be constructed at the locations and for the lengths indicated below:

As included in item 1.2.1 above

2.9 Grade separated structures

2.9.1 Grade separated structures shall be provided as per particulars are given below:

Sl. No.	Location structure	Length (m)	Number and length of spans (m)	Approach gradient	Remarks, if any
1	Flyover HUDA City Center Road (Straight)	269.5m MC01, MC02	3 Nos of 15.0m each (Total=45m)	4%	2.5 m Vertical Clearance

2	Right Turning Underpass from Signature Tower to Subhash Chowk	705m MC03	160 m covered portion and 150 m of horizontal U-type designed for loads for covering at top in future.	4%	5.5 m Vertical Clearance
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2.10 Cattle and pedestrian underpass /overpass

Cattle and pedestrian underpass/ overpass shall be constructed as follows: [Refer to paragraphs 2.14.3 of the Manual and specify the requirements of cattle and pedestrian underpass/ overpass]

Sl. No.	Location	Type of crossing
NIL		

2.11 Typical cross-sections of the Project

As per Drawings enclosed in Annex-III

3 INTERSECTIONS AND GRADE SEPARATORS

All intersections and grade separators shall be as per Section 3 of the Manual. All existing intersections which are coming in the project area are to be improved to the prescribed standards.

Properly designed intersections shall be provided at the locations and of the types and features given in the tables below:

a) Grade separated intersection with ramps

Sl. No.	Location	Salient features	Minimum length of viaduct/tunnel to be provided	Road to be carried over /under structures
1	Right Turning Underpass from Signature Tower to Subhash Chowk	7.5 m carriageway with 5.5 m clearance having 160 m (20+120+20m) of covered portion, 150 m (75+75m) of U-type horizontal open portion with provision of putting top slab in future and 197.5m ramp towards Signature tower and 197.5m ramp towards Subhash Chowk. Both side ramps and U-type Horizontal open portions are covered with 16mm thick multi wall modular Poly Carbonate panel roof. Full length of both inside walls of underpass will be aesthetically	160 m Box and 150 m U-type designed for putting Top Slab and 1.0m earth cushion in future and subjected and IRC load	Right Turning Road towards HUDA City Center Road and U-Turns towards Signature tower and towards Subhash Chowk

		improved by providing 22mm thick vitrified tiles with colored patterns, pictures, text by screen print Wearing course shall be laid separately as per clause 2702.2 of MoRTH specifications.		
2	Flyover-1 (Overpass) from 3-Arm Junction to 4-arm Junction of HUDA City Center Road	2X10.5m dual carriageway with 1.2m median and 0.5m crash barrier on both sides with 2.5m vertical clearance having 45 m (3X15m span) stilted portion, 90.0m filled portion towards 4-Arm Junction (IFFCO Chowk) and 134.5m filled portion towards 3-Arm Junction (Subhash Chowk). Wearing course shall be laid separately as per clause 2702.2 of MoRTH specifications.	45.0 m -3 spans of 15.0 m each with abutments and two rows of pier columns as shown in the GAD	For U-turn movements, Pick-up and Drop-off of Auto rickshaws and Taxis on surface

4 ROAD EMBANKMENT AND CUT SECTION

- 4.1** Widening and improvement of the existing road embankment/cuttings and construction of new road embankment/ cuttings shall conform to the Specifications and Standards given in section 4 of the Manual and the specified cross sectional details. Deficiencies in the plan and profile of the existing road shall be corrected. The revised plan and profile as shown in the drawings annexed as Annex III shall be adopted

5 PAVEMENT DESIGN

- 5.1** Flexible Pavement design shall be carried out in accordance with IRC:37 (Latest . addition) and Rigid Pavement design shall be carried out in accordance with IRC:58 (Latest Edition)

5.2 Type of pavement

All At-Grade Roads and approach Ramps of Flyovers are flexible pavement and approaches (ramps) of the right turning Underpass shall be Rigid Pavement

5.3 Design requirements

5.3.1 Design Period and strategy

Flexible pavement for widening and strengthening of the existing pavement shall be designed for a minimum design period of 20 years. Stage construction shall not be permitted. The existing pavement shall have overlay of minimum 40mm thick BC or more with requisite thickness of DBM as per the results of FWD (Falling Weight Deflectometer) Test to be conducted by the contractor on all the roads.

The profile correction shall be done by providing DBM for achieving the required camber and geometry.

5.3.2 Design Traffic

Notwithstanding anything to the contrary contained in this Agreement or the Manual, the Contractor shall design the flexible pavement for design traffic of 100 million standard axles for all roads. The Contractor shall conduct Traffic Survey and Axle Load Survey

to confirm the actual value for design and fatigue but subject to a minimum value of 100 million standard axles. The rigid pavement shall be designed as per IRC:58 subject to minimum 300 mm thick PQC not leaner than M40 grade laid over 150 mm DLC and 150 mm thick layer of GSB

5.4 Reconstruction and overlay in various stretches

The details of Reconstruction and overlay shall be as per the details below:

SL. NO.	ROAD DETAILS	CHAINAGE (KM)		PAVEMENT IMPROVEMENT PROPOSAL	
		FROM	TO	OVER EXISTING ROAD PORTION	WIDENING PORTION
1	MC01	0+000	0+255	RECONSTRUCTION FROM EMBANKMENT TOP BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
2	MC02	0+000	0+270	RECONSTRUCTION FROM EMBANKMENT TOP BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
3	MC03	0+000	0+705	UNDERPASS WITH APPROACHES	
4	MC04	0+000	0+417	OVERLAY WITH 40MM BC+ 80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
5	MC05	0+000	0+166	OVERLAY WITH 40MM BC+ 80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
6	MC06	0+000	0+100	OVERLAY WITH 40MM BC+ 80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
7	MC07	0+000	0+263	OVERLAY WITH 40MM BC+ 80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
8	MC08	0+000	0+224	OVERLAY WITH 40MM BC+ 80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)

9	MC090+000 0+223			OVERLAY WITH 40MM BC+ 80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
10	MC10	0+000	0+054	RECONSTRUCTION FROM EMBANKMENT TOP BY DISMANTLING OF MIN. EXISTING BT LAYER (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
11	MC11	0+000	0+267	OVERLAY WITH 40MM BC+ DBM (VARIES) AS PROFILE AND GEOMETRIC CORRECTION COURSE	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
12	MC12	0+000	0+236	OVERLAY WITH 40MM BC+ DBM (VARIES) AS PROFILE AND GEOMETRIC CORRECTION COURSE	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
13	MC13	0+000	0+067	OVERLAY WITH 40MM BC+ DBM (VARIES) AS PROFILE AND GEOMETRIC CORRECTION COURSE	-
14	MC14	0+000	0+082	OVERLAY WITH 40MM BC+ 80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
15	MC15	0+000	0+089	RECONSTRUCTION FROM EMBANKMENT TOP BY DISMANTLING OF MIN. EXISTING BT LAYER (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
16	MC16	0+000	0+244	OVERLAY WITH 40MM BC+ 80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
17	MC17	0+000	0+229	OVERLAY WITH 40MM BC+ 80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)

18	MC18	0+000	0+100	OVERLAY WITH 40MM BC+80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
19	MC19	0+000	0+143	OVERLAY WITH 40MM BC+80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
20	MC20	0+000	0+145	OVERLAY WITH 40MM BC+80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
21	MC21	0+000	0+074	OVERLAY WITH 40MM BC+80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
22	MC22	0+000	0+065	OVERLAY WITH 40MM BC+80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
23	MC23	0+000	0+189	OVERLAY WITH 40MM BC+80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
24	MC24	0+000	0+079	OVERLAY WITH 40MM BC+80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)
25	MC25	0+000	0+081	OVERLAY WITH 40MM BC+80 MM (minimum) DBM AND A PROFILE AND GEOMETRIC CORRECTION COURSE IN DBM AS PER DESIGN REQUIREMENT	NEW CONSTRUCTION FROM EMBANKMENT TOP (BC=40MM, DBM=115MM, WMM=250MM, GSB=200MM & SUBGRADE=500MM)

6 ROADSIDE DRAINAGE

All the existing drains is to be dismantled and dismantled material is to be disposed properly as per the guidelines of National Green Tribunal. Drainage system including

surface and subsurface drains for the Project shall be provided as per IRC SP:50 (Latest Edition).

1.5m wide and minimum 1.1m deep (between bottom of top slab and invert level) RCC covered footpath cum drain will be provided on both sides of the carriageway as shown in TCS. The depth of drain will be as per FRL and the gradient of the drain (minimum 0.3%) required to carry the discharge to the existing drains outside the contract limits as per proposed drainage plan to be prepared by the contractor for submission to the Authority Engineer for their approval. Access to the road side properties to be provided by way of providing box culvert etc, no separate cost to be provided.

Total Length of covered RCC drain shall be 4200 m (2 X 2100m). The surface runoff will be collected along the edge by providing channel kerb and carried into the drains by 100 mm diameter PVC gullies with gratings @ 5.0m centers on both sides along full length of surface roads. At the location of gullies 600mm diameter FRC manholes covers shall be provided for de-silting of drains.

The runoff of Underpass shall be collected by suitable means by providing pipe and gullies in the four sumps and then pumped to discharge into proposed side drain shall be provided as per drainage plan of the contractor approved by Authority Engineer. Steel access doors to 2 Nos. pump rooms shall be provided. Each Pump room shall have 10 HP submersible pump of approved make of 50cum/h discharge capacity including Auto Panels and probes with all pipes and electric cables, meters, junctions and connections complete. The pumps shall be connected with exclusive power supply for which the cost will be borne by the contractor. Two standby pumps and two standby generators of 50 KVA each in noise less canopy shall be installed nearby location as per approval of Authority Engineer. Existing manholes on existing driveway if any to be raise up to the FRL with all the necessary cover provision etc. at no extra cost.

Minimum four numbers rain water harvesting pits to be provided at suitable locations as per drainage plan of the contractor after getting approval from the Authority Engineer.

7 DESIGN OF STRUCTURES

7.1 General

- 7.1.1 All bridges, culverts and structures shall be designed and constructed in accordance with section 7 of the Manual and shall conform to the cross sectional features and other details specified therein.
- 7.1.2 Width of the carriageway of new bridges and structures shall be: as per the drawings
- 7.1.3 The following structures shall be provided with footpaths: as per the drawings
- 7.1.4 All bridges shall be high-level bridges: NIL
- 7.1.5 The following structures shall be designed to carry utility corridor shall be provided as specified in the cross section in the drawings:

7.2 Culverts

7.2.1 Overall width of all culverts shall be equal to the roadway width of the approaches.

7.2.2 Reconstruction of existing culverts: Full Length

7.2.3 Widening of existing culverts: Full Length

7.2.4 Repairs/replacements of railing/parapets, flooring and protection works of the existing culverts shall be undertaken as follows: The serviceable material of the existing drains, footpaths, railing etc shall be deposited at store as per the direction of Authority Engineer.

7.2.5 Floor protection works shall be as specified in the relevant IRC Codes and Specifications.

7.2.6 RCC box trench 4 number shall be provided in the box portion of underpass to facilitate crossing of any utilities which may come up in future. Dimension of such trench shall be 1.5m wide and 1.0 high.

7.3 Bridges

7.3.1 Existing bridges to be re- constructed/widened: NIL

7.3.2 Additional new bridges: NIL

7.3.3 The railings of existing bridges shall be replaced by crash barriers at the following locations: NIL

7.3.4 Repairs/replacements of railing/parapets of the existing bridges shall be undertaken as follows: NIL

7.3.5 Drainage system for bridge decks

An effective drainage system for bridge decks shall be provided as specified in paragraph 7.20 of the Manual

7.3.6 Structures in marine environment: NIL

7.4 Rail-road bridges

7.4.1 Design, construction and detailing of ROB/RUB shall be as specified in section 7 of the Manual: NIL

7.4.2 Road over-bridges

Road over-bridges (road over rail) shall be provided at the following level crossings, as per GAD drawings attached: NIL

7.4.3 Road under-bridges

Road under-bridges (road under railway line) shall be provided at the following level crossings, as per GAD drawings attached: NIL

7.5 Grade separated structures

The grade separated structures shall be provided at the locations and of the type and length specified in paragraphs 2.9 and 3 of this Annex-I.

7.6 Repairs and strengthening of bridges and structures

The existing bridges and structures to be repaired/strengthened, and the nature and extent of repairs /strengthening required are given below: NIL

7.7 List of Major Bridges and Structures

The following is the list of the Major Structures:

Sl. No.	Location
1	Right Turning Underpass from Signature Tower to Subhash Chowk
2	Flyover/Overpass between 3-Arm Junction and 4-Arm Junction on HUDA City Center Road
3	FOB on road to IFFCO Chowk
4	FOB on Road to Signature Tower

7.7.1 The foundations of structures shall be as per Geo Technical Investigation to be arranged by contractor as per IRC:78 at each foundation location of all the structures .

7.7.2 The shapes of Piers and Pier-caps of various structures as shown in the drawings in Volume-III will have to be followed and no variation in shape and size will be accepted. 16mm thick Multi-wall Poly Carbonate modular panels shall be used for the roof of ramps of underpass and FOBs

8 TRAFFIC CONTROL DEVICES AND ROAD SAFETY WORKS

8.1 Traffic control devices and road safety works shall be provided in accordance with IRC SP:44 (Latest Edition)

8.2 Specifications of the reflective sheeting as per IRC:67 (Latest Edition)

8.3 Height gantry at the entry of underpass with warning sign for the height will be provided.

8.4 Cautionary, Mandatory and Informatory signs required as per IRC: 67 and as shown in the drawing in Volume-III shall be provided.

8.5 60 Nos. Traffic Delineators at the entry and exit of underpass shall be provided with cautionary signs and Chevron marking and LED cat's eye will have to be provided.

9 ROADSIDE FURNITURE

Roadside furniture shall be provided in accordance with the provisions of Section 9 of IRC: SP:87 (Latest Edition)

9.1 Two Number Bus shelter in S.S. frame with S.S. seating benches and side, roof covers shall be provided at the locations approved by Authority Engineer.

- 9.2 8500 Nos. cat's eye blinkers solar powered shall be provided as per the directions of Authority Engineer.
- 9.3 4500 m length of 1.5 m high M.S. railings (fitting and fixing mild steel railing comprising of hollow Rectangular 100x 50 mm and Square pipe of 75mm dia including two coat of primer and two coat of paint etc) at the edge of footpaths and at islands for segregation of pedestrian shall be provided as per drawings in Volume-III and approved by Authority Engineer.
- 9.4 1700 m length of 0.75m high Concrete Barriers (Type-2) at the edge of median on Shubhash Chowk Road and Sector Road towards NH-8 side and at islands shall be provided as per drawings in Volume-III and approved by Authority Engineer.

10 COMPULSORY AFFORESTATION

There are about 130 Nos. of trees to be cut from ROW and 3 times new trees to be planted by the contractor.

11 HAZARDOUS LOCATIONS

Concrete Crash Barriers (Type-1) shall be provided along both sides of Ramps of Underpass and Flyovers/Overpasses as per the drawings in Volume-III and approved by Authority Engineer.

12 RAIN WATER HARVESTING

The mandatory rainwater harvesting system as per guidelines of Ministry of Environment and Forest to take care of drainage for ground water recharge shall be provided with due approval of the Authority Engineer. Minimum four numbers of rain water harvesting shall be done as per IRC: SP:50 (latest edition)

13 Other structures:

Following other structures are required to be dismantled carefully and material received from the dismantling should be disposed off as mentioned:

- a. There is existing FOB in front of Metro Station over HUDA City Center Road. The deck, substructure and stairs in steel and foundation in concrete. This FOB has to be dismantled and all the steel components to be brought to the store and stacked as per the directions of GMDA/Authority Engineer.
- b. There is another partly constructed FOB on near Metro Station on road to Signature Tower. The foundations in concrete and Steel Columns are constructed. The built structure is to be dismantled and all the steel components to be brought to the store and stacked as per the directions of GMDA/Authority Engineer.
- c. The roads are comprised with central verge/dividing medians and footpath & grill is installed. The dismantled material such as Kerbs & Channel, grills & paver blocks are to be brought to the store and stacked as per the directions of GMDA/Authority Engineer.
- d. The roads are equipped with street light etc. The poles, lights, cables etc. are to be brought to the store and stacked as per the directions of GMDA/Authority Engineer.

- e. The traffic lights has also been provided at Z Chowk and Signature Tower road Chowk. The traffic light dismantled are to be brought to the store and stacked as per the directions of GMDA/Authority Engineer.
- f. Some directions boards and barricading has been provided for regularization of the traffic with some temporary structures constructed by Haryana Police. The boards and barricading are to be brought to the store and stacked as per the directions of GMDA/Authority Engineer.

14. **CONSTRUCTION DEMOLITION WASTE:**
Construction Demolition Waste shall be disposed off strictly as per 2016 guidelines of National Green Tribunal (NGT)

15 **CHANGE OF SCOPE**

The length of Structures and bridges specified hereinabove shall be treated as an approximate assessment. The actual lengths as required on the basis of detailed investigations shall be determined by the Contractor in accordance with the Specifications and Standards. Any variations in the lengths specified in this Schedule-B shall not constitute a Change of Scope, save and except any variations in the length arising out of a Change of Scope expressly undertaken in accordance with the provisions of Article 13.

SCHEDULE - C

(See Clause 2.1)

PROJECT FACILITIES**1 Project Facilities**

The Contractor shall construct the Project Facilities in accordance with the provisions of this Agreement. Such Project Facilities shall include:

- (a) Traffic Control Devices/road safety/roadside furniture;
- (b) Pedestrian facilities;
- (c) Landscaping and Tree Plantation;
- (d) others to be specified

2 Description of Project Facilities

Each of the Project Facilities is described below:

(a) Traffic Control Devices/Road Safety/Roadside Furniture

The roadside furniture shall include the provision of;

- i. Traffic Signs: Traffic signs include roadside signs, overhead signs and Kerb mounted signs along the length of the Project. The details of these signs are shown in the Signage Drawing attached in Volume-III "Drawings"
- ii. In addition, the Overhead Height Gantry shall be provided at the entry of underpass.
- iii. Pavement Markings: Pavement markings shall cover road marking for the entire Project Length
- iv. LED Traffic Blinkers: These shall be provided for the entire Project Length.
- v. Crash barrier: New Jersey type crash barrier shall be provided along both sides of the ramps of the underpass.
- vi. Delineators: Delineators for the entire Project at the locations as suggested in Manual
- vii. Rumble Strip in Underpass: In the underpass Rumble strips shall be provided at the entry and exit.

(a) Pedestrian Facilities:

Pedestrian footpath with guard rail/hand rail shall be provided in FOBs and on surface at the edge of footpaths and at islands as finalized in consultation with Authority Engineer.

All the footpaths along with the all the roads including 8.5 m wide Pedestrian plaza in full stretch of road in front of Fortis Hospital opposite HCC Metro Station and end to end footpath shall be provided as per the drawings given in annexed in Volume-III and approval of Authority Engineer.

(b) Landscaping and Tree Plantation:

Plantation in median/Island/Footpath/Walkway shall be done with permitted species in consultation with Authority Engineer. The vertical garden on FOBs shall also be provided as per consultation with the Authority and Authority Engineer The system for watering of Plantation area shall be through pipe water supply and prop ups automatically. Any pumping arrangement shall be at Ground level to ensure safety of

traffic. The system of watering of plantation should be complete with all fitting and fixtures.

(c) Others

I. Project Lighting : Lighting shall be provided at the following locations:

- (i) Lighting shall be provided on entire length of the project including inside sky walk, Underpass, Ramps, all at-grade roads being improved under the project as per Schedule D, IRC:SP:90-2010 and relevant IRC codes using solar power with full alternative power backup. 70 Nos 9.0m high dual bracket & 500 Nos 9.0m high single bracket with fixtures, LED Lights, junction box, auto switch, cabling and connection to the power supply shall be provided as per direction and approval of Authority Engineer. Power back generator shall be placed at Ground only. Care should be taken at the entry and exit of the underpass during the day and night to avoid black hole/glare effects. Cost for lighting and maintenance including running/operations with consumable etc shall be borne by the Contractor.
- (ii) 7 Nos 30.0 m High Mast LED Lighting complete with Auto switch, junction boxes, cabling and connection to power supply shall be provided at both intersection locations as per Schedule D.

II Drainage for Underpass

Drainage for underpass consisting of collection drains, sumps and pumps shall be provided to prevent flooding as shown in the drawing. At least one stand-by pump of adequate capacity shall be provided which shall be in good running condition.

III Traffic Management during Construction:

Traffic management during construction shall be given utmost importance. The Traffic Management Plan shall be prepared by the safety consultant of the contractor and shall be got approved by the Authority Engineer and Traffic Police. For guidance a Traffic Management Plan has been given in the drawings annexed in Volume-III.

Contractor shall deploy at least 15 nos. of personnel for 24 hours, who will be responsible to manage the traffic during construction period including any extension in the period thereof. All the persons responsible for traffic management shall be "Home Guard" or equivalent and shall have experience in traffic management for at least 2nos. of similar projects in metropolitan areas. Payment against shall be made against the deployment of the personnel during execution period as per Schedule H. No extra payment will be made on account of this during extension period. In case the deployment is less than the specified and the authority finds any lapse in traffic management leading to undesirable heavy traffic congestion or deadlock, Contractor

shall take immediate measure to resolve the same at the full satisfaction of the Authority. Non-compliance of the same shall lead to penalty at the rate of ₹ 30,000 (Rupees thirty thousand only) per day.

IV Finishes on Abutment Walls of Flyovers and Walls of underpass

For visual enhancement inside Abutment walls of Flyover and inside walls of Underpass including ramps using screen Printed vitrified tiles with colored pictures and patterns shall be provided as approved by Authority and Authority Engineer.

V Finishes on walkway

Boundary wall of the walkway connecting the Huda City Cener metro station to the proposed Bus Terminal shall be aesthetically enhanced by providing cladding of Printed vitrified tiles with colored pictures and patterns as approved by Authority and Authority Engineer.

SCHEDULE - D**(See Clause 2.1)****SPECIFICATIONS AND STANDARDS****1 Construction**

The Contractor shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for construction of the Project .

2 Design Standards

The Project including Project Facilities shall conform to design requirements set out in the following documents:

Manual of Specifications and Standards for Four Laning of Highways through Public Private Partnership (IRC: SP: 84-2007), referred to herein as the Manual]

Geometric Design Standards for Urban Roads in Plains IRC:86 (Latest

Edition) Guidelines for the design of Interchanges in Urban Area IRC:92

(Latest Edition) Guidelines for Urban Drainage IRC:SP:50 (Latest Edition)

Annex - I

(Schedule-D)

Specifications and Standards for Construction

1 Specifications and Standards

All Materials, works and construction operations shall conform to the Manual of Specifications and Standards for Four-Laning of Highways (IRC:SP:84), Geometric Design Standards for Urban Roads in Plains (IRC:86), Guidelines for Design of Interchanges in Urban area (IRC:92) referred to as the Manual, and MORTH Specifications for Road and Bridge Works. Where the specification for a work is not given, Good Industry Practice shall be adopted to the satisfaction of the Authority's Engineer.

2 Deviations from the Specifications and Standards

2.1 The terms "Concessionaire", "Independent Engineer" and "Concession Agreement" used in the Manual shall be deemed to be substituted by the terms "Contractor", "Authority's Engineer" and "Agreement" respectively.

2.2 Notwithstanding anything to the contrary contained in Paragraph 1 above, the following Specifications and Standards shall apply to the Project, and for purposes of this Agreement, the aforesaid Specifications and Standards shall be deemed to be amended to the extent set forth below:

Sl. No.	Item	Description of Deviation	Clause reference
1	Gradients	For the approach ramp of right turning underpass descending gradient shall be 4% and ascending gradient will be 4%	2.9.6.2
2	Vertical Clearance	Vertical clearance of Underpass shall be 5.5 m as per Clause 2.5.1 and Clause 2.5.2 of Schedule B	2.10.2 and 2.11.2
3	Typical Cross sections	Typical cross-section shall be as given in Annex-III of Schedule B	2.17
4	Width of new Structures	Width of underpass and Skywalk shall be as given in Schedule B and as per enclosed TCS of bridge	7.1
5	Right of Way	Proposed Right of Way shall be as per Schedule B	2.3
6	Traffic Signs	Signage structures and frames shall be as per the attached drawing	9.2

SCHEDULE - E

(See Clauses 2.1 and 14.2)

MAINTENANCE REQUIREMENTS**1 Maintenance Requirements**

- 1.1** The Contractor shall, at all times maintain the Project in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits.
- 1.2** The Contractor shall repair or rectify any Defect or deficiency set forth in Paragraph 2 of this Schedule-E within the time limit specified therein and any failure in this behalf shall constitute non-fulfillment of the Maintenance obligations by the Contractor. Upon occurrence of any breach hereunder, the Authority shall be entitled to effect reduction in monthly lump sum payment as set forth in Clause 14.6 of this Agreement, without prejudice to the rights of the Authority under this Agreement, including Termination thereof.
- 1.3** All Materials, works and construction operations shall conform to the MORTH Specifications for Road and Bridge Works, and the relevant IRC publications. Where the specifications for a work are not given, Good Industry Practice shall be adopted.

[Specify all the relevant documents]**2 Repair/rectification of Defects and deficiencies**

The obligations of the Contractor in respect of Maintenance Requirements shall include repair and rectification of the Defects and deficiencies specified in Annex - I of this Schedule-E within the time limit set forth therein.

3 Other Defects and deficiencies

In respect of any Defect or deficiency not specified in Annex - I of this Schedule-E, the Authority's Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Contractor within the time limit specified by the Authority's Engineer.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-E, if the nature and extent of any Defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Contractor shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Authority's Engineer and conveyed to the Contractor and the Authority with reasons thereof.

5 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-E, if any Defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Contractor shall promptly take all reasonable measures for eliminating or minimizing such danger.

6 Daily inspection by the Contractor

The Contractor shall, through its engineer, undertake a daily visual inspection of the Project and maintain a record thereof in a register to be kept in such form and manner as the Authority's Engineer may specify. Such record shall be kept in safe custody of the Contractor and shall be open to inspection by the Authority and the Authority's Engineer at any time during office hours.

7. Pre-monsoon inspection / Post-monsoon inspection

The Contractor shall carry out a detailed pre-monsoon inspection of all bridges, culverts and drainage system before [1st June] every year in accordance with the guidelines contained in IRC: SP35. Report of this inspection together with details of proposed maintenance works as required on the basis of this inspection shall be sent to the Authority's Engineer before the [10th June] every year. The Contractor shall complete the required repairs before the onset of the monsoon and send to the Authority's Engineer a compliance report. Post monsoon inspection shall be done by the [30th September] and the inspection report together with details of any damages observed and proposed action to remedy the same shall be sent to the Authority's Engineer.

8. Repairs on account of natural calamities

All damages occurring to the Projection account of a Force Majeure Event or default or neglect of the Authority shall be undertaken by the Authority at its own cost. The Authority may instruct the Contractor to undertake the repairs at the rates agreed between the Parties.

Annex - I
(Schedule-E)**Repair/rectification of Defects and deficiencies**

The Contractor shall repair and rectify the Defects and deficiencies specified in this Annex-I of Schedule-E within the time limit set forth in the table below.

Nature of Defect or deficiency		Time limit for repair/rectification
ROADS		
(a)	Carriageway and paved shoulders	
(i)	Breach or blockade	Temporary restoration of traffic within 24 hours; permanent restoration within 15 (fifteen) days
(ii)	Roughness value exceeding 2,200 mm in a stretch of 1 km (as measured by a calibrated bump integrator)	120 (one hundred and twenty) days
(iii)	Pot holes	24 hours
(iv)	Any cracks in road surface	15 (fifteen) days
(v)	Any depressions, rutting exceeding 10 mm in road surface	30 (thirty) days
(vi)	Bleeding/skidding	7 (seven) days
(vii)	Any other defect/distress on the road	15 (fifteen) days
(viii)	Damage to pavement edges	15 (fifteen) days
(ix)	Removal of debris, dead animals	6 hours
(b)	Granular earth shoulders, side slopes, drains and culverts	
(i)	Variation by more than 1 % in the prescribed slope of camber/cross fall (shall not be less than the camber on the main carriageway)	7 (seven) days
Nature of Defect or deficiency		Time limit for repair/rectification
(ii)	Edge drop at shoulders exceeding 40 mm	7 (seven) days
(iii)	Variation by more than 15% in the prescribed side (embankment) slopes	30 (thirty) days
(iv)	Rain cuts/gullies in slope	7 (seven) days
(v)	Damage to or silting of culverts and side drains	7 (seven) days
(vi)	Desilting of drains in urban/ semi urban areas	24 hours
(vii)	Railing, parapets, crash barriers	7 (seven) days (Restore immediately if causing safety hazard)
(c)	Road side furniture including road sign and pavement marking	
(i)	Damage to shape or position, poor visibility or loss	48 hours

	of retro reflectivity	
(ii)	Painting of km stone, railing, parapets, crash barriers	As and when required/twice every year one before 15 August and one before 26 th January
(iii)	Damaged/missing road signs requiring replacement	7 (seven) days
(iv)	Damage to road mark ups	7 (seven) days
(d)	Road lighting	
(i)	Any major failure of the system	24 hours
(ii)	Faults and minor failures	8 hours
(iii)	Replacement of IL luminaries	8 hours
(e)	Trees and plantation	
(i)	Obstruction in a minimum headroom of 5 m above carriageway or obstruction in visibility of road signs	24 hours
(ii)	Removal of fallen trees from carriageway	4 hours
(iii)	Deterioration in health of trees and bushes	Timely watering and treatment
Nature of Defect or deficiency		Time limit repair/rectification
(iv)	Trees and bushes requiring replacement	30 (thirty) days
(v)	Removal of vegetation affecting sight line and road structures	15 (fifteen) days
(f)	Rest area	
(i)	Cleaning of toilets	Every 4 hours
(ii)	Defects in electrical, water and sanitary installations	24 hours
(g)	[Toll Plaza]	
(h)	Other Project Facilities and Approach roads	
(i)	Damage in approach roads, pedestrian facilities, truck lay byes, bus-bays, bus-shelters, cattle crossings, [Traffic Aid Posts, Medical Aid Posts] and service roads	15 (fifteen) days
(ii)	Damaged vehicles or debris on the road	4 (four) hours
(iii)	Malfunctioning of the mobile crane	4 (four) hours
Bridges/FOBs		
(a)	Superstructure	
(i)	Any damage, cracks, spalling/ scaling Temporary measures Permanent measures	within 48 hours within 15 (fifteen) days or as specified by the Authority's Engineer
(b)	Foundations	
(i)	Scouring and/or cavitations	15 (fifteen) days
(c)	Piers, abutments, return walls and wing walls	
(i)	Cracks and damages including settlement and tilting, spalling, scaling	30 (thirty) days
Nature of Defect or deficiency		Time limit for repair/rectification
(d)	Bearings (metallic) of bridges	

(i)	Deformation, damages, tilting or shifting of bearings	15 (fifteen) days Greasing of metallic bearings once in a year
(e)	Joints	
(i)	Malfunctioning of joints	15 (fifteen) days
(f)	Other items	
(i)	Deforming of pads in elastomeric bearings	7 (seven) days
(ii)	Gathering of dirt in bearings and joints; or clogging of spouts, weep holes and vent-holes	3 (three) days
(iii)	Damage or deterioration in kerbs, parapets, handrails and crash barriers	3 (three) days (immediately within 24 hours if posing danger to safety)
(iv)	Rain-cuts or erosion of banks of the side slopes of approaches	7 (seven) days
(v)	Damage to wearing coat	15 (fifteen) days
(vi)	Damage or deterioration in approach slabs, pitching, apron, toes, floor or guide bunds	30 (thirty) days
(vii)	Growth of vegetation affecting the structure or obstructing the waterway	15 (fifteen) days
Underpass		
(a)	Polycarbonate Roofing on ramps	
(i)	Any damage (cracking, deformation etc.) to polycarbonate sheets and their support system (rafters, purlins, anchors, bolts etc.) Temporary measures Permanent measures	within 48 hours within 15 (fifteen) days or as specified by Authority Engineer.
(b)	Retaining walls:	
(i)	Any damage, cracks, spallings and damages including tilting & scaling, settlement of adjacent roads at surface, leakage, seepage and malfunction of joints.	15 (fifteen) days
(c)	Top slab and base slab:	
(i)	Any damage, cracks, spalling, scaling Temporary measures Permanent measures	within 48 hours within 15 (fifteen) days or as specified by Authority Engineer.
(d)	Other items	
(i)	Lighting Any major failure of the system Faults, minor failures, replacement of luminaires etc.	24hrs 8hrs
(ii)	Drainage Any blockage and failures of draining system causing accumulation of water inside underpass	2 hrs

(iii)	Finishes on walls Damage or cracking of finishes	24hrs
(vi)	Damage to wearing course	48 hrs
(v)	Damage or deterioration in kerbs, parapets, handrails and crash barriers	3 (three) days
Upkeepment of Project facilities		
(i)	Cleaning of project roads/underpass/flyover	Daily
(ii)	Employment of Security/operator one each on every escalators/lift Round the clock	Daily
(iii)	Maintenance of horticulture by employing adequate number of gardeners	Daily

SCHEDULE - F
(See Clause 3.1.7(a))

APPLICABLE PERMITS

1 Applicable Permits

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

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

1.2 Applicable Permits, as required, relating to environmental protection and conservation shall have been procured by the Authority in accordance with the provisions of this Agreement.

SCHEDULE – G
(See Clauses 7.1.1, 7.5.3 and 19.2)
FORM OF BANK GUARANTEE

Annex-I

(See Clause 7.1.1)

[Performance Security/Additional Performance Security]

[The CEO,

GURUGRAM METROPOLITAN DEVELOPEMENT AUTHROITY

GURUGRAM (HARYANA)]

WHEREAS:

- (A) _____ [name and address of contractor] (hereinafter called the “Contractor”) and [name and address of the authority], (hereinafter called the “Authority”) have entered into an agreement (hereinafter called the “Agreement”) for the C Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram, in the State of Haryana on Engineering, Procurement and Construction (the “EPC”) basis, subject to and in accordance with the provisions of the Agreement
- (B) The Agreement requires the Contractor to furnish a Performance Security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the {Construction Period/ Defects Liability Period and Maintenance Period} (as defined in the Agreement) in a sum of Rs..... cr. (Rupees crore) (the “Guarantee Amount”).
- (C) We, through our branch at (the “Bank”) have agreed to furnish this bank guarantee (hereinafter called the “Guarantee”) by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Contractor’s obligations during the {Construction Period/ Defects Liability Period and Maintenance Period} under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of Executive Engineer that the Contractor has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any

differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/or performance of all or any of the obligations of the Contractor contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Contractor under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect on _____. Unless a demand or claim under this Guarantee is made in writing before expiry of the Guarantee, the Bank shall be discharged from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for up to the date specified in paragraph 8 above or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

Annex – II
(Schedule - G)
(See Clause 7.5.3)

Form for Guarantee for Withdrawal of Retention Money

[The CEO,
GURUGRAM METROPOLITAN DEVELOPEMENT
AUTHORITY GURUGRAM (HARYANA)]

WHEREAS:

- (A) [name and address of contractor] (hereinafter called the “Contractor”) has executed an agreement (hereinafter called the “Agreement”) with the [name and address of the authority], (hereinafter called the “Authority”) for the Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram in the State of Haryana on Engineering, Procurement and Construction (the “EPC”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) In accordance with Clause 7.5.3 of the Agreement, the Contractor may withdraw the retention money (hereinafter called the “Retention Money”) after furnishing to the Authority a bank guarantee for an amount equal to the proposed withdrawal.
- (C) We, through our branch at (the “Bank”) have agreed to furnish this bank guarantee (hereinafter called the “Guarantee”) for the amount of Rs. --
 ----- cr. (Rs.-----crore) (the “Guarantee Amount”).

NOW, THEREFORE, the Bank hereby unconditionally and irrevocably guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of General Manager in the Authority/GMDA, that the Contractor has committed default in the due and faithful performance of all or any of its obligations for under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Retention Money and any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Retention Money.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect 90 (ninety) days after the date of the Completion Certificate specified in Clause 12.4 of the Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

7061/2018/O/o

SE(GMDA

-Infral)



GURUGRAM

METROPOLITAN

DEVELOPMENT AUTHORITY (GMDA)

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address) NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

Annex – III

(Schedule - G)

(See Clause 19.2)

Form for Guarantee for Advance Payment

[The CEO,

GURUGRAM METROPOLITAN DEVELOPMENT

AUTHORITY GURUGRAM (HARYANA)]

WHEREAS:

- (A) [name and address of contractor] (hereinafter called the “Contractor”) has executed an agreement (hereinafter called the “Agreement”) with the GMDA Plot No. 44 Sec-32 Gurugram Haryana, (hereinafter called the “Authority”) for the Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram in the State of Haryana on Engineering, Procurement and Construction (the “EPC”) basis, subject to and in accordance with the provisions of the Agreement
- (B) In accordance with Clause 19.2 of the Agreement, the Authority shall make to the Contractor an interest bearing (@ Bank Rate) advance payment (herein after called “Advance Payment”) equal to 10% (ten per cent) of the Contract Price; and that the Advance Payment shall be made in two installments subject to the Contractor furnishing an irrevocable and unconditional guarantee by a scheduled bank for an amount equivalent to 110% (one hundred and ten percent) of such installment to remain effective till the complete and full repayment of the installment of the Advance Payment as security for compliance with its obligations in accordance with the Agreement. The amount of {first/second} installment of the Advance Payment is Rs. ----- cr. (Rupees ----- crore) and the amount of this Guarantee is Rs. ----- cr. (Rupees ----- crore) (the “Guarantee Amount”)
- (C) We, through our branch at (the “Bank”) have agreed to furnish this bank guarantee (hereinafter called the “Guarantee”) for the Guarantee Amount.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful repayment on time of the aforesaid instalment of the Advance Payment under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Contractor, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of [General Manager in the National Highways Authority of India], that the Contractor has

committed default in the due and faithful performance of all or any of its obligations for the repayment of the instalment of the Advance Payment under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Contractor is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Contractor is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Contractor, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Contractor for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Contractor and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Contractor before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Advance Payment or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Contractor, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Advance Payment.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect on _____. Unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the head office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

SCHEDULE - H
(See Clauses 10.1.4 and 19.3)

Contract Price Weightages

1.1 The Contract price for this agreement is Rs. 44.89 Crores

1.2 Proportions of the Contract price for different stages of construction of the project and procedure of payment shall be as specified below;

Item	Weightage per centage in to the Contract Price	Stage of Payment	%Age Weightage	Payment Procedure
Road works including culverts, widening and repair of Culverts	12.29%	A.1- Road Portion		
		(1) Earthwork up to top of the sub-grade	0.49%	Payment shall be made on pro-rata basis on completion of 1/3rd of total area.
		(2) Sub Base Course	0.81%	
		(3) Non Bituminious Base Course	1.02%	Payment shall be made on pro-rata basis on completion of 20% of total area.
		(4) Bituminous Base Course	5.96%	
		(5) Wearing Coat	4.01%	
Minor Bridges/Underpasses/Overpasses/Flyovers	54.02%	B.1- New Underpasses		
		(a) Tunnel Portion	12.24%	Payment shall be made on pro-rata basis on completion of 25% of total plan area of box structure.
		(b) Approaches	20.88%	Payment shall be made on pro-rata basis on completion of 10% of total length.
		(c) Structure steel and Polycarbonate sheet	4.16 %	Payment shall be made on pro-rata basis on completion of 25% of total length.
		(a) Miscellaneous Pump & sump, lighting, murals and cladding etc.	4.73 %	Payment shall be made on completion of work
		B.2- New Overpasses / Flyovers		
		(a) Viaduct Portion (i) Foundation (ii) Sub Structure (iii) Super Structure	6.47%	Payment shall be made on pro-rata basis on completion of (i) foundation -30% (ii) sub-structure- 25% and (iii) Super Structure-45%

		(b) Approaches	5.42%	Payment shall be made on pro-rata basis on completion of 25% of total length
		(c) Miscellaneous	0.12%	Payment shall be made on completion of work up to stage
FOB	5.49 %	C.1- New foot over bridge		
		(1) Foundation	0.50%	Payment shall be made on completion of the each stage.
		(2) Sub-structure	0.19%	
		(3) Super-structure (including bearing)	2.65%	Payment shall be made on completion of the stage.
		(5) Miscellaneous Items like hand rail, crash barrier etc.	0.69%	Payment shall be made on completion of the stage.
		(6) Stair Case & Lifts	1.46%	
Other Works	28.20 %	(1) Road side drains	12.30%	Payment shall be made on prorata basis on completion of 10% of the total length
		(2) Road signs, markings, street lights etc	4.06%	Payment shall be made on completion of work
		(3) Project facilities		
		(a) Bus bays	0.07%	Payment shall be made on completion of work
		(b) Tiles, PVC Pipes etc.	5.45%	Payment shall be made on pro-rate basis on completion of 20% of total length
		(4) Road side plantation	0.09%	Payment shall be made on completion of work
		(5) Safety and traffic management	4.13%	Payment shall be made on pro-rata basis after every two months working period
		(6) Walkway (connection from Metro station to upcoming bus terminal)	2.10%	Payment shall be made on pro-rata basis on completion of 25 % of total length
			100.00%	

SCHEDULE - I
(See Clause 10.2.4)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 10.2 of this Agreement, the Contractor shall furnish to the Authority's Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-I.

2 Additional Drawings

If the Authority's Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Contractor to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Contractor shall promptly prepare and furnish such drawings to the Authority's Engineer, as if such drawings formed part of Annex-I of this Schedule-I.

Annex - I
(Schedule - I)

List of Drawings

- (a) **Working Drawings of all the components/elements of the Project as determined by Authority Engineer, and**
- (b) **As-built drawings for the Project components/elements as determined by Authority Engineer. As-built drawings shall be duly certified by Authority Engineer.**

A broad list of the drawings of the various components/elements of the Project and project facilities required to be submitted by the Contractor is given below:

- (a) **Drawings of horizontal alignment, vertical profile and cross sections**
- (b) **Drawings of cross drainage works**
- (c) **Drawings of Underpass and Skywalk**
- (d) **Drawings of drainage system including disposal, rain water harvesting, sump and pump house,**
- (e) **Drawings of road furniture items including traffic signage, Overhead gantries, Road markings, Delineators, LED Blinkers, safety gadgets, barriers, etc.**
- (f) **Drawings of traffic diversion plans and traffic control measures**
- (g) **Drawings of road drainage measures**
- (h) **Drawings for Signage**
- (i) **Drawings of Footpaths, medians, landscaping and horticulture**
- (j) **Drawings of street lighting systems including inside underpass and High mast**
- (k) **Any other detailed drawings not included above but required by Authority Engineer for completion/ construction of the project.**

SCHEDULE - J
(See Clause 10.3.2)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction period, the Contractor shall comply with the requirements set forth in this Schedule-J for each of the Project Milestones and the Scheduled Completion Date. Within 15 (fifteen) days of the date of each Project Milestone, the Contractor shall notify the Authority of such compliance along with necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the 120th (one hundred and twenty) day from the Appointed Date (the “Project Milestone-I”).

2.2 Prior to the occurrence of Project Milestone-I, the Contractor shall have commenced construction of the Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 10% (ten per cent) of the Contract Price.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 245th (two hundred and forty five) day from the Appointed Date (the “Project Milestone-II”).

3.2 Prior to the occurrence of Project Milestone-II, the Contractor shall have continued with construction of the Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 30% (thirty per cent) of the Contract Price.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the 305th (three hundred and five) day from the Appointed Date (the “Project Milestone-III”).

4.2 Prior to the occurrence of Project Milestone-III, the Contractor shall have continued with construction of the Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 60% (sixty per cent) of the Contract Price.

5 Scheduled Completion Date

5.1 The Scheduled Completion Date shall occur on the 365 (three hundred and sixty five) day from the Appointed Date.

5.2 On or before the Scheduled Completion Date, the Contractor shall have completed construction in accordance with this Agreement.

6 Extension of time

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE - K

(See Clause 12.1.2)

Tests on Completion**1 Schedule for Tests**

- 1.1** The Contractor shall, no later than 30 (thirty) days prior to the likely completion of construction, notify the Authority's Engineer and the Authority of its intent to subject the Project to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Authority's Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Works.
- 1.2** The Contractor shall notify the Authority's Engineer of its readiness to subject the Project to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt of such notice, the Authority's Engineer shall, in consultation with the Contractor, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Authority's Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 12 and this Schedule-K.

2 Tests

- 2.1** Visual and physical test: The Authority's Engineer shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement. The physical tests shall include all the tests required for quality control or as decided in consultation with the Authority Engineer at the time of physical tests as per relevant IRC codes & Manual.
- 2.2** Riding quality test: Riding quality of each lane of the carriageway shall be checked with the help of a calibrated bump integrator and the maximum permissible roughness for purposes of this Test shall be [2,000 (two thousand)] mm for each kilometre.
- 2.3** Tests for bridges: All major and minor bridges shall be subjected to the rebound hammer and ultrasonic pulse velocity tests, to be conducted in accordance with the procedure described in Special Report No. 17: 1996 of the IRC Highway Research Board on Nondestructive Testing Techniques, at two spots in every span, to be chosen at random by the Authority's Engineer. Bridges with a span of 15 (fifteen) metres or more shall also be subjected to load testing.
- 2.4** Other tests: The Authority's Engineer may require the Contractor to carry out or cause to be carried additional tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.
- 2.5** Environmental audit: The Authority's Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

- 2.6 Safety Audit:** The Authority's Engineer shall carry out, or cause to be carried out, a safety audit to determine conformity of the Project with the safety requirements and Good Industry Practice.

3 Agency for conducting Tests

All Tests set forth in this Schedule-K shall be conducted by the Authority's Engineer or such other agency or person as it may specify in consultation with the Authority.

4 Completion Certificate

Upon successful completion of Tests, the Authority's Engineer shall issue the Completion Certificate in accordance with the provisions of Article 12.

SCHEDULE - L
(See Clause 12.2 and 12.4)

PROVISIONAL CERTIFICATE

- 1 I, (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated (the "Agreement"), for Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram in the State of Haryana (the "Project ") on Engineering, Procurement and Construction (EPC) basis through (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

- 2 Works that are incomplete on account of Time Extension have been specified in the Punch List appended hereto, and the Contractor has agreed and accepted that it shall complete all such works in the time and manner set forth in the Agreement. In addition, certain minor works are incomplete and these are not likely to cause material inconvenience to the Users of the Project affect their safety. The Contractor has agreed and accepted that as a condition of this Provisional Certificate, it shall complete such minor works within 30 (thirty) days hereof. These minor works have also been specified in the aforesaid Punch List.

- 3 In view of the foregoing, I am satisfied that the Project from km ** to km ** can be safely and reliably placed in service of the Users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into operation on this the day of 20.....

ACCEPTED, SIGNED, SEALED

AND DELIVERED

For and on behalf of

Contractor by:

(Signature)

SIGNED, SEALED AND

DELIVERED

For and on behalf of

Authority's Engineer by:

(Signature)

COMPLETION CERTIFICATE

1 I, (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated (the "Agreement"), for Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram in the State of Haryana (the "Project ") on Engineering, Procurement and Construction (EPC) basis through (Name of Contractor), hereby certify that the Tests in accordance with Article 12 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in service of the Users thereof.

2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, and the Project is hereby declared fit for entry into operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

the Authority's Engineer by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE - M

(See Clauses 14.6, 15.2 and 19.7)

PAYMENT REDUCTION FOR NON-COMPLIANCE

1. **Payment reduction for non-compliance with the Maintenance Requirements**
 - 1.1 Monthly lump sum payments for maintenance shall be reduced in the case of non-compliance with the Maintenance Requirements set forth in Schedule-E.
 - 1.2 Any deduction made on account of non-compliance with the Maintenance Requirements shall not be paid even after compliance subsequently. The deductions shall continue to be made every month until compliance is done.
 - 1.3 The Authority's Engineer shall calculate the amount of payment reduction on the basis of weightage in percentage assigned to non-conforming items as given in Paragraph 2.
2. **Percentage reductions in lump sum payments**
 - 2.1 The following percentages shall govern the payment reduction:

S. No.	Item/Defect/Deficiency	Percentage
(a)	Carriageway/Pavement	
(i)	Potholes, cracks, other surface defects	10%
(ii)	Repairs of Edges, Rutting	5%
(b)	Road, Embankment, Cuttings, Shoulders	
(i)	Edge drop, inadequate cross fall, undulations, settlement, potholes, ponding, obstructions	10%
(ii)	Deficient slopes, raincuts, disturbed pitching, vegetation growth, pruning of trees	5%
(c)	Bridges and Culverts	
(i)	Desilting, cleaning, vegetation growth, damaged pitching, flooring, parapets, wearing course, footpaths, any damage to foundations	10%
(ii)	Any Defects in superstructures, bearings and sub-structures	10%
(iii)	Painting, repairs/replacement kerbs, railings, parapets, guideposts/crash barriers	5%
(d)	Roadside Drains	
(i)	Cleaning and repair of drains	5%
(e)	Road Furniture	
(i)	Cleaning, painting, replacement of road signs, delineators, road Markings	5%
(f)	Miscellaneous Items	

(i)	Removal of dead animals, broken down/accidental vehicles, fallen trees, road blockades or malfunctioning of mobile crane	10%
(ii)	Any other Defects in accordance with paragraph 1.	5%
(g)	Defects in Other Project Facilities	5%
(f)	Upkeepment of Project facilities	15%

- 2.2 The amount to be deducted from monthly lump-sum payment for noncompliance of particular item shall be calculated as under:

$$R = P/100 \times M \times L1/L$$

Where P = Percentage of particular item/Defect/deficiency for deduction

M = Monthly lump-sum payment in accordance with the Bid

L1 = Non-complying length

L = Total length of the road,

R = Reduction (the amount to be deducted for noncompliance for a particular item/Defect/deficiency

The total amount of reduction shall be arrived at by summation of reductions for such items/Defects/deficiency or noncompliance.

For any Defect in a part of one kilometer, the non-conforming length shall be taken as one kilometer.

SCHEDULE - N
(See Clause 18.1.1)

SELECTION OF AUTHORITY'S ENGINEER

1 Selection of Authority's Engineer

1.1 The provisions of the Model Request for Proposal for Selection of Technical Consultants, issued by the Ministry of Finance in May 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Authority's Engineer.

1.2 In the event of termination of the Technical Consultants appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith and may engage a government-owned entity in accordance with the provisions of Paragraph 3 of this Schedule-N.

2 Terms of Reference

The Terms of Reference for the Authority's Engineer (the "TOR") shall substantially conform with Annex 1 to this Schedule N.

3 Appointment of Government entity as Authority's Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Authority's Engineer; provided that such entity shall be a body corporate having as one of its primary functions the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the Authority shall not be eligible for appointment as Authority's Engineer.

Annex – I
(Schedule - N)

TERMS OF REFERENCE FOR AUTHORITY'S ENGINEER

1 Scope

1.1 These Terms of Reference (the "TOR") for the Authority's Engineer are being specified pursuant to the EPC Agreement dated (the "Agreement"), which has been entered into between the [name and address of the Authority] (the "Authority") and (the "Contractor") for Construction of Underpass, Flyovers (Overpass), Fobs and Surface Roads around Huda City Center Metro Station in Gurugram in the State of Haryana on Engineering, Procurement, Construction (EPC) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 The TOR shall apply to construction and maintenance of the Project .

2 Definitions and interpretation

2.1 The words and expressions beginning with or in capital letters and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

3. General

3.1 The Authority's Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

3.2 The Authority's Engineer shall perform the duties and exercise the authority in accordance with the provisions of this Agreement, 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).

3.3 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.

- 3.4 The Authority's Engineer shall inform the Contractor of any delegation of its duties and responsibilities to its suitably qualified and experienced personnel; provided, however, that it shall not delegate the authority to refer any matter for the Authority's prior approval in accordance with the provisions of Clause 18.2.
- 3.5 The Authority's Engineer shall aid and advise the Authority on any proposal for Change of Scope under Article 13.
- 3.6 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Authority's Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

4 Construction Period

- 4.1 During the Construction Period, the Authority's Engineer shall review the Drawings furnished by the Contractor along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys, and the recommendations of the Safety Consultant in accordance with the provisions of Clause 10.1.6. The Authority's Engineer shall complete such review and send its observations to the Authority and the Contractor within 15 (fifteen) days of receipt of such Drawings; provided, however that in case of a Major Bridge or Structure, the aforesaid period of 15 (fifteen) days may be extended upto 30 (thirty) days. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Authority's Engineer shall review any revised Drawings sent to it by the Contractor and furnish its comments within 10 (ten) days of receiving such Drawings.
- 4.3 The Authority's Engineer shall review the Quality Assurance Plan submitted by the Contractor and shall convey its comments to the Contractor within a period of 21 (twenty-one) days stating the modifications, if any, required thereto.
- 4.4 The Authority's Engineer shall complete the review of the methodology proposed to be adopted by the Contractor for executing the Works, 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.
- 4.5 The Authority's Engineer shall grant written approval to the Contractor, where necessary, for interruption and diversion of the flow of traffic in the existing lane(s) of the Project for purposes of maintenance during the Construction Period in accordance with the provisions of Clause 10.4.

- 4.6** The Authority's Engineer shall review the monthly progress report furnished by the Contractor and send its comments thereon to the Authority and the Contractor within 7 (seven) days of receipt of such report.
- 4.7** The Authority's Engineer shall inspect the Construction Works and the Project and shall submit a monthly Inspection Report bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. In particular, the Authority's Engineer shall include in its Inspection Report, the compliance of the recommendations made by the Safety Consultant.
- 4.8** The Authority's Engineer shall conduct the pre-construction review of manufacturer's test reports and standard samples of manufactured Materials, and such other Materials as the Authority's Engineer may require.
- 4.9** For determining that the Works conform to 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 the Agreement and in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 4.9, the tests specified in the IRC Special Publication-11 (Handbook of Quality Control for Construction of Roads and Runways) and the Specifications for Road and Bridge Works issued by MORTH (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance.
- 4.10** The Authority's Engineer shall test check at least 20 (twenty) percent of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.
- 4.11** The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Authority's Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Contractor for its own quality assurance in accordance with Good Industry Practice.
- 4.12** In the event that results of any tests conducted under Clause 11.10 establish any Defects or deficiencies in the Works, the Authority's Engineer shall require the Contractor to carry out remedial measures.
- 4.13** The Authority's Engineer may instruct the Contractor to execute any work which is urgently required for the safety of the Project, 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.
- 4.14** In the event that the Contractor fails to achieve any of the Project Milestones, the Authority's Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Authority's Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Contractor to indicate within 15 (fifteen) days the steps proposed to be

taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Contractor, the Authority's Engineer shall review the same and send its comments to the Authority and the Contractor forthwith.

- 4.15 The Authority's Engineer shall obtain from the Contractor a copy of all the Contractor's quality control records and documents before the Completion Certificate is issued pursuant to Clause 12.4.
 - 4.16 Authority's Engineer may recommend to the Authority suspension of the whole or part of the Works if the work threatens the safety of the Users and pedestrians. After the Contractor has carried out remedial measure, the Authority's Engineer shall inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked.
 - 4.17 In the event that the Contractor carries out any remedial measures to secure the safety of suspended works and Users, and requires the Authority's Engineer to inspect such works, the Authority's Engineer shall inspect the suspended works within 3 (three) days of receiving such notice, and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
 - 4.18 The Authority's Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-K and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.18 and all matters incidental thereto, the Authority's Engineer shall act under and in accordance with the provisions of Article 12 and Schedule-K.
- 5. Maintenance Period**
- 5.1 The Authority's Engineer shall aid and advise the Contractor in the preparation of its monthly Maintenance Programme and for this purpose carry out a joint monthly inspection with the Contractor.
 - 5.2 The Authority's Engineer shall undertake regular inspections, at least once every month, to evaluate compliance with the Maintenance Requirements and submit a Maintenance Inspection Report to the Authority and the Contractor.
 - 5.3 The Authority's Engineer shall specify the tests, if any, that the Contractor shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Contractor in this behalf.
 - 5.4 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule E, the Authority's Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.

- 5.5 The Authority's Engineer shall examine the request of the Contractor for closure of any lane(s) of the Project for undertaking maintenance/repair thereof, and shall grant permission with such modifications, as it may deem necessary, within 5 (five) days of receiving a request from the Contractor. Upon expiry of the permitted period of closure, the Authority's Engineer shall monitor the reopening of such lane(s), and in case of delay, determine the Damages payable by the Contractor to the Authority under Clause 14.5.

6 Determination of costs and time

- 6.1 The Authority's Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 6.2 The Authority's Engineer shall determine the period of Time Extension that is required to be determined by it under the Agreement.
- 6.3 The Authority's Engineer shall consult each Party in every case of determination in accordance with the provisions of Clause 18.5.

7. Payments

- 7.1 The Authority's Engineer shall withhold payments for the affected works for which the Contractor fails to revise and resubmit the Drawings to the Authority's Engineer in accordance with the provisions of Clause 10.2.4 (d).
- 7.2 Authority's Engineer shall -
- (a) within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 19.4, determine the amount due to the Contractor and recommend the release of 90 (ninety) percent of the amount so determined as part payment, pending issue of the Interim Payment Certificate; and
 - (b) within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in Clause 19.4, deliver to the Authority and the Contractor an Interim Payment Certificate certifying the amount due and payable to the Contractor, after adjustments in accordance with the provisions of Clause 19.10.
- 7.3 The Authority's Engineer shall, within 15 (fifteen) days of receipt of the Monthly Maintenance Statement from the Contractor pursuant to Clause 19.6, verify the Contractor's monthly statement and certify the amount to be paid to the Contractor in accordance with the provisions of the Agreement.
- 7.4 The Authority's Engineer shall certify final payment within 30 (thirty) days of the receipt of the final payment statement of Maintenance in accordance with the provisions of Clause 19.16.

8. Other duties and functions

The Authority's Engineer shall perform all other duties and functions as specified in the Agreement.

9 Miscellaneous

- 9.1** A copy of all communications, comments, instructions, Drawings or Documents sent by the Authority's Engineer to the Contractor pursuant to this TOR, and a copy of all the test results with comments of the Authority's Engineer thereon, shall be furnished by the Authority's Engineer to the Authority forthwith.
- 9.2** The Authority's Engineer shall retain at least one copy each of all Drawings and Documents received by it, including „as-built“ Drawings, and keep them in its safe custody.
- 9.3** Within 90 (ninety) days of the Project Completion Date, the Authority's Engineer shall obtain a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities; and shall hand them over to the Authority against receipt thereof.
- 9.4** The Authority's Engineer, if called upon by the Authority or the Contractor or both, shall mediate and assist the Parties in arriving at an amicable settlement of any Dispute between the Parties.
- 9.5** The Authority's Engineer shall inform the Authority and the Contractor of any event of Contractor's Default within one week of its occurrence.

SCHEDULE - O

(See Clauses 19.4.1, 19.6.1, and 19.8.1)

Forms of Payment Statements**1. Stage Payment Statement for Works****The Stage Payment Statement for Works shall state:**

- (a) the estimated amount for the Works executed in accordance with Clause 19.3.1 subsequent to the last claim;
- (b) amounts reflecting adjustments in price for the aforesaid claim;
- (c) the estimated amount of each Change of Scope Order executed subsequent to the last claim;
- (d) amounts reflecting adjustment in price, if any, for (c) above in accordance with the provisions of Clause 13.2.3 (a); (e) total of (a), (b), (c) and (d) above; (f) Deductions:
 - (i) Any amount to be deducted in accordance with the provisions of the Agreement except taxes;
 - (ii) Any amount towards deduction of taxes; and
 - (iii) Total of (i) and (ii) above.
- (g) Net claim: (e) – (f) (iii);
- (h) The amounts received by the Contractor upto the last claim:
- (i) For the Works executed (excluding Change of Scope orders);
 - (ii) For Change of Scope Orders, and
 - (iii) Taxes deducted

2.0 Monthly Maintenance Payment Statement**The monthly Statement for Maintenance Payment shall state:**

- (a) the monthly payment admissible in accordance with the provisions of the Agreement;
- (b) the deductions for maintenance work not done;
- (c) net payment for maintenance due, (a) minus (b);
- (d) amounts reflecting adjustments in price under Clause 19.12; and
- (e) amount towards deduction of taxes

3. Contractor's claim for Damages**Note: The Contractor shall submit its claims in a form acceptable to the Authority.**

SCHEDULE - P
(See Clause 20.1)

INSURANCE

1. Insurance during Construction Period

1.1 The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Completion Certificate, the following insurances for any loss or damage occurring on account of Non Political Event of Force Majeure, malicious act, accidental damage, explosion, fire and terrorism:

(a) Insurance of Works, Plant and Materials and an additional sum of [15 (fifteen)] per cent of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and

(b) Insurance for the Contractor's equipment and Documents brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

1.2 The insurance under paragraph 1.1 (a) and (b) above shall cover the Authority and the Contractor against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

2. Insurance for Contractor's Defects Liability

The Contractor shall effect and maintain insurance cover for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and which arises from a cause occurring prior to the issue of the Completion Certificate. The Contractor shall also maintain other insurances for maximum sums as may be required under the Applicable Laws and in accordance with Good Industry Practice.

3. Insurance against injury to persons and damage to property

3.1 The Contractor shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraphs 1 and 2 of this Schedule or to any person (except persons insured under Clause 20.9), which may arise out of the Contractor's performance of this Agreement. This insurance shall be for a limit per occurrence of not less than the amount stated below with no limit on the number of occurrences.

The insurance cover shall be not less than: Rs. 2.0 Crore (Rupees Two Crore only)

3.2 The insurance shall be extended to cover liability for all loss and damage to the Authority's property arising out of the Contractor's performance of this Agreement excluding:

- (a) The Authority's right to have the construction works executed on, over, under, in or through any land, and to occupy this land for the Works; and**
- (b) Damage which is an unavoidable result of the Contractor's obligations to execute the Works.**

4. Insurance to be in joint names

The insurance under paragraphs 1 to 3 above shall be in the joint names of the Contractor and the Authority.

End of the Document